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SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)

SDRCC 13-0194

CANADIAN SOCCER LEAGUE (CSL)  
(CLAIMANT)

AND

CANADIAN SOCCER ASSOCIATION (CSA)  
(RESPONDENT)

BEFORE  
HUGH L. FRASER  
ARBITRATOR

AWARD

## **BACKGROUND**

The parties in this dispute are the Canadian Soccer League (CSL), and the Canadian Soccer Association (CSA). In 2009 the CSL applied for membership with the CSA. At its Annual General Meeting, the CSA granted conditional membership to the CSL with the stipulation that the league meet the approval criteria set by the CSA's professional and technical committees. On February 8, 2010, the CSL was granted full League Membership status by the CSA.

The CSA issued a press release on February 12, 2010 confirming the admission to membership of the CSL. The first paragraph of the press release stated that:

The Canadian Soccer Association announced today that the Canadian Soccer League has been granted full membership. Applying the provisos of the Canadian Soccer Association's revised Professional Soccer Standards that were recently ratified by the Association's Executive Committee, the Canadian Soccer League has been provided with the conditions of membership and a set of transitional benchmarks.

Acceptance into the CSA as a member permitted the CSL to operate as a sanctioned league. All but one of the CSL's teams was based in Ontario. Only the Montreal Impact Academy team operated outside of the province of Ontario.

By letter dated February 13, 2013, the President of the CSA advised the Chairman of the CSL that the CSA's Board of Directors had passed a motion which indicated that the CSA would no longer sanction the CSL as a League effective immediately.

The Motion which was reproduced in the February 13, 2013, letter stated that:

- Whereas the Canadian Soccer Association (CSA), commissioned a study on the future of soccer in Canada, hereinafter called the Rethink Management report,

- And Whereas the Rethink Management report made recommendations, which were adopted unanimously by the Professional Soccer Committee of the CSA at its meeting of November 16, 2012, confirming a regional pro league approach,
- And Whereas the CSA Board of Directors ratified and approved the recommendations of the Professional Soccer Committee and the Rethink Management report at its meeting of December 8, 2012,
- It is moved that the CSA Board of Directors, having ratified and approved the recommendations of the Rethink Management report, no longer sanction the Canadian Soccer League as a League with immediate effect.

The letter concluded by stating, “As such, this letter will serve as the CSL’s official notification that the CSA will no longer sanction the CSL.”

On February 26, 2013, Vincent Ursini in his capacity as President of the CSL Association Inc. wrote a letter to the CSA President, Mr. Victor Montagliani and the CSA Board of Directors suggesting that the CSA Board of Directors decision to de-sanction the CSL was invalid and demanding an immediate rescission of the decision.

## **JURISDICTIONAL ORDER**

In its Answer, the CSA maintained that the SDRCC did not have the jurisdiction to deal with this dispute. The CSA submitted that the jurisdiction for this dispute rested with the CONFEDERATION OF NORTH, CENTRAL AMERICAN AND CARIBBEAN ASSOCIATION FOOTBALL (CONCACAF) or with FEDERATION INTERNATIONALE de FOOTBALL ASSOCIATION (FIFA). In a decision released on April 2, 2013, the Panel ruled that the CSL decision to challenge its de-sanctioning by the CSA Board of Directors is an internal national dispute and as such the Sport Dispute Resolution Centre of Canada has the jurisdiction to deal with such dispute. The matter was therefore scheduled for a full hearing on April 10, 2013.

## **ISSUE**

The fundamental issue in this arbitration is whether the CSA through its Board of Directors had the specific authority to de-sanction the CSL.

## **POSITION OF THE PARTIES**

### **Position of the CSL**

The CSL takes the position that they were sanctioned to play within the CSA as a League Member and full member of the CSA. The CSL submitted that the granting of membership in the CSA was synonymous with the granting of sanction to operate as a sanctioned league member. The CSL also notes that the term “sanctioned” is not defined in the CSA By-Laws or Rules and Regulations. The CSL adds that the term “de-sanction” is not defined in the CSA By-laws, Rules and Regulations or Policy provisions. The CSL argues that the only manner in which the CSA may remove rights conferred on a league member is through a suspension or an expulsion after the member has committed breaches of its obligations.

