

**IN THE MATTER OF A COMPLAINT SUBMITTED TO BRITISH COLUMBIA
WRESTLING ASSOCIATION**

BETWEEN

Madison Payette

COMPLAINANT

and

Aso Palani

RESPONDENT

DECISION

APPEARANCES:

For the Complainant: Amanda Fowler
Emir Crowne

For the Respondent: Clive Llewellyn

I. OVERVIEW

1. This matter arises from a Complaint (the “Complaint”) dated April 14, 2022, from Madison Payette (“Payette” or the “Complainant”) against Aso Palani (“Palani” or the “Respondent”).
2. Payette alleges that Palani sexually assaulted her after a party in Edmonton, Alberta, in December 2013, when she was 17 years old. She argues that Palani breached his obligations and responsibilities as a member of the British Columbia Wrestling Association (the “BCWA”). Palani denies the allegations in full.

3. For the reasons that follow, the Panel has determined that Palani has breached the BCWA's Code of Conduct (the "Code").

A. PROCEDURAL HISTORY

4. Payette submitted a complaint to the independent third party for Wrestling Canada Lutte (the "WCL") on January 31, 2022. The BCWA was copied on that complaint.
5. As a result of the Complaint, the BCWA notified Palani on February 4, 2022 he would be suspended, effective immediately, from any and all activities under BCWA's jurisdiction. This suspension is in effect until a final decision on the Complaint is rendered.
6. On February 22, 2022, WCL notified the BCWA that the independent third party for WCL had determined that WCL did not have jurisdiction over the complaint. Payette was directed to resubmit her complaint to the BCWA.
7. On April 8, 2022, the BCWA notified Payette that it had received her complaint from WCL and confirmed that the BCWA would have jurisdiction over her complaint.
8. On April 14, 2022, Payette submitted a revised complaint to the BCWA.
9. On April 15, 2022, the BCWA notified Palani of the complaint against him and provided him and his counsel with a copy of the Complaint.
10. On or around May 3, 2022, the BCWA appointed a panel (the "Panel") to hear the matter, and determine the process and deadlines for the hearing and all preliminary matters.
11. Between May 2022 and February 2023, the hearing was scheduled and adjourned twice. In February 2022, one of the original panel members had to step down, and a new panel member was appointed on March 3, 2023.
12. An oral hearing took place over videoconference on April 20-21, 2023. The following persons appeared before the Panel:

Madison Payette, Complainant
Amanda Fowler, Counsel for the Complainant
Emir Crowne, Counsel for the Complainant
Aso Palani, Respondent
Clive Llewellyn, Counsel for the Respondent
Michael Payette
Kris Christianson
Kaelan Findlay
Dustin Helwig
Cholena Horne
Richard Francis
Greg McIntyre

Katrina Haintz
Jennifer Jo Kennedy
Linda Raymond

13. The following individuals were available to appear before the Panel, but counsel for the Complainant declined to cross-examine them:

Kaia Haintz
Megan Carbonetto
Marquesis Haintz
Karla Godinez
Tin Dao
Melvin Arciaja
Justin Abdou

14. The Panel accepted the signed statements from the individuals who were not cross-examined into evidence on consent of the parties, and gave them weight as evidence of Palani's character and contribution as a coach.
15. The Panel did not give any weight to the statement from Dylan Williams; likewise, the Panel did not give any weight to the statement from Owen Dawkins, because the statements were not signed, and neither was a witness for the Respondent.
16. Furthermore, the Panel considered the written evidence and oral testimony from Linda Raymond regarding a relationship between Palani and Brianna Raymond. On the whole, the Panel did not find that evidence relevant to the allegation under consideration (i.e., Palani's alleged assault of Payette).

