

Jurisdictional Arguments

The argument on behalf of Orangeville is that there was no jurisdiction to impose a fine. Essentially, this argument is that there was no authority for the CLA to impose the fine.

Orangeville is arguing that proper process was not followed and more fundamentally, there was no authority to impose a fine at all.

Mr. Thwaites argued that the fine was “premature” and the wrong process was followed.

He said that the issue of buying the rings from another source “could and should have been dealt with under the Minto Cup Agreement and that the process is in the Minto Cup agreement.”

He said that it took place during the Minto Cup and therefore under s. 22.3 of the Agreement the dispute had to be resolved by the Convenor. The AC disagrees and finds that that particular clause deals with matters which arise from incidents at the tournament and not following the completion of the tournament.

He then referred to s. 21.9 of the Agreement which provides that Sponsor Agreements shall be approved by the CLA and will be attached to this Agreement as appendices. Should a conflict arise in regards to sponsorship agreements, the Minto Cup Committee will have final approval.

In his submissions, Mr. Thwaites said that the Minto Cup Committee had final approval of sponsorships but this is wrong when one looks at the Minto Cup Agreement itself and the minutes of the meeting of March 21, 2006. The minutes of the teleconference meeting on March 21, 2006, which Dean McLeod attended, indicated that there was proposal from Highwood Manufacturing included in Appendix A and “the committee agreed that the CLA would have the authority to agree to terms with potential sponsors without coming to the Committee for approval.”

It was impossible to attach the Highwood Agreement to the Minto Cup Agreement because the Agreement was signed in 2005 and the Agreement had not yet been obtained.

No records of anyone complaining about the Memorandum of Understanding Sponsorship or not having a copy of the Highwood Agreement have been produced at this hearing.

The argument was raised that even after the agreement was signed, it was never appended to the Agreement and the agreement called for this. Mr Thwaites submitted that this meant that the agreement was not enforceable as it was not appended. However, on examination of Dean McLeod, he indicated that none of the sponsorship agreements had ever been appended to the main agreement and over the three year period there were a number of sponsorship agreements entered into. From this, we conclude that the Committee had proceeded on all sponsorships without the requirement to append the agreements to the original.

Also on this point, there is a conflict between the evidence of the David Miriguay and Dean McLeod.

Mr. Thwaites said that the OLA never got a copy of the sponsor agreement and that he had been advised by Dean McLeod of that. Dean McLeod said that he was aware of the Highwood Agreement but the OLA never got copies of it. We did not hear from the OLA directly on that.

Dean McLeod was asked if he had ever requested a copy of the Sponsorship Agreement before that and he said that he had not. He claimed that he did not ask for the Highwood agreement before the 2008 Minto because he had no warning that the Memorandum of Understanding Sponsorship which warns of the \$5,000.00 fine would be coming at Minto 2008. This is clearly incorrect because he signed the identical Memorandum of Understanding in 2006 and 2007 and, by his own admission, he never asked for a copy of the Highwood Agreement on those occasions or ever until after the 2008 Minto.

Dean McLeod said that the Agreement was forwarded to him after the Calgary Minto Cup was completed. He claimed that he did not get a copy of the document until after the fine was levied. He claimed this was the first time he saw the actual agreement.

David Miriguay said that he did not send out any of the Sponsorship Agreements and no one asked him for any of them.

David Miriguay confirmed that Dean McLeod signed the Memorandum of Understanding Sponsorship in 2006-2007-2008 and he was never asked for a copy of the Highwood Agreement. He said that the only time he was asked about the Agreement was when he reminded Bob Clevely in the fall that he would have to buy from Highwood. As we understand his evidence the next thing he heard was a request from Dean McLeod for a copy of the Agreement and he either faxed or emailed it to him in September or October. He does not have any record of that. He says that his email was cleaned out for that period of time.

David Miriguay said that he did discuss the Highwood Agreement with the Minto Cup Committee and gave some details on what it was about.

As David Miriguay went on, he narrowed down his evidence by saying that he could only say that it would be in the first week of September that he sent the Highwood Sponsorship Agreement to Dean McLeod and he would assume that it was only by email. He had no recall of speaking to Dean McLeod on the phone and confirmed that he had not provided it on August 22, 2008.

It is worthy of comment that, whatever way David Miriguay sent the record, it was sent and it was sent by either fax or email. Yet, Dean McLeod, who would have received a faxed copy or an email, has not produced anything to show when it was received. Also, we would expect that Bob Clevely would know when he spoke to David Miriguay and one would expect that he may have some sort of a record, even if David Miriguay does not. The AC advises Orangeville that, if it is established that there are such records, this could result in the drawing of an adverse inference against Orangeville for failing to produce them.

The fine was levied by e-mail March 13, 2009. We have a copy of an e-mail dated October 22 from Fiona Clevely (VP for the Orangeville team) sent to sales@highwoodrings.com stating they “are wondering what the design and price is for the rings”. This does not prove Orangeville had a copy of the sponsorship contract but that they were aware of their obligation. In Joey Harris’s package of e-mails, there is one from Dean McLeod dated November 27, 2008 to a number of people including Joey Harris. In it, he is asking what the procedure is for the MVP winner to get his ring. He also asks about the ring he got from the Six Nations team for their Minto Victory. He received a ring from Six Nations the previous year and they spelled his name wrong. In the e-mail dated November 27, 2008, he states “Also when I received the agreement from you that you had signed with Highwood, one of the clauses in this agreement stated “D. Provide complementary engraving on the inside of the ring.” This is the exact wording from the clause under “Highwood’s responsibilities include”. Therefore, we conclude that, as David Miriguay said, Dean McLeod had a copy of the Sponsorship agreement and that he had it no later than November 27, 2008 which is after the Minto Cup as he claims but well before the fine was levied.