The CSL maintains that once they were granted League Membership status they had the reasonable expectation that they would continue to be sanctioned to play and operate a League provided that they did not violate the provisions of the CSA By-laws. The CSL suggests that there are only two ways in which rights may be taken away from a CSA League Member;

- a) Where a Member seriously or repeatedly violates its obligations as a Member. Upon being suspended, the Member “shall lose its membership rights. Other members may not entertain sporting contact with a suspended member”. (CSA By-Law 16.3); and/or
- b) “i. it fails to fulfill its financial obligations towards the CSA;

ii. it seriously or repeatedly violates the statutes, by-laws, rules and regulations, directives or decisions of FIFA, CONCACAF, or the CSA.”  
(CSA By-Law 17.2)

The CSL argues that this is not a case of a league being refused sanction, but rather is a matter of a league having its sanctioned status removed. The CSL maintains that there are no CSA By-laws, Rules, or Regulations that speak to the de-sanctioning of a league. De-sanctioning according to the CSL meant that it could no longer play games against other CSA sanctioned teams and could not use CSA sanctioned referees thus rendering it a “rogue” league.

The CSL adds that it was given no opportunity to take part in the decision to de-sanction and that there is no reason for that league to remain a member of the CSA if it does not have CSA sanction.

The CSL also notes that in a meeting which took place on January 28, 2013, Mr. Montaglini and Mr. Smale of the CSA met with Mr. Ursini of the CSL. During that meeting Mr. Montaglini requested that the CSL resign from CSA membership.

The CSL submits that it requested confirmation of its status from the CSA on at least three occasions, being February 4, 2013, February 11, 2013, and February 26, 2013, and that the CSA refused to provide this confirmation.

The CSL also submits that it was justified in assuming that the loss of sanction meant a loss of membership given the inadequate response from the CSA.

The CSL states that the decision to de-sanction was communicated only 6 weeks prior to the commencement of the 2013 CSL season causing significant confusion and financial hardship for the league’s stakeholders and partners.

The CSL also argues that there was no legitimate, logical or legal reason to de-sanction the CSL immediately and that in so doing the CSA was ignoring its duty to protect its interests pursuant to the CSA objectives (By-Law 3.1(d)). The CSL also states that there was no urgency to implement the decision to de-sanction its league and that if the CSA was authorized to make such a decision it could have phased in the implementation without prejudice to its policy decision.

The CSL acknowledges that Mr. Montagliani of the CSA had suggested that the CSL apply for membership in the Ontario Soccer Association (OSA) but that insufficient time was given for such a transition to take place for the 2013 season.

The CSL submits that the decision to de-sanction its league affects all 16 teams and that those teams are operated as private enterprises with millions of dollars invested in the league. The CSL adds that the league has contractual commitments to over 700 players as well as to sponsors.

### **Position of the CSA**

The CSA is the governing body for soccer in Canada. The CSA is also the sanctioning body for professional soccer in Canada. The CSA members consist of the various provincial and territorial associations including the Canadian Soccer League or CSL.

The CSA maintains that the CSL was granted conditional acceptance at the Annual General Meeting in May 2009. The CSA motion from that meeting stated:

“to approve, in principle, the application of the Canadian Soccer League (CSL) for 2010 provided:

- (1) the League meets the criteria for professional leagues as established by the CSA;
- (2) the application gets approval from the Professional Soccer and Technical Committees.”

The CSA takes the position that the CSL always remained a conditional member of the CSA and its application was never made unconditional.

The CSA submits that as the national governing body for soccer, it, through its Board of Directors, is empowered to govern soccer at a national level and make policy decisions which are in the best interest of soccer and in the “interests of its members”.

The CSA further submits that in compliance and furtherance of this mandate, it commissioned ReThink Management Group to study various options for the development of soccer in Canada. The ReThink Management Group authored a report which became known as the James Easton Report, which made several recommendations for soccer in Canada.

