

Applicant, a figure skating coach, for maltreatment occurring in 2005, in reference to certain of his minor-age athletes.

[2] An independent investigator determined the Applicant's conduct breached the UCCMS and he was subsequently declared permanently ineligible for participation with Skate Canada, which effectively ends his coaching career. The Applicant then challenged this decision through arbitration conducted by the Sport Dispute Resolution Centre of Canada ("SDRCC").

[3] Before the appointed arbitrator, Peter Lawless K.C., dealt with the challenge on the merits, he considered, as a preliminary jurisdictional issue, whether the UCCMS applied to the Applicant's historical conduct in 2005, some 20 years prior to the UCCMS coming into force. The Arbitrator found that it did, reasoning that the UCCMS was designed to "ensure protection of the sporting public" and "is a forward looking or prospective code that's purpose...is to safeguard sport participants into the future as distinct from seeking to punish offenders for past conduct."

[4] The UCCMS which, as noted, came into force in 2022, sets out harmonized rules designed to advance a culture of respect in sport and to ensure the protection of the sporting public. It defines the types of behavior that constitute abuse and maltreatment and establishes a framework for assessing violations and imposing sanctions.

[5] The SDRCC is a not-for-profit entity funded by Sport Canada, in charge of administering dispute resolution services for sport participants. The SDRCC implements and manages the Canadian Sport Dispute Resolution Code (the "Code"). Until 2025, the SDRCC was also responsible for administering the Abuse-Free Sport program launched in 2022 pursuant to a directive from the Government of Canada, which included responsibility for the administration of the UCCMS. This responsibility, as of July 1, 2025, passed to the Canadian Centre for Ethics in Sport. However, the SDRCC remains responsible for administration of complaints received before that date, such as the present matter.

[6] The SDRCC created the Office of the Sport Integrity Commissioner ("OSIC") to implement the UCCMS. OSIC operates in part through one of its officials, the Director of Sanctions and Outcomes ("DSO"). OSIC is in charge of administering the complaint intake

process, conducting preliminary assessments to determine the eligibility of complaints, commissioning investigations, and monitoring compliance.

[7] The affidavit of Marie-Claude Asselin, CEO of the SDRCC, explains that a typical maltreatment or abuse complaint proceeds in the following manner:

- i. A complaint form is submitted to OSIC online.
- ii. OSIC conducts a preliminary assessment of the complaint to determine whether the allegations are within its jurisdiction and subject to UCCMS.
- iii. If OSIC determines the UCCMS applies, it notifies the parties in a Statement of Allegations.
- iv. An independent investigator is appointed, who is empowered to receive and review documents and conduct interviews.
- v. Upon completion of the investigation, the investigator releases their findings in a report to OSIC, and a copy of the report is then shared with the parties and the DSO.
- vi. The DSO then reviews the investigation findings to determine if a violation of the UCCMS occurred and if so imposes the appropriate sanction.

[8] According to section 8.6 of the Code, parties may challenge findings of violations or sanctions to the SDRCC's "Safeguarding Tribunal". The standard of review of those findings is reasonableness. The DSO (or in this case the deputy DSO, "the DDSO") appears before the Safeguarding Tribunal to argue in favour of their decision in order to offer a 'trauma-informed process' to avoid placing the burden on the individuals impacted by the alleged conduct. Once a request is made to the SDRCC for such a challenge, the SDRCC appoints an independent arbitrator to conduct the arbitration.

[9] Since 2021-2022, national sport organizations were required to adopt the UCCMS in order to be eligible for funding from Sport Canada, and since 2023, were required to be signatories to the Abuse-Free Sport program. Each national sport organization (such as Skate Canada in the

present case) was required to ensure its participants (such as the Applicant Mr. Myles), consented to comply with the UCCMS. Importantly, the required consent from participants introduced a contractual aspect to their relationship with the UCCMS.

OSIC Investigation and Decision

[10] In the present case, OSIC received the complaint against the Applicant on February 20, 2023. It was alleged, as noted previously, that in 2005, the Applicant hosted underage athletes at his home, served them alcohol, watched pornography with them, and slept with them in the same bed. OSIC determined the allegations were subject to the UCCMS and appointed an investigator.

