

CITATION: *Formenton v. Newport Sports Management Inc. et al.*, 2026 ONSC 1373
COURT FILE NO.: CV-25-00737089
DATE: 20260306

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ALEX FORMENTON, Applicant

AND:

NEWPORT SPORTS MANAGEMENT INC., WADE ARNOTT and the
NATIONAL HOCKEY LEAGUE PLAYERS ASSOCIATION, Respondents

BEFORE: Schabas J.

COUNSEL: *Jason Squire and Haley Brittain*, for the Applicant

Arthur Yallen, for Newport Sports Management Inc. and Wade Arnott

Paul J.J. Cavalluzzo and Clemence Thabet, for the National Hockey League
Players Association

HEARD: January 22, 2026

REASONS ON APPLICATION

Overview

[1] This is an application to set aside the Award of an arbitrator pursuant to s. 46(1) of the *Arbitration Act, 1991*, S.O. 1991, c. 17 (the “Act”). In his Award, the arbitrator determined that the applicant’s claims against his agent were barred as they were commenced after the expiry of a six-month limitation period for making claims as contained in the National Hockey League Players’ Association (“NHLPA”) Regulations Governing Agent Certification (the “Regulations”).

[2] The applicant argues that the arbitrator lacked jurisdiction to make the finding as the Award dealt with conduct which occurred after the applicant’s National Hockey League (“NHL”) contract, and the contract with his agent made pursuant to the Regulations had expired such that the dispute was no longer covered by the Regulations. He relies on paragraph 3 of s. 46(1) of the Act which provides that the Court may set aside an Award if it “deals with a dispute that the arbitration agreement does not cover or contains a decision on a matter that is beyond the scope of the agreement.” Alternatively, as the arbitrator did not exercise his discretion not to apply the six-month limitation period, the applicant submits that he was “not treated equally and fairly”, which is a ground on which a court may set aside an Award under s. 46(1)6 of the Act.

[3] For the reasons that follow, I dismiss the application. I also dismiss the action seeking similar relief by the applicant in Superior Court File No. CV-24-00728429 (the “Superior Court Action”).

Background

[4] The applicant, Alex Formenton (“Formenton”), is a professional hockey player. In June 2017, aged 17, he was drafted to the National Hockey League by the Ottawa Senators. In August 2017 he signed a Standard Player-Agent Contract (“SPAC”) with the respondents, Wade Arnott (“Arnott”) and Newport Sports Management Inc. (“Newport”).¹ Arnott is a certified NHL player agent, licensed by the respondent NHLPA, who operates through Newport.

[5] The NHLPA is the exclusive bargaining agent for all present and future players in the NHL. However, because different players can command different salaries and terms, the NHLPA delegates the negotiation of individual player contracts to agents certified by the NHLPA who must negotiate contracts consistent with the provisions of the Collective Agreement between the NHLPA and the NHL. This means that NHL clubs may not engage in contract negotiations with any person other than the player or a certified agent. Agents act on behalf of both the NHLPA and the players they represent. Agents are bound by the Regulations, as are the Players. Put another way, the NHL is a “closed shop”, and all contracts and contract negotiations are subject to NHLPA rules.

[6] The SPAC is a mandatory standard form contract between players and their agents that is required by the Regulations. In the event of any disputes between players and agents, the Regulations and the SPAC provide for an arbitration process as the sole method of resolution. The Regulations provide a six-month limitation period for commencing an arbitration.

[7] Formenton signed an entry-level Standard Player Contract with the Senators on October 2, 2017. His contract with the Senators was set to expire on July 12, 2022. The SPAC between Formenton and the respondents Arnott and Newport expired on the same day; however, Arnott and Newport continued to represent Formenton after July 12, 2022.

[8] The Senators made what is called a “Qualifying Offer” to Formenton on July 5, 2022, which was open for acceptance between July 13 and July 22, 2022. Formenton did not accept the Qualifying Offer. He alleges that Arnott believed they could negotiate a more favourable contract with the Senators. However, those negotiations failed, leaving Formenton without an NHL contract. Formenton did not receive offers from other NHL clubs and has not played in the NHL since 2022. He now plays professional hockey in Europe.

[9] Formenton delivered a Notice of Arbitration in accordance with the SPAC and the Regulations on June 28, 2024. He asserted claims of breach of contract, breach of fiduciary duty, and negligence against Arnott and Newport arising from the failure to accept the Qualifying Offer, which expired on July 22, 2022, and he asserted claims relating to conduct after July 22, 2022. The respondents delivered an Answer asserting the six-month limitation period. An arbitrator was

¹ Newport and Arnott are referred to collectively as Formenton’s “agent.”

appointed on August 2, 2024. The parties then agreed to address the limitation period first, as a threshold issue.

