

IN THE MATTER OF AN APPEAL TO RINGETTE BRITISH COLUMBIA

BETWEEN

KIM BAILEY

(Appellant)

— and —

THOMPSON OKANAGAN RINGETTE LEAGUE

(Respondent)

DECISION

Date: January 9, 2025

Appeal Panel: Kate Scallion

INTRODUCTION

1. Kim Bailey (the “Appellant” or “Bailey”) appeals the decision of the Thompson Okanagan Ringette League (the “Respondent” or “TORL”) to suspend her from participating in any coaching or team duties relating to the Zone 5 U16 team from November 24, 2024, to January 15, 2025.
2. Bailey is the head coach of the U16 Zone 5 team.
3. The TORL is the ringette league responsible for the sport of ringette in the geographic region of Zone 2, as determined by Ringette BC, which includes teams from Kelowna, Vernon, and other areas in the Thompson-Okanagan region.
4. TORL suspended Bailey for violating TORL Bylaw 1.04.
5. Bailey appeals the TORL suspension on the basis that TORL failed to follow its procedures and that TORL made a decision influenced by bias.
6. The first issue to be determined in this appeal is whether or not Bailey has proven on a balance of probabilities that TORL failed to follow its procedures or made a decision influenced by bias. If Bailey succeeds on proving either of those grounds of appeal, the second issue to be determined is whether or not TORL’s failure to follow procedures and/or make an unbiased decision had a material effect on the outcome.

7. For the reasons that follow, this appeal is allowed and Bailey’s suspension is lifted with immediate effect.

Procedural History

8. TORL notified Bailey of her suspension on November 24, 2024 (the “Suspension Notice”). The Suspension Notice advised Bailey that she could submit an appeal in accordance with the Ringette BC Appeals Policy 3.7 (the “Appeals Policy”).
9. Bailey submitted her appeal within the timeline imposed by the Appeals Policy; however, the appeal manager appointed by Ringette BC determined that the Appeals Policy 3.7 was inapplicable, as it does not apply to disciplinary matters. Rather, Bailey’s suspension was imposed to sanction her for what TORL believed was a violation of their Bylaws 1.04a.
10. Bailey resubmitted her appeal in accordance with the appeal process outlined in the Ringette BC Discipline and Complaints Policy (the “Complaints Policy”).¹ Her appeal was accepted on December 19, 2024. On that date, the case manager notified Bailey and TORL that the appeal would proceed and established deadlines to exchange submissions; he further clarified the process on December 24, 2024.
11. I was appointed as the appeal panel on or around December 19, 2024.
12. Due to a number of factors, including accommodating statutory holidays, submissions did not close until January 8, 2025. Bailey requested a decision by January 10, 2025, so that, if her appeal was successful, she could resume her coaching duties for a tournament on January 11-12, 2025. In light of that compressed timeline, this appeal proceeded as a documentary hearing. The parties answered questions from me and provided those answers at the same time they submitted their final reply and sur-reply submissions.

JURISDICTION

13. The appeal process, as outlined in the Complaints Policy, only permits appeals on limited grounds. These grounds are that a respondent:
 - a. made a decision that it did not have the authority or jurisdiction (as set out in the applicable governing documents) to make;
 - b. failed to follow its own procedures (as set out in the applicable governing documents); and

¹ Ringette BC, *3.6 Discipline and Complaints Policy* (revised 10 September 2024) [the “Complaints Policy”].

- c. made a decision that was influenced by bias (where bias is defined as a lack of neutrality to such an extent that the decision-maker appears not to have considered other views).²
14. Bailey's notice of appeal argues that TORL failed to follow its own procedures, and made a decision that was influenced by bias.
15. The appeal manager also accepted the appeal on the grounds that Bailey was not afforded procedural fairness in that she maintains she was never provided with the opportunity to answer the allegations against her prior to being suspended.
16. Section 83 of the Complaints Policy requires an appellant to demonstrate on a balance of probabilities that the respondent has made a procedural error as described in section 61 of the Complaints Policy (and listed above in paragraph 13), and that such error had a material effect on the decision or the decision-maker.
17. This means that Bailey must show that it is more likely than not that TORL failed to follow its procedures or made a decision that was influenced by bias, and that failing to follow its procedures or remain unbiased had a material effect on the decision to suspend Bailey from November 24, 2024 to January 15, 2025.
18. If an appeal panel allows an appeal, section 84 of the Complaints Policy directs that the appeal panel may:
 - a. reject the appeal and confirm the decision being appealed;
 - b. uphold the appeal and refer the matter back to the initial decision-maker for a new decision; or
 - c. uphold the appeal and vary the decision.
19. The appeal panel has no greater authority than the original decision-maker, but may consider any evidence relevant to the subject matter.³
20. To be clear, the only matters before me are:
 - a. did TORL follow its procedures or make a decision that was influenced by bias?
 - b. if TORL did not follow its procedures or made a decision that was influenced by bias, did doing so materially affect the outcome?