The Professional Soccer Committee of the CSA is one of the many committees that make recommendations to the CSA on professional soccer matters. This committee met in Ottawa on November 16, 2012, and the meeting was chaired by Joe Guest. The CSA submits that on October 29, 2012, the committee members including Mr. Ursini, President of the CSL, were sent the meeting materials including the James Easton Report. The CSA further submits that as a result of this meeting a motion was made to “recommend to the Board that they support the concept of a national regionally based semi-professional league structure that requires coordination with the CSA Technical Director to ensure it is in line with a national player development strategy”.

The CSA argues that pursuant to its By-Law 25.2, “the Board of Directors is the governing body” and as such it follows that the Board can then exercise the powers of the CSA. It notes also that By-Law 25.4 states that the “Standing and Special Committees shall advise and assist the Board of Directors in carrying out its responsibilities”. The CSA submits that in recommending to the Board that

they support the concept of a national regionally based semi-professional league structure, the Professional Soccer Committee was acting pursuant to the provisions of this By-law.

The CSA Board of Directors accepted the recommendations of the Professional Soccer Committee on December 8, 2012. The CSA submits that in accepting these recommendations, the CSA Board of Directors were acting pursuant to their powers and duties under By-Law 25 as well as By-Law 31.4 (a)(1) which states, "The Board shall have authority over, and responsibility for, the conduct of the affairs of the CSA, and is accountable for all decisions made by, and on behalf of, the CSA".

It is submitted therefore by the CSA that by accepting the recommendations of the Professional Soccer Committee to adopt the James Easton Report including its recommendation of a national regionally based semi-professional league structure, the CSA Board of Directors were making a policy decision for the CSA, in accordance with its powers under the By-Laws, and were acting in good faith in pursuing the CSA objects to promote, regulate, and control the game of soccer throughout Canada, and to protect the interests of all of its members.

The CSA maintains that through the involvement of Mr. Ursini on the Professional Soccer Committee, the CSL did have input in the James Easton report and in the recommendation made to the CSA Board of Directors to adopt a national regionally based semi-professional league.

The CSA argues that in view of the adoption of this new strategy, it should have been evident to the CSL that the CSA would pass on jurisdiction over these regionally based semi-professional leagues to the various provincial and territorial associations thereby obviating the need for the CSA to continue to sanction the CSL.



The CSA submits that to this end, its President, Victor Montagliani along with the OSA President, Ron Smale arranged to meet with CSL Chairman, Vincent Ursini, on January 28, 2013, as a courtesy to advise him of the results of these decisions and to facilitate a meeting between the CSL and the OSA so that the CSL might have a role to play in the new regionally based semi-professional league.

The CSA maintains that the CSL has not made any further attempts to meet with the OSA or to investigate the entrance of its clubs into the OSA jurisdiction.

The CSA submits that the CSL is not really challenging the power of the CSA to sanction and refuse sanction to the CSL as much as they are challenging the process involved and the end result of that process.

The CSA argues that the power to sanction is confirmed by the provisions of their Regulation 10. Paragraph a) defines a league as “an organization operating under an executive to provide competition for teams”. Paragraph b) iii) states that “Professional teams forming a league under the sanction and jurisdiction of this Association are required to pay an annual affiliation fee per team”. The CSA maintains that the above language confirms the power of that organization to sanction the teams and the league for play.

The CSA continues its submission on its sanctioning power by referring to sub-paragraph 10 b) (v) of Regulation 10 which states, “In the event of a league being refused sanction the applicants shall have the right to appeal to the next level of jurisdiction”. The CSA takes the position that this language confirms what is only logical, that if the CSA has the power to sanction the league and the teams, it also has the power to refuse to sanction them. Additionally, the CSA submits that the fact that there may not be a By-Law or regulation that spells out the process of sanction is irrelevant to the power to do so since the objects of the CSA and the powers given to the CSA Board of Directors by virtue of By-Law 31.4 provide the authority to conduct the affairs of the Association.

To address the CSL argument that the decision taken by the CSA was oppressive and unfairly prejudicial and contrary to section 241 of the Canada Business Corporations Act (CBCA) the CSA submits that the CSL is not a stakeholder and that this term is not found in the CSA By-laws.