[11] The investigator determined the allegations against the Applicant were made out, and, in addition, that the Applicant also tried to coerce false testimony from witnesses in the course of the investigation. The DDSO then reviewed the findings, determined a violation of the UCCMS occurred, and by way of sanction, declared the Applicant permanently ineligible from participating with Skate Canada.

The Arbitration Decision

[12] The issue of whether the UCCMS could apply to the historical allegations in the present matter was determined by Arbitrator Peter Lawless K.C. as a preliminary matter. Both the Applicant and the DDSO made detailed written submissions.

[13] The Arbitrator rendered his decision on May 23, 2024 (the “Arbitration Decision”) holding that the events giving rise to the complaint, which occurred in 2005, were nevertheless subject to the UCCMS. This is the decision sought to be reviewed by this court pursuant to the *Arbitration Act*, 1991, S.O. 1991, C.17

[14] The Arbitrator observed that whether the UCCMS could apply to “historical conduct”, depended largely on the purpose or object of the UCCMS.

[15] The Arbitrator relied significantly on the judgement of the Supreme Court of Canada in *Brosseau v Alberta Securities Commission*, [1989] 1 SCR 301. He observed that the Court distinguished between new legislation aimed at punishing past conduct (which would be

presumptively not enforceable) and legislation with a prospective aim to protect the public (which is presumptively enforceable).

[16] The Arbitrator carefully considered section 1 of the UCCMS which sets out its purpose as:

[...] advancing a respectful sport culture that delivers quality, inclusive, accessible, welcoming and safe sport experiences. [...] Individuals should have the reasonable expectation when they participate in sport in Canada that it will be in an environment that is free from all forms of Maltreatment and that treats every individual with dignity and respect. Maltreatment in all its forms is a serious issue that undermines the health, well-being, performance and security of individuals, communities, and society.

[17] The Arbitrator found that the purpose of the UCCMS was to ensure the protection of the sporting public and not necessarily punishment of past behavior and therefore could be applied in this case. The Arbitrator also found that the Applicant sought to interfere with the investigation, which itself would have been grounds for the matter to proceed irrespective of the historical allegations.

Issues

[18] There are three issues before the court on this Application.

- 1) Should the court grant leave to appeal the Arbitrator's decision?
- 2) Should the court set aside the Arbitration Decision on the basis that the Arbitrator erred in law in determining the UCCMS applied retroactively to the Applicant's conduct?
- 3) Should the court set aside the Arbitration Decision because the Applicant was denied natural justice by being subject to the UCCMS for conduct occurring before it was enacted?

Leave to Appeal

[19] As noted, leave to appeal is required in this case. However, both parties have advised the court they are in agreement that leave to appeal should be granted. This is a matter of serious

concern because the Arbitrator's ruling was on a preliminary issue. An arbitration award can be appealed to the court only on a question of law. Section 45(1) of the *Arbitration Act* provides that where the arbitration agreement does not deal with appeals on questions of law, a party may appeal an award to the court on a question of law with leave, which the court will only grant if it is satisfied that: a) the importance to the parties of the matters at stake in the arbitration justifies an appeal; and b) determination of the question of law at issue will significantly affect the rights of the parties. The criteria of importance to the parties is made out in the present appeal but what is not clear is whether the issue of the retrospective application of the UCCMS is properly characterized as a question of law.

[20] Counsel submit there is a public interest in granting leave to hear this appeal given the SDRCC's ongoing role in adjudicating complaints related to the UCCMS, (complaints received prior to July 1, 2025).

[21] There are also conflicting cases at the SDRCC related to the issue of retroactivity. In particular, a decision from the SDRCC's appeal body (SDRCC ST 24-0022) upheld the decision of an arbitrator holding that the UCCMS does not apply retroactively. The initial arbitrator concluded that the Supreme Court's decision *Brosseau* is not directly applicable in a relationship where the application of the UCCMS is a matter of consent and, therefore, a matter of contractual and not statutory interpretation. The appeal panel held that the starting point of the analysis is contractual interpretation, not retroactivity, and the language of the consent and the UCCMS, read together, supports a conclusion that the respondent on the specific facts of that case, did not consent to the application of the UCCMS to conduct that pre-dated the consent.