² Complaints Policy, s 61.

³ Complaints Policy, s 79.

21. I am not determining whether the allegations against Bailey with respect to breaching the Ringette BC Player Releases Policy (the “Player Releases Policy”)⁴ or the TORL Bylaws are substantiated, nor am I am not considering whether or not she violated her Initial Suspension or breached confidentiality.
22. Both parties made substantial submissions relating to whether or not Bailey breached the Player Releases Policy, whether or not she has previously been disciplined, whether or not she breached confidentiality, whether or not she breached the terms of her 10-day suspension, use of email as the primary means of communication, and the qualifications of the review officer. TORL also raised new issues in their final submissions that seem to present their arguments as to why Bailey was suspended. None of these issues are properly before me and they will not be considered in this decision.
23. My role in this process is to determine whether or not Bailey has proven her grounds of appeal. I am not making any findings of fact relating to her conduct prior to November 24, 2024. In accordance with the appeal process outlined in the Complaints Policy, my role is to decide whether or not an appellant has proven their grounds of appeal on a balance of probabilities and if such grounds had a material effect on the decision being appealed.

BACKGROUND

24. This matter arises from a decision by Ringette BC to allow an appeal and release two players to the Zone 5 U16 team, coached by Bailey.
25. Sometime prior to October 23, 2024, Baily submitted an appeal to Ringette BC on behalf of two players, requesting that the decision denying their release be overturned. This appeal was successful. Ringette BC notified Bailey by email on October 23, 2024 that the appeal succeeded and the players would be released.
26. When Ringette BC notified Bailey of the appeal outcome, several other people were included on that communication, including Michael Beatch, the vice-president of the Kelowna Ringette Association (the “KRA”), who replied (and copied additional parties on his reply), expressing his displeasure with Ringette BC’s decision.
27. On October 24, 2024, the TORL board of directors (the “TORL Board”) convened a special meeting where they voted to suspend Bailey for 10 days, from October 25 to November 3, 2024 (the “Initial Suspension”). According to the notice of suspension, the

⁴ Ringette BC, *1.9 Player Releases Policy* (updated July 2024) [the “Player Releases Policy”].

TORL Board decided to suspend Bailey based on an alleged violation of the TORL Bylaws and the Player Releases Policy.

28. On November 24, 2024, the TORL Board notified Bailey and released a statement, publicizing that Bailey would be suspended until January 15, 2025, based on a finding that she had violated TORL Bylaw 1.04a.

ANALYSIS

29. Bailey raises two grounds of appeal in her notice: that TORL failed to follow its procedures, and that it made a decision that was influenced by bias.

Did TORL Follow its Procedures?

30. Bailey was suspended on the basis that she violated TORL Bylaw 1.04a, which states:

The Board of Directors shall have the power to suspend or expel any Member of an Association in the League (i.e. player, official, parent, etc.) who may, in its opinion, be guilty of conduct detrimental to the interests of the League or who may have transgressed any of its Rules or Bylaws, or who has failed to cooperate with the League in its efforts to ensure its successful operation whether an Association Member or Player Member. No Member shall, however, be expelled until she has been given an opportunity of appearing before a meeting of the Board to answer any charges made against her. A Member who has been expelled may be readmitted to membership by resolution of the Board at a regular meeting thereof upon the offence being corrected and the payment of any sum in arrears at date of expulsion, together with a fine as set by the Board.
31. The Initial Suspension notice advised that a review officer would be appointed prior to November 3, 2024, and that there would be an examination for discovery conducted to make a final determination on the allegations. Bailey was told she would be required to provide any and all information requested by TORL as part of this determination.
32. On November 3, 2024, Bailey contacted TORL vice-president, Richard Toth (“Toth”), seeking clarification as to the end date of her suspension and asking when she would be contacted by the review officer.
33. Later that day, Toth replied and notified Bailey that Davor Gugolj (“Gugolj”) of the Bow Valley Ringette Association had been appointed as the review officer. Toth wrote, “He will

be reviewing all documentation provided and will be in contact with you and anyone else he deems necessary.”⁵