The CSA states that it is a Part 2 corporation under the Canada Corporations Act as confirmed by its letters patent and that s. 241 of the Canada Business Corporations Act has no application to a not for profit corporation. The CSA further submits that a remedy under s. 241 of the Canada Business Corporations Act can only be granted by a court, and the SDRCC is a quasi-judicial body and not a court which by definition in the CBCA would mean the Superior Court of Justice for an action in the Province of Ontario.

It is further submitted that the claimants request for reinstatement requires the SDRCC to quash the decision of the CSA. The power to quash is known as the equitable discretionary remedy of certiorari. The CSA argues that the prerogative remedy of certiorari is not a remedy available to attack the decisions of domestic tribunals such as the CSA Board of Directors.

The CSA maintains that the CSL has failed to pursue negotiations with the OSA to determine if it could continue to exist as a member of that organization.

The CSA also maintains that courts in general, and reviewing bodies such as the SDRCC should be reluctant to attack policy decisions made by sporting bodies, which are in the best position to make decisions in the best interest of their members.

## **EVIDENCE**

An in-person hearing took place in Ottawa on April 10, 2013. The CSL called two witnesses, while the CSA presented three witnesses. At the conclusion of the in-person hearing the parties were invited to provide closing submissions to the Panel in writing by April 12, 2013. That deadline was extended on consent to April 13, 2013. I will summarize the testimony of each of the witnesses on the relevant issues that the Panel was required to consider.

### **Pino Jazbec**

Mr. Jazbec is the CSL Administrator and Vice Chair. He has been involved with the CSL since 2006. Mr. Jazbec admitted that the CSL required the sanction of the CSA in order to operate as a national soccer league. He also admitted that the CSA is the sanctioning body for soccer in Canada. Mr. Jazbec agreed that the CSL had not met some of the “standards” required of it as part of the conditional acceptance of the CSL into the CSA.

Mr. Jazbec also admitted that the word “sanction” appeared in the CSA Regulation 10 and that the By-Laws and Regulations are the contract that governs the CSA and the CSL.

### **Vincent Ursini**

Mr. Ursini became President of the CSL in March, 2011. Prior to being nominated as President of the CSL, Mr. Ursini had been involved as an administrator in Canadian soccer for over twenty-five years, including a stint as an Executive member of the CSA Board of Directors. Mr. Ursini was a member of the Professional Soccer Committee at the time of the release of the James Easton Report.

Mr. Ursini admitted that the CSL never received a notice from the CSA advising them that they were no longer a member of the CSA. He confirmed that the letter of February 13, 2013, only advised the CSL that the CSA would no longer sanction them.

Mr. Ursini testified that there was some confusion over the status of the CSL within the CSA after the February 13, 2013, letter was received because to him being de-sanctioned meant that they were no longer a member of the CSA. Mr. Ursini agreed that after receiving the sanction decision from the CSA, he continued to sit as a member of the CSA's Professional Soccer Committee. He also agreed that the CSL has received an agenda for the upcoming CSA Annual General Meeting indicating that the CSL still has a vote.

During his testimony Mr. Ursini also admitted the following:

- that the CSA is the body with the power to sanction and that soccer at a national level fell under the jurisdiction of the CSA;
- that if the CSL is subject to being sanctioned by the CSA they are also subject to being de-sanctioned by them;
- that without the CSA sanction, the CSL could not play any soccer games;
- that the February 13, 2013, letter from the CSA dealt only with the refusal to sanction the CSL to play the game of soccer;
- that the CSL is not challenging the CSA's power to sanction and de-sanction it, but is challenging the way in which they were de-sanctioned, through the Easton report, and that the CSL had anticipated being given more input into the roll out of the Easton report;
- that he had received a copy of the Easton report in September, 2012, and again in October, 2012, and that he had read the report five or six days

prior to the meeting of the Professional Soccer Committee (PSC) and understood its recommendations;

