IN THE MATTER OF A COMPLAINT TO THE ONTARIO VOLLEYBALL ASSOCIATION (HEREINAFTER "OVA") BY DARLENE LOSIER (HEREINAFTER "COMPLAINANT") AGAINST DAVID MACDONALD (HEREINAFTER "RESPONDENT") UNDER THE OVA DISCIPLINE AND COMPLAINT POLICY (HEREINAFTER "POLICY")

INTRODUCTION

1. On March 10, 2024, per Section 18 of the Policy, the Complainant filed a formal complaint along with four (4) witness statements (hereinafter "Complainant's Submissions") against the Respondent alleging that at an invitational event attended by OVA youth teams in the Fall 2023, the Respondent yelled at the Complainant, an opposing head coach, and engaged in hostile verbal behaviour aggressively insisting the Complainant had cheated, including the use of profane language and physically intimidating body language. The Complainant alleges that this conduct constitutes a violation of the OVA Code of Conduct and Ethics (hereinafter "Code of Conduct").
2. On April 26, 2024, I issued a preliminary jurisdictional decision accepting the complaint, finding that the complaint is not frivolous and is within the jurisdiction of this policy, determined that alternative dispute resolution was not appropriate in this matter pursuant to Section 26(b) of the Policy, determined that the OVA shall retain jurisdiction in this matter, and also determined that this complaint shall proceed through Process #1 pursuant to Section 26(c.1)(i) of the Policy.
3. I confirm that I am free of conflict and bias in this matter and that the parties have not challenged my appointment.
4. After receiving the Respondent's Submission materials along with two other witness statements (hereinafter "Respondent's Submissions"), and the Complainant's Reply materials along with a video of a portion of the incident (hereinafter "Complainant's Reply"), I have determined that I have sufficient information on which to issue a substantive decision.

SUBMISSIONS

5. Below is a summary of the relevant facts and allegations based upon the written submissions. While I have considered all the facts, allegations, arguments, and evidence submitted by the Parties, I have referred in this decision only to the submissions and evidence I consider necessary to explain my reasoning.

Complainant's Submissions

6. The Complainant has alleged that at an invitational tournament on October 29, 2023, following a rotation issue with the Complainant's team that was not penalized due to a timeout that the Respondent consented to being granted after the match official had not seen the Complainant's timeout request, the Respondent "went ballistic and started swearing and speaking loudly to the ref (*sic*)."
7. The Complainant further submitted that when the Complainant "went over to the score table to sign the score sheet, … the [Respondent] came up and grabbed it out of the scorekeeper hand (*sic*) to sign…. He completely lost it and said that 'it was typical smash. What a bunch of cheaters!'…. He continued to berate [the Complainant] and told [the Complainant] that [the Complainant] was cheating."
8. The Complainant also submitted that when the scorekeeper offered to speak to the Complainant about the match's scoring, the Respondent refused to leave, continued the verbal assaults, and "started to walk towards [the Complainant], with his hands raised up, shaking his arm at me in a very threatening way."
9. The Complainant further submitted that when parents became involved, the Respondent "lunged forward" at them and challenged them to a physical altercation.
10. The Complainant also provided four witness statements:
    a. In the first witness statement, Witness "[redacted]" observed the Respondent "name calling" and acting "aggressively" towards the Complainant, such that the Respondent "lunged towards [the Complainant] causing her to back up with her hands up" and then further observed that the Respondent refused to leave the Complainant alone with the scorekeeper and instead, "got angry again and began swearing".

b. In the second witness statement, Witness "[redacted]" observed the Respondent arguing with the referee and becoming "increasingly hostile", and essentially fully corroborated all of the Complainant's Submissions, including the post-match conduct.
c. In the third witness statement, Witness "[redacted]" observed the Respondent "displaying aggressive behaviour towards" the Complainant following the rotation issue.
d. In the fourth witness statement, Witness "[redacted]" observed the Respondent as they, "continued to raise his voice and move towards [the Complainant], essentially taking up as much space as he could and moving her off the table. This was clearly an attempt at intimidation towards" the Complainant.

Respondent's Submissions

11. The Respondent has submitted that they did not argue or threaten anyone while the rotation issue with the match official was ongoing, never lunged towards anyone, never shouted or yelled names, and that the Complainant is only submitting the complaint now to get the Respondent's team "in a mess before their Provincials".
12. The Respondent further submitted that following the match, they did not "snatch" the scoresheet from anyone's hand and instead submitted the Complainant actually brought up the issue after the match and began arguing after the Respondent informed them that they had been cheating and unethical.
13. The Respondent finally submitted that it was the parents from the Complainant's team that physically challenged him, and the Respondent declined to escalate the situation because children were present.
14. The Respondent also provided two witness statements:
    a. In the first witness statement, Witness "[redacted]" observed the post-match incident following the signing of the scoresheet in which the Witness corroborates the Respondent's submission that the parent from the

Complainant team is who made physical threats and began using profane language.

b. In the second witness statement, Witness "[redacted]" "can agree that David MacDonald did yell at the opposing coach, did engage in hostile verbal behaviour insisting that the opposing coach cheated, did use profane language and did come across as physically intimidating in his body language" while also observing that the Respondent did in fact "snatch the scoresheet because he wanted to sign first" and while the Complainant and Respondent "were equally aggressively speaking to each other", the Respondent "was more aggressive towards the [parent] than he was towards the coach".

