

WRESTLING CANADA LUTTE  
IN THE MATTER OF A DISCIPLINE POLICY COMPLAINT

BETWEEN:

WRESTLING CANADA LUTTE

Complainant

and

MARTY CALDER

Respondent

**COMPLAINT REVIEW DECISION**

**HON. HUGH L. FRASER, chair**  
**HON. ROBERT DECARY**  
**CAROL ROBERTS**

**ARBITRATORS**

**Submissions:**

Don Ryan:  
Clive Llewellyn:

President, Wrestling Canada Lutte  
Counsel for Marty Calder

## **I. PARTIES:**

1. The Complainant, Wrestling Canada Lutte, (“WCL”) is the governing body for the sport of Wrestling in Canada.

2. The Respondent, Marty Calder is a former National and International Canadian athlete in the sport of Wrestling, who has served as a coach at the Brock High Performance Wrestling Training Center located at Brock University in St. Catharines, Ontario.

## **II. FACTUAL BACKGROUND:**

3. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions and evidence adduced during the proceeding. Additional facts and allegations found in the Parties’ written submissions and evidence may be set out, where relevant, in connection with the discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted in the present proceedings, it will only refer to the submissions and evidence it considers necessary to explain its reasoning.

4. In December, 2018, Marty Calder was named as a Respondent to a Discipline hearing complaint commenced by WCL (the “Prior Proceeding”). This prior proceeding contained serious allegations about Mr. Calder, including a complaint that he assaulted an athlete and attempted to “interfere with and frustrate” an independent investigation report commissioned by WCL.

5. The present proceeding as well as the prior proceeding were initiated pursuant to Section 27 of the WCL Discipline Policy (“the *Policy*”) which reads as follows:

*The discipline process is confidential. Once initiated and until a decision is released, none of those involved will disclose confidential information relating to the on-going process to any person not involved in the proceedings.*

6. The parties involved in the Prior Proceeding were reminded of the need to comply with Section 27 and invitations to all witnesses included a paragraph containing Section 27 wording.
7. The Prior Proceeding commenced receiving evidence on November 17, 2020. Each witness who testified at that proceeding was reminded of their obligation to keep matters discussed at that Prior Proceeding as well as their own evidence, strictly confidential.
8. The evidentiary portion of the Prior Proceeding was completed in November, 2020 and the parties agreed to a timetable in respect of filing closing submissions that contemplated a final decision being rendered by that Panel in the spring of 2021.
9. On February 12, 2021, the Respondent filed a Statement of Claim (Court File Number 2101-02161) in the Court of Queen's Bench in Calgary against WCL and a number of individuals in their personal capacity.
10. This Civil Action against WCL referenced the fact that a Discipline complaint had been made against Mr. Calder. The Claim included paragraphs from that Prior Proceeding complaint, as well as the particulars of preliminary motions determined in the Prior Proceeding and particulars of the hearing itself. Also included in the pleadings were particulars of evidence given by a key witness in the Prior Proceeding.
11. On March 11, 2021 an article appeared in the Calgary Herald newspaper which commented on allegations made in the Statement of Claim including evidence led in the Prior Proceeding.
12. The Calgary Herald article was widely circulated within the wrestling community and was the subject of much social media discussion in that community.
13. The defamation suit filed by the Respondent on February 12, 2021 was withdrawn in April, 2021.
14. On June 4, 2021, the Panel in the Prior Proceeding dismissed WCL's complaint against Mr. Calder in its entirety.

### **III. JURISDICTION**

15. In accordance with the WCL Discipline Policy, a Discipline Panel was appointed by the WCL Complaints and Appeals Officer Dr. Frank Fowlie. The Panel consisted of Carol Roberts, Robert Décary, and Hugh Fraser, and their appointment was confirmed on April 28, 2021. The Hon. Hugh Fraser was appointed chair of the Panel.

16. The Panel accepted the complaint reviewed the alleged incident in accordance with Section 17 of the *Policy*.

17. Both parties confirmed that an oral hearing was not required and that the Panel could come make a decision based on the written submissions and documentary evidence filed in this proceeding.