In any event, nothing in CLA by-laws or in the rules of natural justice would support an argument that jurisdiction of the CLA to fine or discipline would be ousted because the Sponsor Agreement was not attached as an appendix to the Agreement. In other words, no one could point to any condition precedent for discipline that, if you do not follow 21.9, there can be no discipline.

Another way to consider this is whether, by not sending the Highwood Agreement to the parties, Orangeville was prejudiced. In other words, what difference could it have made in relation to their conduct? We have not had any argument that it could have and we see none.

It may be helpful to give for the AC to give examples of valid jurisdictional arguments: If there was a breach of by-law 7 in terms of time deadlines; a hearing not being held within 21 days of the Appeal Committee’s appointment without there being an extension of the deadlines; and a discipline complaint being made longer than 15 days after the event came to the attention of the Complainant in breach of s. 6.2.2.1. Those are true jurisdictional problems.

The AC also recognizes that we are not a court of law nor is this a criminal prosecution. No one goes to jail. Accordingly, strict construction of agreements and by-laws, as is required in situations where a person’s liberty is jeopardy, may not be the type of construction which should be applied. Tribunals of our nature should try to get at the heart of the issues and not be unduly technical.

Collaterally, we note on this point that Mr. Thwaites objected in very strong terms about a lack of disclosure but this has no merit because that disclosure is in David Miriguay’s statement which was disclosed to him a long time ago. He also said that David Miriguay’s statement was not evidence but this is incorrect as well, because the AC is entitled to look at written statements without a witness testifying. Moreover, David Miriguay was present to be questioned.

Turning to the next argument, Orangeville has argued that s. 23.2 requires that where one of the parties to the Agreement is of the opinion that the other party has failed to conform with its obligations under the Agreement or is interfering with a party's ability to meet the obligations that party must go through a process and then if that process is unsuccessful a complaint goes to the CLA. So, a fine cannot be levied unless that process is followed. It is a condition precedent to a fine.

While this argument, at first, seems to have merit, we find that it does not succeed.

It is questionable that Orangeville is a **party** to the agreement. This clause is likely intended to refer to major disputes in relation to the respective obligations of the **parties** to the agreement in regard to the Minto Cup Tournament. It probably is not intended to deal with issues like this. This, however, need not be decided.

By signing the Memorandum of Understanding Sponsorship in 2006, 2007 and 2008, this creates a contract which is just as binding as the Minto Cup Agreement itself. We note that the CLA signed it and each MA and each participating team signed it. There is nothing in the Memorandum of Understanding Sponsorship that requires that the Sponsorship Agreement with Highwood be provided before any discipline could occur. So, the parties have contracted out of this argument and that would also apply to the other jurisdictional argument discussed above.

In relation to the point that the Memorandum of Understanding Sponsorship is a contractual document binding Orangeville and the OLA, we refer to s. 14.3 which provides "should the CLA arrange a sponsor for the Championship rings, the Championship team will bound by the Agreement." Here, again, the Championship team signed the Memorandum of Understanding Sponsorship and so did the OLA.

Further, it is noted that, as set out in s. 22.1, "Amendments to this Agreement can be undertaken at anytime as set out in s. 24. The Amendments will be in writing and, if adopted, will be attached to the main Agreement. All amendments must be completed by the end of the pre-tournament meeting." Section 24 provides that the Minto Cup Committee has four votes and all of those who had votes signed that Agreement. Therefore, the Agreement was amended and that was done in 2006 – 2007 -2008.

The Memorandum of Understanding Sponsorship provides that "any team found to have purchased a championship ring from any other supplier will face a fine of \$5,000.00 and further disciplinary actions." That is the clause that governs in this case and what happened here was that Orangeville did that and they were automatically fined, as per the Agreement.

There was another argument raised by Mr. Thwaites which was that Orangeville did not know who the decision maker was, either Joey Harris or David Miriguay. Given the clear disclosure provided to him that Joey Harris made the decision and told David Miriguay to communicate it, this, in our view, has no merit.

Application for Recusal of Tom Engel

The following are our reasons for dismissing this application:

1. It does not matter if Mr. Engel signed the Minto Cup Agreement because we are concerned only with interpreting the words in the contract and nothing in the discussions leading up to the formulation of the contract are admissible or relevant;
2. The fact that an administrative tribunal is aware of facts outside of the contract or the relationships involved or the realities of the situation is not reason to disqualify. In matters such as ours it is viewed to be an asset for members to be aware of that sort of thing;
3. As for the email communications that Mr. Engel had with David Thwaites where he challenged Orangeville about the availability of Mr. Thwaites and his client and witnesses, Mr. Engel was delegated to do that by the Committee and the Committee was kept advised of all of those communications and the Committee, including the Chair, had no concerns about the approach he was taking. Mr. Thwaites failed to point to any particular words in the communications which could give rise to a reasonable apprehension of bias. There is nothing unusual for a tribunal such as ours, where cases should be heard as soon as possible, to be demanding in relation to ensuring that the Appeal is heard within a reasonable time. The issues that Mr. Engel was dealing with were procedural only and not about the merits of the case itself so there is no basis to feel prejudiced;
4. In relation to the emails between Tom Engel and Dean McLeod, Dean McLeod, on his own, raised the issue with Mr. Engel and he responded and ensured that the other parties were informed. Dean McLeod attacked the integrity of Mr. Engel, as a Panel Member, and Mr. Engel demanded that he clarify what he was saying. Nothing in the emails would suggest that this could give rise to a reasonable apprehension of bias against Orangeville. By analogy, if a witness for the defence called a judge a liar and the judge demanded an explanation, it is clear that a judge would not have to step aside. The witness could even be cited in contempt by that judge and the judge would not have to step aside.