- that he spoke with James Easton and the CSL had input into the Easton report;
- that he agreed with the conclusions of the Easton report;
- that by commissioning and adopting the Easton report, the CSA was making a policy decision, which was within their mandate to do;
- that the Easton report recommended the regional semi-pro league model;
- that the PSC recommended the adoption of the regional semi-pro league approach but that he understood that the PSC would receive and review a second phase of the report, notwithstanding the fact that the PSC only recommended that the CSA technical director deal with the matter thereafter;
- that if the CSA adopted the Easton report as per the PSC recommendation, it would mean that jurisdiction over the leagues would fall onto the provincial bodies and not the CSA;
- that the CSA Board of Directors was entitled to rely on the recommendations of the PSC;
- that at the January 28, 2013, meeting with the CSA and OSA Presidents he was left with the message that the board of the CSA had decided not to sanction the CSL and that the CSL should speak with the OSA to coordinate a transition to the OSA;
- that he and the CSL have not met with or had any discussions with the OSA since the January 28, 2013, meeting.

**Joe Guest**

Mr. Guest was the chair of the PSC in November, 2012. He indicated that the minutes of the November meeting accurately reflected what occurred at the meeting and that the Easton report was debated for about an hour during that meeting. He also testified that he was not aware that any other phase of the Easton report would be coming back before the PSC. He also stated that after the PSC made the recommendation to the CSA Board to adopt the regional semi pro league approach, he anticipated that the Board of Directors would deal with the remaining steps.

**Ron Smale**

Mr. Smale is the President of the OSA. He testified that he met with Mr. Ursini and Mr. Montagliani on January 28, 2013, "to discuss the recent decision about the Easton report and to discuss the regional based approach". He recalled that during this meeting, Mr. Montagliani advised Mr. Ursini that the CSA would no longer be sanctioning the CSL in view of the adoption of the Easton report and that he should work with the OSA.

Mr. Smale also confirmed that Mr. Montagliani asked Mr. Ursini if the CSL would consider resigning from the CSA.

Mr. Smale stated that the CSL has not made application to become a member league under the OSA jurisdiction. He acknowledged that the CSL had applied for associate membership which is a different category of membership, but that the CSL had not provided the required audited financial statements. He confirmed that the application for associate membership is to be considered at the next OSA meeting.

## **Victor Montagliani**

Mr. Montagliani is the President of the CSA. He confirmed that the CSA Board of Directors accepted the recommendation of the Easton report for the creation of a regional semi-professional league at their December 8, 2012, meeting.

Mr. Montagliani understood that the result of this recommendation would mean that the CSA would “download” jurisdiction over these regional semi-pro leagues to the provinces and territories.

Mr. Montagliani agreed that the Easton report had recommended a second phase to study the financial viability of such leagues, but the CSA decided not to implement that phase since they had sufficient information on the financial viability of the regional league based on the existing situation in the Provinces of Ontario and Quebec.

Mr. Montagliani recalled that he was authorized by the CSA Board to meet with the CSL and OSA Presidents as a courtesy to advise them of the decision to de-sanction and to facilitate a meeting between them to work together in the transition. Mr. Montagliani acknowledged that he raised the issue of the CSL resigning from the CSA because he thought that there would be a “better taste” left if the de-sanctioning resulted from a resignation as opposed to the more formal steps that the CSA might take.

Mr. Montagliani admitted that he did not respond to the subsequent CSL requests questioning whether they were still a member because he viewed his letter of February 13, 2013, as being very clear. It was his position that the CSA never told the CSL that they were not a member and that they continued to receive communications from the CSA treating them as members.

Mr. Montagliani stated that decisions involving the structure of soccer in Canada or the national game are policy decisions made by the CSA keeping in mind the best interest of soccer and the best interests of all of its members.

Mr. Montagliani was adamant that the decision of the CSA Board to no longer sanction the CSL had nothing to do with any match fixing allegations against the CSL, and everything to do with the adoption of the Easton and PSC recommendations to the Board.