34. On November 4, 2024, Bailey replied to Toth, saying, “I have not heard from Davor Gugolj, I was unfortunately not afforded the ability to learn, nor respond to the allegations made against me within the timeframe set by the TORL board.”⁶ After more email exchanges, Bailey requested an update as to the new timeline for the review that same day.
35. On November 8, 2024, Bailey again emailed Toth seeking an update. Bailey asked Toth when the final decision would be provided by the TORL Board, and when she would be contacted by Gugolj. Toth replied, “Davor is hoping to have the review complete by Monday.”⁷ This was the last communication Bailey had with TORL until November 24, 2024.
36. TORL did not reply to my question, “Did you tell Davor Gugolj that Kim Bailey contacted you on November 8, wondering when he was going to contact her?” Given TORL’s lengthy sur-reply submissions (which include copies of emails from Gugolj dated January 8, 2025, that answer other questions put to TORL), and their answers to all the other questions put to them, I read TORL’s silence on this specific question as a strong indication they did not notify Gugolj that Bailey had not heard from him and that she was seeking confirmation as to when she would.
37. Both parties argue email exchange between Bailey and Toth on November 8 and 9, 2024 show that Bailey either had been contacted by Gugolj or knew she had to contact them. Both Bailey and TORL provided copies of the exact same emails to support their arguments.
38. In their sur-reply submissions, TORL says of this exchange:

She in that email acknowledged she knew the Review Officer requesting a response from Ms. Bailey. No response to this follow-up was received, and at no point did Ms. Bailey indicate to the TORL Vice President that she had not received communication from the Review Officer. TORL would have reasonably expected Ms. Bailey to bring up concerns about missing the Review Officer’s email during this time, prior to the issuance of the suspension notice on November 24, 2024.

⁵ Email from Richard Toth to Kim Bailey, “Re: Notice of Suspension” (3 November 2024 at 7:29 AM).

⁶ Email from Kim Bailey to Richard Toth, “Re: Notice of Suspension” (4 November 2024 at 5:55 AM).

⁷ Email from Richard Toth to Kim Bailey, “Re: Notice of Suspension” (9 November 2024 at 7:36 AM).

39. To repeat the email exchange, on November 8, 2024, 7:36 a.m., Bailey wrote to Toth:

Mr. Toth,

I'm asking again for an estimated timeline of when I will be hearing from Davor and subsequently when a final decision will be provided by the board. [*Emphasis added*]

The lack of response is causing undue stress for myself and unnecessary concern for my players.

Kim Bailey.

40. On November 8, 2024, at 8:18 a.m., Toth replied, "I will ask Davor and get back to you." Bailey did not reply to that email.

41. On November 9, 2024, at 7:36 a.m., Toth replied:

Hi Kim,

Davor is hoping to have the review complete by Monday.

Richard Toth.

42. Nothing in the above exchange supports TORL's assertion that Bailey knew Gugolj was waiting for a response from her. It is preposterous to suggest that.

43. Bailey's reference to a "lack of response" could just as easily suggest that she had contacted Gugolj and was waiting for him to reply to her, or it could refer to TORL's lack of response to her concerns about having her voice heard.

44. Similarly, saying that Bailey "at no point" indicated to Toth that she had not heard from Gugolj is clearly false. The first line of her November 8, 2024 email asks when she would hear from him.

45. Toth does not suggest anywhere in his emails to Bailey that Gugolj had already contacted her and that Gugolj had not yet heard back from Bailey. Bailey made it clear that she had not yet hear from Gugolj. This is demonstrated by her following up with Toth and directly asking when she could expect to hear from Gugolj. Toth's response, "I'll will ask Davor

and get back to you,” can easily be interpreted as Toth asking Gugolj when Gugolj would contact Bailey. Toth’s reply also does not in any way suggest that Bailey should look up Gugolj online to find his contact information and contact him herself.