B. THE COMPLAINT

17. In her written submissions, the original complaint submitted to WCL, and in her will-say statements provided in advance of the hearing, Payette alleges that she attended a house party in December 2013 at an apartment off Whyte Avenue in Edmonton, Alberta. This was a party hosted and attended by athletes from the University of Alberta wrestling team. Payette states that Palani also attended this party.
18. Payette states that at some point that evening, the other attendees left the apartment for a nearby bar. Payette, being underage, stayed behind with Palani.
19. Once they were alone, Payette says that Palani provided her with alcohol. She became intoxicated and he started to kiss her. Payette attempted to stop Palani by saying she was tired. Palani ignored Payette and led her to a bedroom, where Payette says that Palani stripped naked, removed her clothing by undoing her pants and pulling them down, and asked Payette to touch him. Payette says she did not want to touch him.

20. According to Payette, Palani tried to persuade her to perform oral sex on him. Payette did not consent. Palani continued to try and persuade her before aggressively pushing Payette's head down towards his genitals. Payette alleges he grabbed her by her hair, put his penis in her mouth, and forced her to perform oral sex on him.
21. At the time of the alleged assault, Payette was an athlete member of the Edmonton Wrestling Club (the "EWC"), and had been since 2008. She turned 17 on November 4, 2013, and was a minor in December 2013, as defined in the BCWA Code of Conduct.
22. In December 2013, Palani was a member of the Canadian senior national team and had been training and working in Edmonton for over a year.
23. The Respondent denies attending this party. He denies having any interactions with Payette on the night in question. He denies the allegation of sexual assault in full.
24. Prior to the alleged assault, Payette submits that Palani was "very flirtatious" and "would often graze or 'smack [her] backside'" while coaching her.
25. The Respondent also denies these allegations. These allegations were not raised by either party during the hearing.
26. Payette does not detail allegations of grooming before the alleged sexual assault, but says that Palani groomed her after the alleged sexual assault by referring to it as their "little secret."
27. The Respondent denies these allegations in his written response to the Complaint. These allegations were not raised by either party during the hearing.

II. ANALYSIS

A. LEGAL ISSUES

1. JURISDICTION

28. This matter falls within the jurisdiction of the BCWA. Palani was a member of the BCWA at the time of the alleged incident through the Burnaby Mountain Wrestling Club. The BCWA provided a membership list confirming Palani's status as a BCWA member in 2013.
29. The BCWA was unable to provide a copy of the code of conduct in effect in 2013. Accordingly, the Panel relies on the Code of Conduct in effect when the complaint was submitted.¹ The Panel decided that relying on the Code in effect in 2022 is fair because the allegation of sexual assault is one that the Panel believes has always been prohibited in sport codes of conduct.

¹ BC Wrestling Association, *Code of Conduct*, October 2021 (the "Code").

30. The BCWA did not have a discipline and complaints policy or process in place when the complaint was received. In the absence of a process outlined in any discipline or complaints policy, the Panel has conducted this proceeding in accordance with the principles of procedural fairness, and what it believes are the best practices for conducting an administrative hearing of this nature.
31. Palani did not formally challenge the BCWA's jurisdiction in this matter, nor was the authority or jurisdiction of the Panel challenged by either party.

2. PALANI'S STATUS UNDER THE CODE

32. Payette's submissions argue that Palani was her coach at the time of the alleged assault. Palani disputes that he was a coach at the relevant time, and he further denies that he had any sort of coaching role or coaching relationship with Payette or the EWC.
33. Counsel for both parties dedicated extensive time in their submissions to debating whether or not Palani was a coach, whether or not he coached Payette, and his role with the EWC.
34. Mike Payette, Kris Christianson, Richard Francis, and Greg McIntyre all provided signed statements stating that Palani was retained by the EWC as a coach in the fall of 2012 until April 2013. Although he was not retained as a coach beyond April 2013, Palani was still involved with EWC and would be present at club practices when he was available.
35. The nature of Palani's contract with EWC was further explained during oral testimony. Each of these four individuals testified that Palani was retained by EWC as a coach, and would have kept that status even when he was not paid by EWC. Because EWC was a youth club, Palani would have had no reason to attend EWC practices in any role other than that of a coach.
36. Palani did not contest that he had been paid by EWC, but his explanation was that he had to be paid by EWC because he could not be paid as an athlete to train with either the EWC or the University of Alberta wrestling team. According to Palani, Owen Dawkins wanted Palani to come to Edmonton to raise the level of training for athletes at the University of Alberta. Without the lure of monthly compensation, Palani would not have relocated to Edmonton from Vancouver. His position was that the monthly payments were to support his training in Edmonton, effectively disguised as payments for coaching from the EWC.
37. On cross-examination, Payette and Kaelan Findlay explained why they perceived Palani to be their coach, and why they referred to him as a coach while he was involved with the EWC. Statements from witnesses for both parties also clearly indicate that several people considered Palani to be an EWC coach, even when his involvement was limited, due to his own training and competition schedules.
38. Palani argued that while he may have been present at the EWC, he never coached Payette. He remained steadfast on that point, even when shown photos of him sitting in the coach's chair for a match featuring EWC athletes, and a photo showing Payette sitting next to him.