## **ANALYSIS**

CSA By-Law 31.4 states that:

a) Authority of the Board

- 1) The Board shall have authority over, and responsibility for, the conduct of the affairs of The CSA, and is accountable for all decisions made by, and on behalf of, The CSA.
- 2) The Board shall govern the affairs of The CSA in accordance with the provisions of The CSA's by-laws, rules and regulations, and policies.
- 3) The Board shall have the authority to delegate powers to Standing and Special Committees to assist it in carrying out its responsibilities.
- 4) The Board shall ensure compliance with the CSA's by-laws, rules and regulations and policies.
- 5) The Board shall have the authority to delegate tasks arising out of its areas of responsibility to other bodies of The CSA or to third parties.



After reviewing the By-Laws and Regulations of the CSA, I am persuaded that the CSA's Board of Directors had the authority to sanction the CSL as a semi-professional soccer league, and the CSA's Board of Directors had the authority to withdraw sanction from the CSL. Although there is no specific by-law or regulation that spells out the process of sanction, it is inherent in the objects of the CSA and the powers granted to the CSA Board of Directors by virtue of By-Law 31.4 that the authority to sanction and withdraw or refuse sanction is contained therein.

Although the granting of League membership status within the CSA was synonymous with the CSL becoming a sanctioned league, I do not accept the CSL submission that there is no distinction between membership and being a sanctioned league. It is clear from the documentary evidence presented in the hearing that the CSA contemplated an arrangement in which the sanctioning and governing of semi-professional soccer would be transferred or assigned to the Provincial Soccer Associations while the CSA would maintain an overall governance role. In such a scenario the CSA would no longer be sanctioning the CSL, but there might still be a benefit to the CSL in maintaining membership with the CSA.

At the end of the hearing, the evidence from the CSL witnesses, Mr. Ursini and Mr. Jazbec confirmed that they acknowledged somewhat begrudgingly, that the CSA had the power to sanction and refuse sanction to the CSL. The main issue remaining appeared to be the CSL angst over the manner in which the de-sanctioning was communicated to them and the manner in which it was ultimately imposed.

In its closing submissions the CSA made the following comment:

The decision made by the CSA was made by elected officials of the CSA, who arguably know their sport better than courts do. They are entrusted with the good government of the Association and with the

future of the game as they see fit. The approval of the Easton report was such a decision, one that deals with the game of soccer in Canada and presumably with how to better position the Canadian players and teams at a national and international level. There is no doubt that this is a policy decision, and that it ought to be given the same deference and immunity which the courts give to the policy decisions of governments.

I disagree with the CSA submission that the claimant's request for reinstatement cannot be granted by the SDRCC because it would invoke the prerogative remedy of certiorari, which is not a remedy available to attack the decisions of domestic tribunals. I am of the view that there are circumstances in which an administrative panel such as the SDRCC could order reinstatement of the CSL. I acknowledge however, that those circumstances would be very limited, and a Panel should approach any consideration of reinstatement with much caution.

In the SDRCC case of Nova Scotia Taekwondo Association v. Taekwondo Canada, Arbitrator Richard Pound who was considering an appeal launched by the Claimant following the decision of an internal appeal panel, said the following:

Appeals against decisions of sport organizations are not, and should not be, wholesale occasions for substituting the opinion of an arbitrator for that of the responsible organization in matters relating to the governance and management of the sport. The specific knowledge and experience applicable to a particular sport rests with its appropriate authorities. It is they, who should determine, organize and direct the activities of that sport. Arbitrators play limited roles in resolving disputes that may arise in case errors of law may have been made or when organizational conduct has not respected the applicable rules and the rules of natural justice.

(Nova Scotia Taekwondo Association v. Taekwondo Canada, SDRCC 12-0175 at p.11)

## **Decision**

I have determined that the CSA Board of Directors had the authority to determine that the CSA would no longer continue to sanction the CSL as a semi-professional soccer league. The issue that I will now consider is whether the CSA Board of Directors in coming to their determination, proceeded in a fair manner, and whether the actions of the CSA Board of Directors in making their policy decision were reasonable in all the circumstances.

Given the fact that the CSL was granted sanction by the CSA to operate a semi professional league as the primary benefit to attaining membership in the CSA, it is not surprising that there was some confusion concerning their membership status after receiving the letter of February 13, 2013, from the CSA advising them that they had been de-sanctioned.