[10] Following the assertion of the limitation period, on September 27, 2024, Formenton commenced the Superior Court Action, asserting the same wrongs against Arnott and Newport.

[11] An oral hearing addressing the limitation period was held before the arbitrator on November 13, 2024. The arbitrator issued his Award dismissing Formenton's claims on January 13, 2025. By Notice of Application dated February 10, 2025, Formenton commenced this application, and on February 13, 2025, he served his Statement of Claim in the Superior Court Action.

The jurisdiction issue – section 46(1)3

[12] Once the limitation period was raised, Formenton objected to the arbitrator's jurisdiction to apply the six-month limitation to his claim arising from conduct after July 12, 2022. In short, as Formenton's contract with the Senators, and his SPAC, had expired on that date, he submitted that the arbitrator had no jurisdiction to adjudicate any claims arising after that date.

[13] The arbitrator rejected Formenton's position. In his Award he referred to the origins and purpose of the NHLPA, which were to, among other things, ensure a high degree of competence and integrity in the representation of players. As the exclusive bargaining agent for all players eligible to play in the NHL, whether under contract or not, the NHLPA's Regulations provided that its arbitration process "be the sole and exclusive method for resolving any and all disputes that may arise from the interpretation, application or enforcement of these Regulations and the resulting agreement between agents and individual players." The arbitrator also noted that "arbitral determinations shall not be subject to appeal or judicial review and that arbitrators appointed pursuant to the Regulations have 'exclusive authority' to determine the arbitrability of disputes."

[14] In rejecting Formenton's submission that, because the SPAC had expired, the Regulations no longer applied, the arbitrator stated: "this contention assumes wrongly that the SPAC is a document – a contract -- separate from and independent of the Regulations. Rather, it bears repeating, the SPAC and the Regulations constitute an integrated whole of the NHLPA's governing of Agent certification and Player-Agent contractual relations."

[15] The arbitrator's approach is consistent with s. 17(2) of the Act which provides that where an "arbitration agreement forms part of another agreement, it shall, for the purposes of a ruling on jurisdiction, be treated as an independent agreement that may survive even if the main agreement is found to be invalid." Thus, even if the SPAC had expired, the arbitration provisions in the Regulations continue to apply in order to "safeguard arbitration agreements, not imperil them": *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41, [2022] 3 S.C.R. 265 at para. 168.

[16] In *Alectra Utilities Corporation v. Solar Power Network Inc.*, 2019 ONCA 254, 145 O.R. (3d) 481, at para. 43, the Court of Appeal confirmed that s. 46(1)3 of the Act "sets out a jurisdictional question that must be answered correctly." The respondents, however, point to the power of the arbitrator to determine whether a grievance is arbitrable. I do not need to resolve the

issue of whether deference is owed on this issue, as I see no error in the arbitrator's conclusion that he had jurisdiction over the dispute between Formenton and his agent.

[17] In 2022, Formenton was – and he apparently still is – a player eligible to play in the NHL. As the NHLPA is the exclusive bargaining agent for eligible players, the NHLPA Regulations, which exist to protect the players, govern all relations between players and agents, whether the player is under a contract with a team or not.

[18] Although the SPAC between Formenton and his agent may have expired, Formenton's claim arises from the agent's representation of him in attempting to obtain a new contract, which must be in accordance with the Regulations that govern agents' behaviour. The only way for a player to obtain an NHL contract is to negotiate with a team directly or through a certified agent who is governed by the Regulations as a delegate of the NHLPA.

[19] As an eligible player, Formenton is subject to the NHLPA rules, including the dispute resolution provisions in the Regulations. The fact that the SPAC had expired is an issue that ought to have been addressed between Formenton and his agent. Indeed, I was told in argument that it could lead to discipline against the agent. However, the expiration of the SPAC does not take Formenton's case outside the labour relations context. The NHLPA rules which require that "any and all disputes" between players and agents shall be resolved through arbitration still apply. This is the nature of a closed shop in the labour relations context. Complaints against the union and its delegates shall be resolved by arbitration and not the courts. Formenton acknowledged this by submitting his dispute to arbitration.

[20] Further, under the Regulations, the arbitrator has the exclusive authority to determine the arbitrability of the dispute. The parties asked him to decide the question, and he answered it. In doing so, the arbitrator did not make a decision that was outside his jurisdiction. As the Court of Appeal stated in *Alectra* at paras. 25-27:

[25] Although the court cannot apply s. 46(1)3 without having regard to an arbitrator's decision, the court's authority to set aside an arbitration award under that subsection depends on the mandate the arbitration agreement confers on the arbitrator to resolve a particular dispute. In order to succeed on an application to set aside an arbitration award, an applicant must establish either that the award deals with a dispute that the arbitration agreement does not cover or contains a decision on a matter that is beyond the scope of the arbitration agreement.