Complainant's Reply

15. The Complainant submitted that "the outcome or calls during the game are not the issue here. The issue is the behaviour of the coach in response to the calls."
16. The Complainant further submitted that "have nothing to gain by initiating this complaint …. [and] waited so long because [they were] fearful that we may run into this coach in the season and was worried about further altercations or retribution."
17. The Complainant also adduced a 40-second video that is purportedly taken immediately after the rotation issue was decided and play was resuming in which the Respondent is seen arguing with the referee across the court.

DECISION

18. In arriving at the complaint findings made, I have reviewed the Policy, and it is silent on the issues of the Party bearing the burden of proof and the standard of proof to be met in the circumstances of a complaint. I have determined the burden of proof rested with the Complainant and that this obligation or burden was to be satisfied on the balance of probabilities.
19. In analyzing the Respondent's Submissions, solely regarding the allegations of a verbal assault (disrespectful or aggressive communication) by the Respondent against the Complainant, I find that the Respondent has unsuccessfully attempted to justify their behaviour (as corroborated by multiple Witness statements) by submitting multiple

parties that affirmed that the Respondent was “correct” about the rule controversy regarding the rotation issue.

20. Of note, these submissions are indicative of an irrelevant consideration by the Respondent: whether or not they were correct or incorrect regarding the on-court ruling, such rulings are never justifications for violations of the Code of Conduct, especially in terms of modes of communication.
21. Therefore, on a balance of probabilities, bolstered by separate corroborating Witness statements adduced by the Complainant and the [redacted] witness statement provided by the Respondent, I have found that this Respondent violated Sections 10(a.1), 10(b)(i, ii, iv), 10(c), and 10(k) of the Code of Conduct.
22. However, on a balance of probabilities, given the inconsistencies between the Complainant’s witness statements and the Complainant's Submissions regarding physical threats or acts of intimidation by the Respondent as against either the Complainant or a parent, I have found that the Respondent has not violated the Code of Conduct regarding these allegations.
23. As such, pursuant to Section 32 of the Policy, since I have found a violation of the Code of Conduct occurred, I can apply one or more sanctions as against the Respondent.
24. As such, pursuant to Section 32(f) of the Policy, I have determined that the appropriate sanction in this matter is a suspension from all OVA activities, including those of member clubs, for a period of four (4) months, beginning in the next volleyball season or on the date the Respondent registers next with the OVA (whichever is later).
    a. This suspension includes a prohibition of the Respondent attending any OVA or OVA member club volleyball events, even as a spectator, during the suspension period.
25. Furthermore, pursuant to Section 32(b) of the Policy, I have determined another appropriate sanction in this matter is a written letter of apology to the Complainant. This letter shall:
    a. Be no longer than 250 words each in length.
    b. Be emailed to Jennifer Harkness of the OVA no later than June 12, 2024.

c. Include a thoughtful reflection on why the communication methods and language used were inappropriate, addressing the harm done and what alternative actions might have been more effective in the situation; and
d. Be to the satisfaction of the OVA.

26. Finally, pursuant to Section 32(g) of the Policy, I have determined that the final appropriate sanction in this matter is that for the Respondent to be eligible for reinstatement following their suspension, they must complete an anger management course at their own cost. While the Respondent can choose which course they complete, the OVA must approve of the Respondent's selection prior to the Respondent completing the course. The Respondent must then provide a proof of completion to the satisfaction of the OVA to fully comply with this sanction.
27. In arriving as to the appropriate disciplinary sanctions, I have considered the following factors:
    1. I have been made aware of previous disciplinary issues of the same nature involving the Respondent and as such, have determined that the sanctions imposed are justified as a result of these previous incidents:
        a. Following an OVA investigation into a reported incident from the 16U Girls Provincial Cup on November 24, 2018, the OVA issued a warning letter to the Respondent on December 11, 2018, indicating that the letter will be kept on file with the OVA indefinitely and that there would be escalating sanctions for further incidents.
        b. Following an OVA investigation into a reported incident from the 15U Girls McGregor Cup on January 26, 2019, the OVA found that the Respondent had violated the Code of Conduct and issued a fine and tournament suspension on February 8, 2019.
        c. I also understand that the Respondent was also issued a red card at the Ontario Championships on April 20, 2024, for outward displays of aggression.
    2. The Respondent has been cooperative and cordial throughout the process.

3. There is no indication that any participant suffered any physical injury.

28. Pursuant to Section 32.1 of the Policy, the above-noted sanctions begin immediately and, “If the Respondent fails to comply with a sanction applied in accordance with Section 32, the Respondent will be automatically suspended until such time as compliance occurs.”

ADMINISTRATION

29. Per Section 47 of the Policy, “Records of all decisions will be maintained by the OVA; the OVA will submit all records to Volleyball Canada, which will maintain a national record of all decisions made. All records will be maintained in accordance with Volleyball Canada’s and the OVA’s Privacy Policy, as applicable.”
30. Per Section 33 of the Policy, this decision serves as notice to the parties of the decision, which is now considered a matter of public record.
31. A link to all relevant policies can be found at https://www.ontariovolleyball.org/policies and a copy of this decision will be distributed to the parties forthwith.

“Brian Ward – City of Ottawa – June 5, 2024”