[22] The court is not persuaded that it has jurisdiction to hear an appeal on a preliminary matter in circumstances where there has been no adjudication on the merits of the appeal before the arbitrator. As noted, the arbitrator treated the issue of the retrospective application of the UCCMS as a preliminary issue. However, given the importance of the issue and the parties expressed wish that the appeal be heard by this court, I will deal with this matter but I am not making a ruling on the issue of the court's jurisdiction.

Fresh Evidence

[23] There is a dispute as to the admissibility of the affidavit filed on this appeal by the Applicant Mr. Myles. The Respondents have also filed an affidavit, that of Marie-Claude Asselin, CEO of the SDRCC. Neither affidavit was before the Arbitrator. The Asselin affidavit provides essential background to assist the court in the understanding of Sports Canada's Safe Sports program and administrative structure, (matters no doubt familiar to the arbitrator but not to the court). The Applicant's affidavit deals more with the application for leave issues but also provides very helpful contextual information. On the whole, both affidavits are of material assistance to the court and will be admitted as a matter of the court's discretion.

Discussion

Retroactive Application of the UCCMS

Standard of Review

[24] The appellant submits Arbitrator Lawless erred in law in his determination that the UCCMS applied retrospectively to the historical conduct of the appellant in reference to events occurring in 2005. For the reasons which follow, this court is of the opinion that the arbitrator made no error of law in holding that the UCCMS can apply to events occurring before its enactment. Alternatively, his ruling on that issue was reasonable.

[25] If the appellant is correct and the question of retrospective application of the UCCMS is a matter of contractual interpretation, then I hold the arbitrator rendered a reasonable decision on what I find to be a mixed question of fact and law. It is well settled law that matters of contractual interpretation are questions of mixed fact and law: see *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, at para. 50. However, on this view of the matter this court has no jurisdiction in the present case given the *Arbitration Act* only permits appeals to the court on questions of law or in matters of procedural unfairness.

[26] However, if the recent trial level jurisprudence is correct, holding that the standard of review from an arbitration decision dealing with the interpretation of a contract is the appellate standard, rather than the standard of reasonableness, see *Burwell et al v Wozniak*, 2024 ONSC 5851 and *Place Laurier Ltd. v The Manufacturers Life Insurance Company*, 2025 ONSC 4172,

then I would hold there is no palpable and overriding error to be discerned in the Arbitrator's decision supporting the retrospective application of the UCCMS, in the circumstances of this case.

Retrospective Application

[27] In reaching his conclusion on retrospective application of the UCCMS, the Arbitrator began by considering several leading authorities, which deal with retroactivity as a matter of statutory interpretation: *R v. Dineley*, 2012 SCC 58; *R. v. Bengy*, 2015 ONCA 397; *Brousseau v. Alberta Securities Commission*, [1989] 1 SCR 301, and he considered an excerpt from a 1978 article by Elmer Driedger, (Statutes: Retroactive Retrospective Reflections, 1978 56-2 Canadian Bar Review 264),

[28] The Arbitrator drew this conclusion from his review of the appellate jurisprudence:

“If the purpose of the UCCMS is to impose a new punishment for historic conduct, then it risks offending *Dineley* and *Bengy* and may therefore not be used in the present matter. However, if the purpose is to protect the public, then, in keeping with *Brousseau*, the UCCMS may examine historic conduct.”

[29] The Arbitrator went on to examine the purpose of the UCCMS as set out in section 1 of that document and concluded “on its face” the UCCMS is a code that is designed to ensure the protection of the sporting public. He also went on to state that “I find that the UCCMS does not have as its core purpose the prescription of new punishments for old behaviours. It does not, therefore, run afoul of *Dineley* or *Bengy*...I find that the UCCMS is a forward looking or prospective code that's purpose, both as articulated in the UCCMS itself and as applied, is to safeguard sport participants into the future as distinct from seeking to punish offenders for past conduct.”

[30] The Arbitrator concluded “...consistent with *Brousseau*...I find that the UCCMS may examine and make findings about historic conduct for the prospective purpose of ensuring a safe sport environment for participants”. As discussed below, *Brousseau* is one of a line of cases that adopts a “protection of the public” exemption to the rule against retroactivity.