Palani's position is that it was not uncommon for athletes to sit in the coach's chair during a match if both athletes were from the same team, or if an athlete's coach was unavailable.

39. Jennifer Jo Kennedy appeared for Palani as a witness regarding his status with the EWC. Kennedy was a member of the EWC executive from at least 2013. She says she never approved a cheque written to Palani for coaching. However, given the testimony from the other EWC coaches and board members, that would not be surprising if Palani stopped receiving monthly payments from EWC after April 2013 and Kennedy only joined the executive in 2013.
40. The Panel does not consider Palani's status as a coach or athlete to be determinative in whether or not the Code was breached. The Code applies to all "Participants." The definition for "Participants" and "Participant" is defined as:

[...] any individual member and/or registrant defined in the Bylaws of BCWA who are under BCWA jurisdiction and who are subject to the UCCMS and the policies of BCWA, as well as all people employed by, contracted by, or engaged in activities with, BCWA including, but not limited to, employees, contractors, Athletes, coaches, instructors, officials, volunteers, managers, administrators, Committee Members, athletes' parents or guardians, spectators at BCWA-sanctioned Events, and Directors and Officers.

41. At the time of the alleged incident, Palani was a registered member of a BC wrestling club and was also a member of the Canadian national team. He was a member of the BCWA at the time the Complaint was accepted, and, but for his suspension, would likely still be a member of the BCWA. Whether or not Palani was coaching Payette, or acting as a coach with the EWC, does not affect his status as a "Participant" under the Code.
42. Payette perceived Palani as her coach. As such, there was an immediate power imbalance between them. She assumed he had that status and her behavior with him would have been influenced by her perception of that status. Although Palani may not have been Payette's actual coach, he knew and knows that a relationship with her would have been improper. Further, there was an existing power imbalance between them because of his status as a senior athlete and hers as a junior — a power imbalance he acknowledged in testimony.

3. BURDEN OF PROOF

43. The Complainant has the burden of proving her complaint on a balance of probabilities. That means she has to prove it is more likely than not that the alleged conduct occurred, and that the alleged conduct breaches the Code.
44. The balance of probabilities is the civil standard of proof. This is not a criminal proceeding where the burden of proof is beyond a reasonable doubt. The nature of the allegations and the potential sanction have no bearing on which standard of proof applies, nor do they require anything other than a finding that it is more likely than not that the alleged incident occurred. Unless otherwise stated, the civil standard is what applies in an administrative hearing such as this.

45. Despite counsel for Palani urging the Panel to adopt a burden of proof closer to certainty, the Panel is not obligated to do so.

4. APPLICATION OF THE CODE OF CONDUCT

46. The BCWA Code applies to all Participants' conduct during all BCWA business, activities, and events (whether or not such conduct occurs within B.C.), as well as Participants' conduct "outside of the business, activities, and events of BCWA when such conduct adversely affects the organization's relationships (and the work and sport environment) or is detrimental to the image and reputation of BCWA."²
47. The application of the Code outside of the sport environment is reinforced by section 9.d) which notes that the physical location where maltreatment occurred is not determinative, and that maltreatment can occur "outside of the sport environment where the Maltreatment has a serious and detrimental impact on another Participant."³

