

# Decision affirms independence of sports organizations

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For Law Times

A recent Superior Court decision shows sports organizations should be left to their own devices when it comes to matters of internal governance, says a Toronto lawyer.

In *Cricket Canada v. Bilal Syed*, Justice Freya Kristjanson overturned parts of an arbitrator's decision that imposed new bylaws on the sport's governing body in the country following a disputed board election.

Jordan Goldblatt, partner at Adair Barristers LLP who acted for Cricket Canada, says his clients were pleased with the result.

"I think the lesson here is that, ultimately, what organizations are permitted to do under their bylaws is a decision that is best left to members," he says.

Goldblatt says if the arbitrator's decision had been endorsed, it had the potential to cause chaos within Cricket Canada or any other organization where the membership objects, either immediately or at some point in the future, to bylaw changes they are directed to make.

"What are you supposed to do in a situation where the arbitrator says one thing and the members say that no, they don't like

the bylaws imposed on them? It creates uncertainty," he adds.

Sports lawyer John Polyzogopoulos, partner at Blaney McMurtry LLP, says the decision is the latest in a line that suggests courts will be hesitant to get involved in the inner workings of corporations.

"It's not the court's role to second-guess the internal governance of organizations," says Polyzogopoulos.

"That's where the arbitrator went offside. It wasn't his job to criticize or require changes to the existing bylaws. It's his and the court's job to look at the rules that are already in place, interpret them and determine whether they have been applied fairly in the case before them."

The dispute has its roots in Cricket Canada's 2016 annual general meeting, when a fresh slate of directors is normally elected by the corporation's members — provincial subsidiaries that administer the game in their home jurisdictions.

Each provincial group controls votes in proportion to the number of teams under its purview.

Bilal Syed's name went on the ballot paper after he was vetted without incident by a nominations committee appointed by the board.

However, when Syed ran and



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lost in the election by members, he protested the result with a spectacular complaint that alleged fraud, bias and racism in the process.

An arbitrator appointed to rule on the dispute dismissed Syed's allegations of discrimination as lacking evidence, but he did order a new election based on failures in the conduct of the election. For example, he found that the Saskatchewan vote was carried out by the former provincial president rather than its current leader at the time of the

election.

In addition, the arbitrator expressed his discomfort with other "improprieties" in the election process, and he directed Cricket Canada to make "all necessary amendments" to its bylaws to address his concerns.

He said the election rules should bar anyone with a role in selecting the nominations committee from running and force provincial directors to resign those posts before seeking election to the national board. Finally, he said nominees should be banned from offering or promising benefits to voters.

Goldblatt says the election was rerun in accordance with the arbitrator's award, even as Cricket Canada challenged his jurisdiction to make them, and Syed, who could not be reached by *Law Times*, was again unsuccessful.

In her May 30 decision, Kristjanson found all three of the arbitrator's suggestions were core issues of internal governance that fell "outside the scope of the arbitration agreement" and were "beyond the jurisdiction of the Arbitrator."

The judge also set aside the arbitrator's direction to amend the organization's bylaws.

"It is for the members to decide on changes to Cricket Canada's By-laws, policies and

procedures. Such changes are properly the subject of negotiation, consultation and input from all stakeholders and votes by the members, and not the unilateral decision of an arbitrator in a sports-related dispute regarding the participation of an individual in an election," Kristjanson wrote.

Polyzogopoulos says he has seen "some or all" of the arbitrator's directed bylaw changes in practice at other sports organizations.

"But every corporation is different, and I don't know that there is one cookie-cutter approach that works for everyone. It's going to depend on the nature of the particular organization and the desires of its members," he says.

"They are the kinds of changes that should be looked at case by case."

Mark Blumberg, partner with Toronto firm Blumberg Segal LLP, who works almost exclusively with charities and non-profits, says governance disputes are relatively commonplace within entities incorporated under the Canada Not-for-profit Corporations Act but that it's rarer to see them make it all the way to court.

"A lot of them go nowhere, and people just get upset and leave," Blumberg says. **LT**