### **IV. ISSUES**

18. The issues to be determined in this complaint are as follows:

- (a) Has the Respondent committed a breach of the confidentiality provision found at Section 27 of the *Policy*?
- (b) If a breach is found, what is the appropriate sanction?

### **V. POSITION OF THE PARTIES**

#### **Claimants Submissions**

19. The Claimant submits that, in filing the civil action, Mr. Calder contravened the *Policy*, and more specifically the confidentiality provision and he abused his position of authority within WCL to protect his personal interests, while acting in a disgraceful, dishonourable and unprofessional manner that has brought embarrassment to WCL.

20. The Claimant also submits that the actions and decisions of Mr. Calder's counsel on behalf of his client are deemed to be at the direction of the client. The Claimant argues therefore that Mr. Calder must accept responsibility for the filing of the Statement of Claim and the contents provided therein, and cannot be absolved from a finding of a breach of the confidentiality obligations, even if neither he nor his lawyer were responsible for the fact that the information contained in the civil action was publicized by the Calgary Herald.

21. The Claimant further submits that Mr. Calder should be suspended for a period of three months, and fined in an amount serious enough to act as a deterrent to any other WCL member who deliberately violates the confidentiality obligations of its *Policy*.

22. The Claimant also requests the Panel to direct Mr. Calder to pay WCL's costs related to the breach of the policy, and seeks such further and other relief as the Panel may consider appropriate.

### **Respondent Submissions**

23. The Respondent's submissions were provided in a witness statement given by his legal counsel. In the submissions, Mr. Calder's counsel advised that he had prepared and filed the Statement of Claim prior to the release of the decision from the Panel in the Prior Proceeding out of a concern about a possible limitation period relating to the Civil action. The Respondent's counsel submitted that the breach was inadvertent and that it was he who made the decision to file the Statement of Claim without requesting a sealing order from the court.

24. Respondent's counsel also submitted that the Statement of Claim was filed and not served and that he did not intend nor anticipate that the Statement of Claim would be disclosed before the Prior Proceeding had been completed. He added that it was he and not Mr. Calder who determined what information would be included in the Statement of Claim.

25. A central part of the Respondent's submission is that the allegations in the Prior Proceeding were well known in the wrestling community and were not being treated as confidential by the parties involved, including the WCL Board, who had distributed a 2018 Investigation Report which led to the allegations that were being considered by the Panel in the Prior Proceeding. That report had been published on the WCL website.

26. The Respondent further submits that WCL took other steps after the Prior Proceeding was commenced that caused the Prior Proceeding and the allegations to be publicly known in the wrestling community.

27. The Respondent maintains that Section 27 of the *Policy* must meet both of the following criteria:

- (a) information that is confidential, and not already publicly available; and
- (b) information which, if disclosed, could adversely impact an ongoing discipline process.

28. The Respondent adds that any information in the Statement of Claim that might have been considered confidential had already been disclosed to the wrestling community before and during the Prior Proceeding, and was well-known in that community.

29. The Respondent also asserts that because the hearing in the Prior Proceeding had been completed, none of the information included in the Statement of Claim, even if unintentionally disclosed, could adversely impact the remainder of the Prior Proceeding process.

30. The Respondent notes that WCL sought a temporary stay of the Prior Proceeding after learning that a Civil Suit had been filed, and that the Panel hearing the Prior Proceeding were then made aware that a Statement of Claim had been filed as it considered the stay request.

31. The Respondent submits that WCL did not express any concern regarding the disclosure of confidential information to the Panel hearing the stay application, nor did they allege that Section 27 of the *Policy* had been breached at that time.

32. The Respondent maintains that any concern about a breach of Section 27 should have been directed to the Panel hearing the Prior Proceeding since that Panel was in the best position to assess and determine whether the Statement of Claim contained confidential information relating to the ongoing process that should not have been disclosed until that Proceeding was completed.