46. On November 24, TORL notified Bailey that she was suspended from coaching and team duties of the Zone 5 U16 team, effective from November 24, 2024, to January 15, 2025 (the “November Suspension”).
47. The November Suspension notice says, “TORL Board of Directors has closely reviewed the details of this case and the findings of the independent third party Review Officer and has rendered the decision that further sanctioning is warranted for your violation of TORL BYLAWS 1.04a.”
48. The November Suspension notice does not make any reference to the Player Releases Policy.
49. On November 24, 2024, the TORL Board also released an official statement (the “TORL Statement”) announcing Bailey’s suspension and sharing a copy of Gugolj’s report, dated November 11, 2024 (the “Report” or “Gugolj’s Report”).
50. The TORL Statement notes:

Ms. Bailey was notified in advance of the review process, including the appointment of the Review Officer. The Review Officer attempted to engage Ms. Bailey during the review. However, Ms. Bailey did not respond and by her inaction chose to not participate. Despite Ms. Bailey’s lack of cooperation, the Review Officer felt he was able to conduct an objective, thorough analysis of the facts and reach conclusions based on the available information.
51. Gugolj’s Report includes a finding that Bailey violated TORL Bylaw 1.04a for pursuing the release of two players to the Zone 5 U16 team, but the report acknowledges that “With regard to Ms. Bailey directing soliciting players [redacted] and [redacted] to join her team, in my opinion, there isn’t sufficient evidence to suggest that the communications were initiated by Ms. Bailey.” Gugolj then provides his opinion on what Bailey should have done:

knowing that TORL and KRA had denied the release of these players, Ms. Bailey should have ceased communicating directly or through a proxy with the players’

families, and asked them to follow established processes and direct any further communications or formal appeals to the TORL or KRA boards.

52. Throughout this appeal process, Bailey maintains that Gugolj did not contact her and that she was never given an opportunity to answer the allegations made against her.
53. Gugolj's Report does not include a summary of his methodology, who he contacted, and the evidence he considered in making his findings. Further, Gugolj's Report does not mention that he did not interview Bailey, nor does the Report include anything that indicates she was provided the opportunity to respond to the allegations against her, which expanded from the allegations in the Initial Suspension notice to findings on whether or not Bailey breached her Initial Suspension. Gugolj made findings on allegations that had never even been put to Bailey.
54. TORL provided a copy of an email from Gugolj to Bailey, dated November 6, 2024, to show that Gugolj did indeed attempt to contact her; however, Bailey is adamant she never received his email and that she was diligently checking all of her email folders multiple times a day in anticipation of hearing from a review officer.
55. Gugolj only made one attempt to contact Bailey. His email of November 6, 2024, did not request she confirm receipt, nor did it ask her to reply by a set time and date.
56. Bailey, as noted above, emailed Toth on November 8, 2024, saying she had not yet heard from Gugolj. Toth replied saying that Gugolj hoped to complete his review by November 11, 2024, but he did not say anything about Gugolj emailing Bailey, nor did he suggest that Bailey should contact Gugolj since she knew his name. According to the TORL submissions, "The review officer's contact information is easily available online for both work and sport organization contact."
57. Both the Initial Suspension notice and the TORL Bylaws set a minimum process for TORL to follow prior to disciplining Bailey.
58. Bailey was informed multiple times that she would have the opportunity to speak with the review officer prior to TORL making a decision on her conduct or any penalty to be imposed. She was consistently informed that the review officer would contact her. No one ever suggested that if she had not heard from the review officer prior to any date that she should contact Gugolj herself.

59. TORL Bylaw 104.a provides the TORL Board with the power to suspend and expel members. This bylaw does not permit the board to expel members without that member having the opportunity to have a hearing before the TORL Board to answer the allegations. Bylaw 104.a does not afford the same opportunity of a hearing before the TORL Board for a member facing suspension.
60. I do not have the authority to amend or read into Bylaw 104.a a requirement for the TORL Board to meet with a member prior to suspending them, but the regulations to the *Societies Act* (the “Act”) provide that where there is a conflict between a society’s bylaws and the Act or its regulations, the Act or regulations prevail.⁸
61. The Act and its regulations set the minimum standard for British Columbia societies to follow. TORL is a registered BC society. It must abide by the Act and its regulations.
62. Section 70 of the Act states the bylaws of a society may provide for how to discipline and/or expel members, but section 70(3) requires that before a member of a society is disciplined, the society must provide written notice of the proposed discipline (which notice includes reasons for the discipline), and give the member a reasonable opportunity to respond.
63. There is a conflict between the Act and TORL Bylaw 104.a in that Bylaw 104.a does not provide the opportunity for a member to respond to any proposed discipline other than expulsion.
64. In light of the conflict between the TORL Bylaws and the Act, the Act prevails. This means that prior to disciplining Bailey, at the very least, TORL needed to provide Bailey with the opportunity to make submissions regarding the proposed suspension.
65. This did not happen.
66. TORL did not provide Bailey any opportunity to make submissions or provide evidence with respect to the allegations against her, nor did they provide her the opportunity to make submissions regarding either suspension.
67. TORL did not even provide Bailey with an opportunity to respond to Gugolj’s Report prior to suspending her, despite knowing that Gugolj did not interview Bailey as part of his review.
68. This clearly contravenes the Act, which supersedes Bylaw 104.a due to the conflict.