The CSL requested confirmation of its status from the CSA on at least three occasions, February 4, 2013, February 11, 2013, and February 26, 2013, without receiving an appropriate answer to these inquiries. As stated earlier, the CSL wondered whether the de-sanctioning meant that they were no longer a member of the CSL and one can readily understand how they might have come to that belief.

It appears that a letter was prepared by Mr. Montagliani as President of the CSA for transmission by email to Mr. Ursini as Chairman of the CSL on February 1, 2013. The letter indicates that it was written to confirm the discussion that took place during the recent meeting with Ron Smale, (presumably the January 28, 2013, meeting). That letter has a particular significance to these proceedings and I have reproduced the body of the letter for further comment:

Dear Vince,

Further to our recent meeting, which was also attended by Ron Smale, OSA President, I wish to confirm the following:

1. The CSA has been studying the professional soccer landscape and in doing so commissioned a report from Rethink Management Group.
2. At a meeting of the Professional Soccer Committee held on November 16, 2012, at which you were present and voted, the Committee voted unanimously to recommend support for the recommendations of the report in favor of regional semi pro leagues.
3. The CSA Board has ratified and accepted this recommendation in support of regional semi pro leagues, and in doing so is looking to align with the Provincial Soccer Associations and have them sanction and govern semi pro soccer, with the CSA maintaining an overall governance role.
4. As a result of the above, various Provincial Soccer Associations are investigating their own approach to a semi pro league. The QSF fun[d]s its own semi-pro league and the OSA is looking into the creation of an OSA League.
5. In view of this change of direction, it seemed reasonable to approach you as Chairman of the CSL and advise you to consider approaching the OSA and investigate with them the various possibilities for the present CSL teams to become part of the OSA League in Ontario instead of carrying on as the CSL in its present format.

I trust the above summarizes our meeting and I look forward to hearing from you regarding the above prospects.

Yours Truly,

Victor Montagliani

President.

The CSL submitted that the above letter was never sent by the CSA. This panel will not make such a finding, but will go so far as to state that it is possible that the email communication from Mr. Montagliani did not reach Mr. Ursini or was never seen by Mr. Ursini. In any event, Mr. Ursini wrote to Mr. Montagliani on February 4, 2013. In the February 4 letter, Mr. Ursini states:

It was a pleasure meeting with you and Ron Smale last Monday, January 28, 2013. I was happy to hear that the CSA is moving forward on establishing a "semi-pro" league across the country with regional leagues under a new governance structure that would include the respective provincial jurisdiction in which teams are based.

In our meeting, both you and Ron had indicated that the CSA was no longer going to provide direct sanctioning for the 2013 season, but that CSA sanctioning would be via the OSA. It was then agreed that we would meet with the OSA to review the playing rules that they established in order to ensure there were no issues on the transition and that the CSL would meet all the sanctioning requirements. (underlining is mine)

I was happy to hear that both you and Ron want to make sure the CSL legacy of 87 years would continue. I was also told that the OSA playing rules have been approved by the CSA and that the proposed plans for the Ontario League 1(the Ontario semi-pro league) has been frozen and that we were looking at having the four teams ready to play become members of the CSL. Finally, there was agreement that the CSL name should remain intact.

...The statement that the CSA is not sanctioning the CSL this year is obvious reality since the CSA Board has so decided; however, the omission that sanctioning is to be done through the OSA has caused incredible upheaval.

Mr. Ursini concluded his letter by seeking clarification of the sanctioning issue as quickly as possible adding that he hoped that the CSA would involve the CSL in the future when planning changes to “semi-pro” soccer. Mr. Ursini’s last request in his letter was for the minutes of the CSA Board meeting regarding the motion that was passed since the CSL had not seen anything in writing at that point.

On February 11, 2013, Mr. Ursini sent a further letter to Victor Montagliani and the CSA Board of Directors commenting on the fact that no response had been received to his letter of February 4, 2013, and expressing a concern about CBC reports that the CSL was no longer being sanctioned by the CSA and the impact that such reports were having on the operation of the CSL.