33. The Respondent also states that on April 28, 2021, the Panel hearing the Prior Proceeding denied WCL's request for a temporary stay of that Prior Proceeding and as part of its deliberations, the Panel reviewed the Statement of Claim that the Respondent had filed. The Respondent adds that in its decision denying WCL's request for a temporary stay, the Panel did not express any concern regarding the disclosure of any confidential information relating to its ongoing process or any breach of Section 27.

34. In conclusion, the Respondent submits that WCL has not demonstrated that filing the Statement of Claim violated Section 27. Furthermore, the Respondent maintains that the unanticipated disclosure of the Statement of Claim by the media did not result in any potential harm to the WCL or the sport of wrestling given the fact that the information contained in the Statement of Claim has now been disclosed in the Panel's final decision in the Prior Proceeding. The Respondent also notes that the Panel's decision in the Prior Proceeding has been published on the WCL website at the direction of the Panel.

## VI. ANALYSIS

35. Section 27 of the *Policy* is straightforward. As noted in paragraph 5, this clause states that:

*The discipline process is confidential. Once initiated and until a decision is released, none of those involved will disclose confidential information relating to the on-going process to any person not involved in the proceedings.*

36. The Panel, finds that, by filing a Statement of Claim containing confidential information relating to the Prior Proceeding, the Respondent has breached the provisions of Section 27. In the Panel's view, Section 27 is unambiguous and Mr. Calder had an obligation to not disclose any confidential information relating to the on-going disciplinary matter prior to its conclusion. He also had an obligation to ensure that no disclosures of confidential information was made by anyone else on his behalf.

37. The Panel finds that Mr. Llewellyn was acting on Mr. Calder's behalf when he filed the Statement of Claim. A decision to file a lawsuit against WCL and others, seeking significant damages against the defendants, is one not taken lightly. Mr. Llewellyn was called to the Alberta Bar in 1983 and has had his own firm since 2010. It seems highly unlikely that experienced counsel would take such a step without having instructions to do so. The Panel also finds that experienced counsel would have been aware that the media regularly monitors the activities of the courts including the filing of Statements of Claim.

38. The Panel must next turn it's attention to the appropriate remedy as a result of its finding of a breach of Section 27 of the WCL Discipline Policy.

39. The Panel finds that much of the information contained in the Statement of Claim filed in the Court of Queen's Bench was in fact notorious. As noted by both parties, the wrestling community is relatively small. The Panel acknowledges that many of the details contained in the Statement of Claim were well known to that community prior to the commencement of the court action.

40. This finding does not diminish the fact that the information contained in the Statement of Claim was confidential, and at the very least its contents should have been protected by a sealing order. However, the Panel is also of the view that the circumstances around the breach of Section 27 were brought to the attention of the Panel in the Prior Proceeding and since that proceeding had not yet been completed, a request

could have been made to that Panel by WCL, to consider whether it's clear instructions regarding Section 27 had been violated. It appears that no such request was ever made.

## VII DECISION

41. Section 23 of the WCL Discipline Policy lists the possible sanctions where an infraction of the Policy has been found. The list includes but is not limited to the following:

- (a) verbal or written reprimand from WCL;
- (b) verbal or written apology from one party to another party;
- (c) service or other voluntary contribution to WCL;
- (d) removal of certain privileges of membership for a designated period of time;
- (e) suspension from the current competition, activity, or event;
- (f) suspension from all WCL activities for a period of time;
- (g) fines;
- (h) withholding of prize money, awards,
- (i) payment of costs (eg. event related costs such as flight, room/board, property damage);
- (j) suspension of funding from WCL or from other sources;
- (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.

42. For the reasons stated above, the Panel has determined that although the Respondent was found to have breached Section 27 of the *Policy*, in the circumstances of this case, it is appropriate that no sanction be imposed on the Respondent.

43. The Panel has also determined that no costs should be awarded in this matter.



44. The Panel thanks the Parties for their submissions during this review.

Dated at Ottawa, 14th of August, 2021

*Robert Décary*

*Carol Roberts*

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Hon. Robert Décary

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Carol Roberts

*Hugh L. Fraser*

Hon. Hugh L. Fraser  
Chairman