[26] For example, if an arbitration agreement provides that an arbitrator shall resolve a particular question and the arbitrator does so, the court has no authority to set aside the award on the basis that the arbitrator's decision is unreasonable or incorrect. If, however, in the course of resolving the particular question remitted the arbitrator asks and answers an additional second question, the award may be set aside -- not because the arbitrator's answer to the second question is unreasonable or incorrect, but because the arbitrator had no authority to reach *any* conclusion on the second question at all.

[27] In short, s. 46(1)3 requires that arbitrators act within the bounds of the authority granted by the *arbitration agreement* pursuant to which they are appointed -- no less, but no more. Section 46(1)3 is *not* an alternate appeal route and must not be treated as such. [Emphasis in original.]

[21] Here, the Award did not deal “with a dispute that the arbitration agreement does not cover” nor did it contain “a decision on a matter that is beyond the scope of the agreement.” The arbitrator decided that the dispute was arbitrable, which he clearly had the authority to determine.

[22] Although not necessary for my decision, having regard to the labour relations context, the Regulations, and the role of the NHLPA, my view is that the arbitrator’s decision on his jurisdiction was correct.

The *Limitations Act, 2002* does not apply – section 46(1)6

[23] The applicant submits that the six-month limitation period constitutes an invalid contracting-out of the two-year limitation period found in s. 5 of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B. Counsel for Formenton also argues that the arbitrator did not consider the uncontradicted evidence that Formenton was not provided with a copy of the Regulations by his agent and that the SPAC did not set out the limitation period.

[24] Whether the six-month limitation period is lawful requires consideration of the test set out in *Boyce v. The Co-Operators General Insurance Company*, 2013 ONCA 298, 116 O.R. (3d) 56, at para. 20, leave to appeal dismissed [2013] S.C.C.A. No. 296. This requires consideration of whether the provision (a) describes the limitation period in clear language, (b) identifies the scope of the limitation period, and (c) excludes the operation of other limitation periods.

[25] In his Award, the arbitrator addressed each of these factors reasonably and correctly. He concluded that the “applicable language is clear and unambiguous” in stating that the limitation period is six months. He found that its scope was “identified explicitly as involving any and all disputes that may arise from ‘the interpretation, application or enforcement of these Regulations’.” The Regulations also plainly exclude the operation of other limitation periods as there are no other time limitations governing the filing of a grievance. As the Court of Appeal has noted, “it is unnecessary to refer expressly to the exclusion of the two-year period”: *407 ETR Concession Company Limited v. Day*, 2016 ONCA 709, 133 O.R. (3d) 762 at para. 74, leave to appeal dismissed [2016] S.C.C.A. No. 509.

[26] The issue of Formenton’s knowledge of the limitation period is more appropriately addressed under the fairness argument. However, I do not accept the applicant’s position that the incorporation of the six-month limitation period by reference in the SPAC makes it ineffective. Merely being incorporated by reference does not make a limitation period ineffective; rather, the question is whether the contractual term satisfies the requirements from *Boyce*: see *Kassburg v. Sun Life Assurance Company of Canada*, 2014 ONCA 922, 124 O.R. (3d) 171, at paras. 28-33.

[27] Here, the Regulations are clearly incorporated by reference in the SPAC. As the SPAC states: “This agreement is entered into pursuant to and in accordance with the [Regulations] which may be amended from time to time.” The SPAC and the Regulations are, as the arbitrator found,

documents which are interconnected and work together. Collectively, these two documents form the agreement between Formenton and his agent.

Formenton was “treated equally and fairly” -

[28] The applicant submits that the arbitrator should have granted him “relief from forfeiture” and not enforced the six-month limitation period. However, the arbitrator considered this request and declined it. In doing so, the arbitrator was exercising his discretion, and his decision is entitled to deference.

[29] The main plank of Formenton’s submission is that he was unaware of the limitation period until 2024. His uncontradicted evidence is that he was not provided with the Regulations in 2017, or at any time thereafter by his agent or by anyone until his lawyers obtained them from the NHLPA in June or July of 2024.

[30] About one week prior to the arbitration hearing in November 2024, the NHLPA delivered its factum. In it, the NHLPA stated that the 2022 Regulations² are available to all players and agents through the NHLPA's Source website, and that on September 8, 2022, all players and agents were reminded of the availability of the Regulations on the website when they were emailed a memo notifying them of amendments to the Regulations. The memo attached to the September 8, 2022 email specifically addressed the Regulations' arbitration provisions, including the time period in which to commence a grievance.