The final four paragraphs of the February 11, 2013, letter are produced below:

At the new CSA Professional Soccer Committee (“PSC”) meeting last fall, it was agreed that a sub-committee would be working on new rules and regulations for professional soccer (or semi-pro as you prefer to call it). There was also clear endorsement of the Easton report with the recommendation that the CSA work with all existing leagues, namely senior amateur leagues, the provincial “semi-pro” league in Quebec and the CSL.

I wish to clarify that the CSL and myself are eager to work with the CSA and the Provincial Association(s) to help bring the CSL-level of soccer across the country.

We ask that the CSA please confirm immediately that we are an Associate Member of the Canadian Soccer Association sanctioned to operate as a league in Canada.

I am anxiously awaiting your early reply in the hopes of curtailing the mounting damages.

Two days later, on February 13, 2013, a letter was sent from Mr. Montagliani to Mr. Ursini advising him of the motion passed by the CSA Board of Directors to no longer sanction the CSL as a League with immediate effect.

It was never made clear to the panel as to what went wrong after the meeting of January 28, 2013, between representatives of the CSL, CSA, and OSA. There seemed to be an understanding arrived at during that meeting that CSA sanctioning for the CSL would come via the OSA. It was also acknowledged that there would need to be further meetings between the CSL, CSA and OSA to ensure that the transition went smoothly and that the CSL would be able to meet the OSA sanctioning requirements in order to operate in 2013.

In light of the correspondence that I have just referred to, the CSA letter of February 13, 2013, written just sixteen days after the parties appeared to have come to an understanding, seems somewhat heavy handed. The letter was sent six weeks prior to the commencement of the CSL 2013 season. In his testimony, Mr. Montagliani stated that the CSL had absolutely no involvement in the CSA's decision to de-sanction and the CSA could have "phased in" the decision to de-sanction the CSL but chose not to do so.

It appears to the panel that there was no need for urgency in implementing the decision to de-sanction the CSL. The Ontario Soccer Association did not have a viable league in place. If it was contemplated as of January 28, 2013, that further meetings would be required to ensure that the CSL would be able to meet the criteria required for operation under the OSA sanction it seems highly unlikely if not impossible for all of that to have been accomplished prior to the CSA Board of Directors' meeting in early February, 2013.

By de-sanctioning the CSL with immediate effect, the CSA by its own admission made the CSL a "Rogue League" in that it would not be able to play matches

against other sanctioned teams, and it would not be allowed to use sanctioned referees. The CSA was never able to satisfactorily explain to the Tribunal why the immediate de-sanctioning of the CSL was in the best interests of the sport of soccer in Canada.

In conclusion, I find that the CSA did have the authority in accordance with their By-laws to withdraw the sanction previously given by them to the CSL. I find also that in so doing, and in making the decision to de-sanction effective as of February 13, 2013, the CSA did not provide the CSL with a reasonable opportunity to apply for and receive sanction from the OSA so that they could continue to operate as a sanctioned league in 2013.

If as was submitted by the CSA, the decision to de-sanction the CSL was made for the sole reason that it was consistent with a recommendation made in the Easton report for the establishment of a semi-professional league, there seems to be no reason why the implementation of this recommendation could not be phased in or delayed for a year.

The CSL was and still is a member in good standing of the CSA. The CSA has a duty to protect the interests of all of its members, particularly where such interest does not conflict with the best interests of the sport.

Fairness and natural justice dictate that the CSL be given a reasonable opportunity to seek acceptance into membership with the OSA in order to meet any criteria established by the OSA to operate under their umbrella. I find that a period of one year would provide such reasonable opportunity.

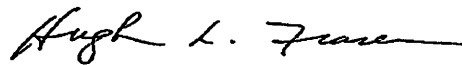
I direct therefore that the Canadian Soccer Association decision to no longer sanction the Canadian Soccer League be made effective **February 13, 2014**, rather than February 13, 2013.



No costs are awarded as part of this Order.

I reserve my right as Arbitrator to deal with any matters arising from this Order and its interpretation.

Dated at Ottawa, this 21<sup>st</sup> day of April, 2013.

A handwritten signature in cursive script, reading "Hugh L. Fraser".

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Hugh L. Fraser

Arbitrator