Position of the Parties

[31] The position of the Appellant is that the Arbitrator misapprehended the law by (1) failing to properly consider the nature of the contractual relationship between the parties and (2), the Arbitrator's decision failed to properly consider the presumption against retroactivity and the absence of any specific language in the UCCMS or the consent form signed by the Applicant, indicating retroactive application. The Respondents' position is that the presumption against retrospective application of statutory sanctions does not apply to statutes which are aimed at protecting the public (i.e. the protection of the public exception in *Brosseau*) and to the extent the matter turns on contractual interpretation, the parties clearly intended the UCCMS to have retrospective application.

[32] In Canada, there is a general rule or principle applicable to statutory enactments that new rules are presumed to operate prospectively only, unless the governing text clearly indicates an intention to apply them retroactively. This is rooted in the rule of law and fairness: people are entitled to know the standards that govern their conduct at the time they act according to its terms. The Supreme Court of Canada in *R. v. Dineley* held that new legislation that affects substantive rights will be presumed to have only prospective effect unless it is possible to discern a clear legislative intent that it is to apply retrospectively.

[33] The Court of Appeal for Ontario applied *R. v. Dineley* in its 2015 decision in *R. v. Bengy*. The Court explained the policy rationale referring to both *Dineley* and *Sullivan on the Construction of Statutes* (5th ed. 2008). The basic principle that applies to this case is the requirement that an individual be aware of conduct which is prohibited to be penalized for such conduct. Deschamps J., (at para. 10 in *Dineley*), explained the principle that animates the presumption against retrospectivity: "Because of the need for certainty as to the legal consequences that attach to past facts and conduct, courts have long recognized that the cases in which legislation has retrospective effect must be exceptional."

[34] The same principle was explained by the Court of Appeal for Ontario in *R. v. Chouhan*, 2020 ONCA 40 (at para. 186) as follows: "The presumption against retrospectivity is a tool for determining the intended temporal reach of legislation...The purpose of the presumption is to prevent a change in the law from looking to the past and attaching new prejudicial consequences

to a completed transaction. The presumption bespeaks fairness and engages the rule of law. Its effect is that new legislation operates from the date of its enactment and applies to what takes place going forward”.

Protection of the Public

[35] As noted, the Arbitrator relied on the decision of the Supreme Court in *Brousseau* and a line of cases that adopt a “protection of the public” exemption to the rule against retroactivity. The Arbitrator said he found the following excerpt from *Brousseau* on the subject of retrospectivity to be instructive: (at para 68):

In *Re A Solicitor's Clerk*, [1957] 3 All E.R. 617, a statute concerning the practice of law by solicitors was amended so as to enable an order disqualifying a person from acting as a solicitor's clerk if such person had been convicted of larceny, embezzlement or fraudulent conversion of property. A clerk who had been convicted of one of those offenses before the coming into effect of the new law, contested his disqualification on the basis that the law was being given a retrospective effect.

[36] The Court of Queen's Bench in *Re A Solicitor's Clerk* dismissed these arguments. Lord Goddard C.J. found that there was no retrospective effect since the real aim of the law was prospective and aimed at protecting the public. He wrote at p. 619:

In my opinion, however, this Act is not in truth retrospective. It enables an order to be made disqualifying a person from acting as a solicitor's clerk in the future and what happened in the past is the cause or reason for the making of the order; but the order has no retrospective effect. It would be retrospective if the Act provided that anything done before the Act came into force or before the order was made should be void or voidable or if a penalty were inflicted for having acted in this or any other capacity before the Act came into force or the order was made. This Act simply enables a disqualification to be imposed for the future which in no way affects anything done by the appellant in the past.

[37] Professor Elmer Driedger summarized the distinction in his article: “Statutes: Retroactive, Retrospective Reflections” (1978), 56 *Can. Bar Rev.* 264, at p. 275: “In the end, resort must be had to the object of the statute. If the intent is to punish or penalize a person for having done what he did, the presumption applies, because a new consequence is attached to a prior event. But if

the new punishment or penalty is intended to protect the public, the presumption does not apply... In the end, resort must be had to the object of the statute. If the intent is to punish or penalize a person for having done what he did, the presumption applies, because a new consequence is attached to a prior event. But if the new punishment or penalty is intended to protect the public, the presumption does not apply”.