B. THE COMPLAINT

1. DID THE ALLEGED CONDUCT OCCUR?

48. Payette alleges that in December 2013, Palani sexually assaulted her by forcing her to perform oral sex on him. This alleged assault occurred after a party at an apartment where neither Payette nor Palani lived. Payette says that the assault was interrupted when a male wrestler from the University of Alberta returned to the apartment. She left the apartment after that individual returned.
49. There were no witnesses to the alleged assault, nor was the individual who returned to the apartment identified.
50. Shortly after the alleged assault occurred, Payette testified that she told her cousin, Kaelan Findlay, about the assault without going into specific details. When challenged by Palani's counsel on why she would confide in someone three years younger than she was, Payette explained that she and Findlay were very close, and she wanted her cousin to be safe. Payette seemed to be motivated less by confiding, and more by a protective impulse.
51. The Panel found Payette to be a credible witness. She was direct and portrayed confidence in her testimony. She had a convincing rationale in seeking to protect other young women, and she had no discernible motive not to tell the truth. Payette had nothing to gain from this process. Her memory of the incident is as accurate as can be expected: she remembers the relevant details of the evening and how the incident came to pass, without embellishment, and acknowledged the shortcomings in her recollection (such as not knowing the date of the party or who interrupted the assault).

² Code, s. 6.

³ Code, s. 9.d).

52. Payette's account is externally corroborated by Kaelan Findlay and Cholena Horne, and their contemporaneous accounts of the events are persuasive. There was no drama or embellishment. Payette just put Findlay and Horne on notice. Nothing seems to be omitted from her account of the incident. While she acknowledges some details are vague, she is very sure in her own knowledge that the assault happened to her.
53. Payette's version of what happened is consistent in her written statements and in her oral testimony on cross-examination. She maintained her version of the events and effectively responded to questions and challenges from Palani's counsel without becoming flustered, defensive, or evasive. Her evidence was convincingly conveyed, even under the scrutiny of cross-examination.
54. Kaelan Findlay testified that Payette confided in her about the assault in December 2013. She said that Payette did not give specific details about what happened, but Findlay clearly remembered Payette making a comment to the effect of, "That's why you don't leave him alone with 16-year-old girls."
55. Findlay, too, was a credible and forthright witness who presented testimony consistent with her written statement, even under the pressure of cross-examination.
56. Payette met Cholena Horne in September 2013. Payette would attend varsity training practises with the University of Alberta wrestlers when Horne was a first-year student. The two became close friends.
57. In her written statements, Horne provides helpful details about the party. She is able to narrow down the date it likely occurred by referencing her 18th birthday and travel to and from competitions. She also stated in her statement and in cross-examination that when Payette asked her generally about remembering a party in December 2013, Horne was able to identify it unprompted as "the time she [Payette] stayed behind with Aso."
58. Horne admitted that Payette never told her about the alleged assault; however, she testified that she remembered Payette making a comment in the locker room at a point in time between December 2013 and April 2014 that she (Payette) was worried about leaving her cousin alone with Palani.
59. Horne remained calm during her cross-examination and her oral testimony did not deviate from her written statements. She was a credible witness.
60. Palani failed to impugn Horne (and Payette) by claiming Horne continued to send athletes to train with Palani even after learning of the alleged assault. Horne testified that was not true, and she in fact stopped sending athletes to Palani once she learned of the alleged assault, and tried to discourage parents from sending their children to him.
61. Palani denies everything about Payette's allegation. He disputes that there was a party at an apartment off Whyte Avenue in December 2013. He asserts that he did not attend a party in

December 2013 where Payette was present. He vehemently denies that the alleged assault occurred.