[31] The applicant submits that the arbitrator unfairly relied on this unsworn statement by the NHLPA in finding that “[t]he NHLPA Regulations have always been accessible and available to NHL players upon request.”

[32] The applicant submits that s. 46(1)6 of the Act requires the arbitrator to follow a fair process in accordance with the factors from the Supreme Court of Canada’s decision in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *Afolabi v. Law Society of Ontario*, [2025 ONCA 257](#) at para. 60; *Spinney v. Fowlie*, 2025 ONSC 2632 at paras. 48-50.

[33] The *Baker* factors do not assist Formenton. Formenton’s complaint that the arbitrator relied on unsworn evidence from the NHLPA does not breach procedural fairness. Under s. 6 of the SPAC, “the NHLPA may participate in any arbitration hearing and present, by testimony or otherwise, any evidence relevant to the dispute.” The Regulations state, in s. 5:

The NHLPA shall be entitled to participate in any proceeding referred to in this Section, to make submissions and to provide information to the arbitrator regarding the interpretation of these Regulations (including the provisions of any Standard Player-Agent Contract) or of the Collective Bargaining Agreement regarding their interpretation or application to the circumstances of the dispute. In light of the NHLPA's status as the Player's exclusive collective bargaining agent, the

² In 2017, when Formenton signed his SPAC the Regulations which applied were dated from 2008. In 2022, the Regulations were amended, though not in any material way that affects this case.

interpretation of the Regulations and/or the Collective Bargaining Agreement advanced by the NHLPA is entitled to deference from the arbitrator and in any proceeding.

[34] There was, therefore, nothing improper about the arbitrator receiving information about the accessibility of the Regulations from the NHLPA. Further, the arbitrator’s finding that the Regulations “have always been accessible and available to NHL players upon request” is consistent with Formenton’s evidence in para. 16 of his affidavit where he states: “I understand that the Regulations are not publicly available; they are only available upon request from the NHLPA.”

[35] The arbitrator did not rely solely on the NHLPA’s communication. In his Award, the arbitrator found that Formenton had a “personal responsibility” to look at the Regulations, stating:

Even if one allows that a 17 year-old minor when signing his SPAC had no reason to look for arbitration provisions in the Regulations, as claimed here, a 22 year-old in the midst of contractual disputes had the personal responsibility to do so at the time of the occurrences or non-occurrences and not to wait to act by filing a grievance 18 months later (using the December 1, 2022 date [the latest date on which he could have signed an NHL contract]). The Player-Grievant's claim that this delay was someone else's fault is not persuasive.

[36] Accordingly, I do not accept the applicant’s submission that the arbitrator’s decision not to exercise his discretion “hinged” on the NHLPA’s statement about the availability of the 2022 Regulations.

[37] The arbitrator also discussed the scope of relief from forfeiture and his discretion to not enforce the six-month time period. He noted that circumstances justifying overriding limitation periods are generally limited to situations where there were “major violations involving bad faith and fraud or marginal technical violations”, none of which applied. This narrow approach to relief from forfeiture is consistent with the general principle that discoverability “refers to facts, not law”: *Hill v. Alberta (Registrar of Land Agents)*, 1993 ABCA 75, 135 A.R. 266, quoted with approval in *Coutanche et al. v. Napoleon Delicatessen et al.* (2004), 72 O.R. (3d) 122 (C.A.), at para. 18.

[38] Accordingly, I am unable to conclude that the applicant “was not treated equally and fairly” or that he “was not given the opportunity to present a case or to respond to another party’s case.” There is, therefore, no basis to set aside the Award under s. 46(1)6 of the Act.

Conclusion

[39] It follows from these Reasons that the application is dismissed. This means that Formenton is bound by the Award: *Arbitration Act*, s. 37. Accordingly, the Superior Court Action seeking the same relief should be dismissed, as requested by Arnott and Newport.

[40] Arnott and Newport seek costs. The NHLPA does not.

[41] The material on the application was essentially the record before the arbitrator. Thus, the work on this application was focused on legal issues. The Bills of Costs of the applicant and the respondents are quite similar, both seeking between \$40,000 and \$50,000 on a partial indemnity scale. In my view, having regard to what the applicant ought to have reasonably expected to pay if unsuccessful, and having considered the factors set out in Rule 57.01(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the principle of proportionality (R. 1.01(1.1)), and the need to balance the indemnity principle with the fundamental objective of access to justice, I fix costs payable by the applicant to the respondents, Arnott and Newport, in the amount of \$25,000, inclusive of HST and disbursements.

Paul B. Schabas J.

Date: March 6, 2026