[38] The Supreme Court explained in *Brosseau* (at p. 301):

The provisions in question are designed to disqualify from trading in securities those persons whom the Commission finds to have committed acts which call into question their business integrity. This is a measure designed to protect the public, and it is in keeping with the general regulatory role of the Commission. Since the amendment at issue here is designed to protect the public, the presumption against the retrospective effect of statutes is effectively rebutted.

[39] The Arbitrator found that the parties had entered into a contract that specifically contemplated the application of the UCCMS to historic conduct and further that the purpose of the UCMSS is not punitive but rather is focused on ensuring that all who participate in sport are able to do so in a safe environment. He found this to be in accordance with the protection of the public exemption in *Brosseau*. He concluded the UCCMS is a code designed to ensure the protection of the sporting public.

[40] The Arbitrator reached this conclusion by considering the words of the UCCMS and the related and connecting agreements which surrounded its implementation. As the Respondents point out, in order to be eligible for funding from Sport Canada, Skate Canada adopted the Abuse-Free Sport program and the UCCMS by signing the Signatory Agreement section 5 of which required Skate Canada to require participants to provide their consent to be subject to the UCCMS.

[41] Section A-2.2 of the Signatory Agreement states *that “UCCMS Participants who have signed the Consent Form in Appendix E may be subject of a complaint under the UCCMS.” Under section A-3.2 of the Signatory Agreement, Skate Canada acknowledged that incidents occurring before the UCCMS became effective could be the subject of a complaint. The Applicant acknowledges he signed the consent form where he agreed to be subject to the UCCMS. Section 3*

*of the consent form states that the Applicant agreed he was “subject to such jurisdiction during the period that I am...employed or contracted by, or otherwise associated with, the Organization, **and for such longer period** (underlining and italics added) as required for purposes of administration and enforcement of the UCCMS”.*

[42] The Respondents contend that the application of the UCCMS arises from the relationship between Sport Canada, Skate Canada, and participants such as the Applicant. When taken together, the Signatory Agreement, the consent the Applicant signed, the UCCMS, and Abuse-Free Sport’s policies, it is clear that Abuse-Free Sport has jurisdiction over actions predating the adoption of the UCCMS. In the court’s view the Arbitrator made no error of law and acted reasonably in accepting this argument. Moreover, the Arbitrator’s approach is supported by strong public policy in favour of promoting safety of the sporting public, particularly where young people are involved.

[43] Furthermore, on the allegations involved in this matter, sexual maltreatment of minors has always been unacceptable in Skate Canada, so it can not be reasonably argued that the retroactive application of the UCCMS has characterized as maltreatment conduct that was acceptable at the time of the occurrence of the events. Sexual abuse of minors was never acceptable and can never be tolerated. Therefore, it could not be reasonably argued on the facts of the present case that a retroactive or retrospective application of the UCCMS would constitute procedural unfairness or amount to a breach of natural justice so as to give rise to a right of appeal under section 46(1) of the *Arbitration Act*.

Disposition

[44] As the court is of the view that the Arbitrator correctly applied the protection of the public exception to the general presumption against the retroactive application of codes of conduct and also adopted a reasonable interpretation of the contractual relationship applying to the UCCMS to which the appellant consented and agreed to be bound, I would dismiss the appeal herein, uphold the Arbitrator’s Award and remit the matter back to the Arbitrator for his disposition of the balance of the Appellant’s appeal on the merits.

[45] If the Respondents wish to seek costs of this appeal, they should submit a concise submission within two weeks of the release of these reasons and the Appellant may respond within two weeks of receiving the Respondents' submission.

Justice Charles Hackland

Released: March 27, 2026

CITATION: Myles v. The Sport Dispute Resolution Centre of Canada, 2026 ONSC 1729
COURT FILE NO.: CV-24-96219
DATE: 2026/03/27

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

TYLER MYLES

APPLICANT

-and-

THE SPORT DISPUTE RESOLUTION CENTRE OF
CANADA, ABUSE-FREE SPORT, DIRECTOR OF
SANCTIONS AND OUTCOMES, AND DEPUTY
DIRECTOR OF SANCTIONS AND OUTCOMES

RESPONDENTS

REASONS FOR DECISION

Justice Charles Hackland

Released: March 27, 2026