62. Palani and his counsel attempted to attack Payette's credibility on multiple fronts. Palani provided evidence where Payette disclosed she had been diagnosed with borderline personality disorder, suggesting that mental health issues meant she was not a reliable witness. He implied that the nine-year gap between the alleged assault and submitting the complaint was because the assault never happened. He questioned why Payette's father would let her attend parties with varsity athletes older than she was, and questioned why she would not confide in her male coaches about the alleged assault. He challenged her memory of the event, implying she was too intoxicated to accurately recall what happened. Payette and Findlay were both challenged on why a 17-year-old would confide in a 13-year-old, disregarding the close family relationship. His counsel also attempted to imply that, if he had interacted with Payette at a party, Palani would have assumed that Payette was 18 years of age or older because she was friends with university students. He further implied that girls who cry on the witness stand are unreliable, and use tears to encourage a sympathetic response to their emotion.
63. Instead of undermining Payette (and Findlay and Horne), Palani and his counsel instead demonstrated their reliance on outdated and harmful stereotypes about how sexual assault victims should behave, when an assault victim should report the assault, as well as to whom, and demonstrated a fundamental misunderstanding of mental health diagnoses. The current test of sexual assault is one of active, ongoing, enthusiastic consent, and the burden of proving such consent (or lack thereof) is shared.
64. These disingenuous attempts to discredit the Complainant failed to undermine or discredit her statements and her testimony.
65. Payette ably refuted the attempts to undermine her credibility by explaining that the delay in her complaint was related to her education as a teacher, during which she learned the importance of consent and accountability. She also clarified her mental health diagnosis, as well as put forward a witness (Dustin Helwig) who testified that Payette had not brought a complaint against him, as she was alleged to have done by Palani, in another effort to undermine her character.
66. Payette also explained that one of the reasons she did not report the assault to people like her father, or the other coaches at the EWC, including Kris Christianson, was because Palani was seen as a superstar by the Edmonton wrestling community. He had effectively been recruited by Owen Dawkins to come train in Edmonton, and she did not feel people would believe a complaint against Palani, given his status within the wrestling community.
67. Palani had one witness, Melvin Arciaga, who submitted a statement saying that he had no memory of a party in December 2013.
68. Melvin Arciaga was available for cross-examination by Payette's counsel, though they declined.

69. Although Arciaga did not appear before the Panel, the Panel has considered his statement. In comparison to the statements provided by Horne and the details she includes about the party, as well as her clear recollection about a party where Palani stayed behind with Payette, the Panel it finds it more likely than not that Palani attended a party that Payette also attended in December 2013.
70. Palani submitted several signed statements that are effectively character references. These statements are provided by athletes and parents of athletes that Palani was coaching prior to his suspension. None of these witnesses were able to provide any evidence regarding the alleged assault.
71. While the signed statements from Katrina Haintz, Kaia Haintz, Marquisis Haintz, Megan Carbonetto, Karla Godinez, and Tin Dao may reflect Palani's character and how his athletes perceive him now, they are of limited relevance for the purpose of determining whether or not Palani assaulted Payette, as alleged.
72. Palani was not a strong witness in his own defense. He portrayed impatience with the process, and indifference to any impact his behaviour may have had, or have, on Payette. Even if he had not assaulted Payette, Palani seemed uninterested in her well-being, and portrayed no empathy to a fellow wrestler. In addition, Palani's interpretation of his status as coach at EWC, and of his role with the club, was in direct opposition to the coaches he interacted with at the time. Palani's failed attempts to impugn Payette and Horne lead the Panel to question his credibility.
73. Based on the written evidence provided by all parties and the oral testimony of the witnesses, the Panel concludes that, on a balance of probabilities, Palani assaulted Payette as alleged in her complaint.

2. DO THE ALLEGATIONS BREACH THE CODE?

74. The complaint alleges that Palani sexually assaulted Payette.
75. As discussed above in paragraph 47, the Code applies to all BCWA Participants, and can apply in a non-sport environment, such as parties, if the maltreatment has a serious and detrimental impact on another Participant.
76. The Panel has found on a balance of probabilities that Palani was a coach at the EWC during the relevant time. In the event that Palani was not a coach at the relevant time, the Panel finds that Palani would have been considered a Participant under the Code.
77. Section 7 of the Code enumerates responsibilities that all Participants share, which include:
 - 7.b) Refrain from any behaviour that constitutes Abuse, Harassment, Workplace Harassment, Sexual Harassment, Workplace Violence, Discrimination or any form of Maltreatment.

7.f) Refrain from the use of power or authority in an attempt to coerce another person to engage in inappropriate activities.

7.r) To remove the risk of any actual or perceived conflicts, not engage in an Intimate or Romantic Relationship with an Athlete of any age, or with any Participant where a Power Imbalance exists. If a relationship that is not permitted by the Policy exists, immediate steps are to be taken, which may require Participants changing their role(s) so that neither is a Person in Authority relative to the other, or ending the relationship.

78. Schedule A of the Code includes a non-exhaustive list of behaviours that would be considered Harassment under the code, including:

VIII. Unwanted physical contact including, but not limited to, touching, petting, pinching, or kissing

X. Sexual flirtations, advances, requests, or invitations

XI. Physical or sexual assault

79. The definition of “Maltreatment” is divided into several subcategories of maltreatment, which include “Sexual Maltreatment.” “Sexual Maltreatment is defined as including, but not limited to:

any act targeting a Participant’s sexuality, gender identity or expression, that is committed, threatened or attempted against that person, and includes but is not limited to the Criminal Code offences of sexual assault, sexual exploitation, sexual interference, invitation to sexual touching, indecent exposure, voyeurism and nonconsensual distribution of sexual/intimate images. Sexual Maltreatment also includes sexual harassment and stalking, cyber harassment, and cyber stalking of a sexual nature.

80. The definition of Sexual Maltreatment includes a non-exhaustive list of examples, including “Any intentional touching of a sexual nature of any part of a person’s body, however slight, with any object or body part by a person upon another person, included but not limited to [...] any contact, no matter how slight, between the mouth of one person and the genitalia of another person.”⁴

81. Payette has proven that the alleged conduct occurred on a balance of probabilities. The alleged conduct meets the definition of sexual maltreatment in that it was a sexual assault.

82. The Panel finds that Palani breached the Code.

III. DISPOSITION AND SANCTION

83. The Complainant has proven her complaint on a balance of probabilities.

⁴ Code, Schedule A, “Maltreatment” s. c)i.2.c.

84. Payette’s counsel urged the Panel to consider the presumptive sanctions in the Universal Code of Conduct to Prevent Maltreatment in Sport (the “UCCMS”) and impose a sanction of permanent ineligibility on the Respondent.
85. Counsel for Palani argued that being suspended from February 4, 2022 is penalty enough and instead proposed that his suspension be lifted and no additional sanction applied.
86. Palani has demonstrated awareness of the power imbalance between coaches and athletes and readily agreed that any sexual contact between a coach and athlete was wrong and would be abusive of the power imbalance that exists.
87. Despite his counsel mentioning that he was training athletes, Palani seems to have respected the terms of his suspension and not engaged in any wrestling-related activities. He explained that he still works as a personal trainer at a public gym, and does some training and coaching for MMA, but has not been involved with wrestling since February 2022.
88. The Panel has decided to impose a three-year suspension, effective from February 4, 2022 to February 3, 2025, in addition to safe-sport training. Any such education that can be completed while under the suspension is to be completed prior to February 4, 2025. Any education that cannot be completed while suspended must be completed by August 4, 2025, and continued on an annual basis once the suspension is lifted. The Panel directs that Palani provide proof of having completed the following courses:
 - a. SafeSport Trained: Core Unit 1: Sexual Misconduct Awareness and Education
 - b. SafeSport Trained Core Refresher: Recognizing and Reporting Misconduct
 - c. SafeSport Trained Core Refresher: Creating a Positive Sport Environment
 - d. Coaches Association of Canada/NCCP: Safe Sport Training (<https://safesport.coach.ca/participants-training>)
 - e. Coaches Association of Canada/NCCP: Support Through Sport: Gender-Based Violence in Sport (<https://coach.ca/support-through-sport-gender-based-violence-sport>)
 - f. Coaches Association of Canada/NCCP: Understanding the Rule of Two (<https://coach.ca/understanding-rule-two>)
 - g. Canadian Women and Sport: Keeping Girls in Sport (<https://womenandsport.ca/learning-opportunities/e-learning/keeping-girls-in-sport-e-module/>)
89. This decision may be published by the BCWA at its discretion.

Dated: May 3, 2023

Jeffrey Raphael (chair)

Ann Peel

Kate Scallion