⁸ *Societies Act*, SBC 2015 c 18 [the “Act”]; Societies Regulation, B.C. Reg. 114/2022, s 1.3 [the “Regulations”].

69. Furthermore, TORL did not follow the process it outlined to Bailey.
70. On October 25, 2024, TORL informed Bailey that they would reach out to her when a review officer was appointed, which would allow her to respond to the allegations.
71. On November 3, 2024, TORL notified Bailey that Gugolj was the appointed review officer and that he would contact her.
72. On November 4 and 8, 2024, Bailey informed Toth that Gugolj had not contacted her.
73. TORL never indicated that Bailey was responsible for contacting Gugolj herself, nor did they provide her with his contact information so that she could contact him herself.
74. Bailey repeatedly sought the opportunity to answer the allegations against her. That opportunity was not provided by Gugolj, nor was it provided by TORL. TORL clearly relied on Gugolj's Report and his recommendations regarding the suspension.
75. Even if Gugolj failed to contact Bailey, that does not relieve TORL from their statutory obligation to allow Bailey to make submissions prior to disciplining her.
76. Furthermore, a single unanswered email does not provide sufficient opportunity to answer allegations, especially given that a suspension is one of the harshest sanctions that may be imposed and that Bailey made multiple inquiries about when she would have an opportunity to respond.
77. Regardless of whether or not Bailey received Gugolj's email, it does not absolve TORL of their obligation to provide Bailey with the opportunity to present her answer to the allegations against her.
78. Based on the above reasons, I find that it is more likely than not that TORL failed to follow its procedures (or those required by the Act) when they suspended Bailey.
79. Bailey also argues that TORL failed to follow its procedures in October prior to her Initial Suspension by failing to adhere to the minimum notice requirements for TORL Board meetings.
80. I refrain from making a finding on that point because there is no remedy available. That suspension was completed before Bailey was even notified of Gugolj's appointment and well before she filed her notice of appeal.

Was TORL's Decision Influenced by Bias?

81. Section 61.c) of the Complaints Policy permits appeals if the decision was influenced by bias; bias is defined in section 61.c) as “a as a lack of neutrality to such an extent that the decision-maker appears not to have considered other views.”
82. From the evidence discussed above, it is clear Bailey's view was not considered by either TORL or Gugolj.
83. Gugolj spoke with five representatives from various associations, but did not speak with Bailey. TORL “understands” but cannot confirm if Gugolj spoke with either of the released players' families when reviewing if Bailey violated the Player Releases Policy. It is hard to believe a review is unbiased or that it objectively considered all sides of a dispute if the players whose releases sparked this entire dispute were not even consulted.
84. In their statement announcing Bailey's suspension and sharing Gugolj's findings, TORL characterized Bailey's participation as “inaction” and “a lack of cooperation.” This characterization demonstrates their bias is unfounded and serves as evidence of their bias.
85. Bailey made several attempts to provide a response in accordance with the process TORL stated they would follow before November 24. Completely ignoring Bailey's desire to participate and then labelling her as uncooperative is persuasive evidence of bias.
86. I am satisfied that the decision to suspend Bailey until January 15, 2025 was influenced by bias. TORL did not consider any view other than Gugolj's to decide that Bailey violated TORL Bylaw 104.a, and they did not consider any other view than their own when deciding to suspend her until January 15, 2025.

Did Failing to Follow Procedure and Being Biased Materially Affect the Decision?

87. Section 83 of the Complaints Policy requires me to consider if TORL's failure to follow procedure and remain unbiased had a material effect on the decision.
88. In this matter, TORL did not receive any submissions from Bailey regarding the allegations. Gugolj did not receive any submissions or evidence from Bailey.
89. Bailey clearly wanted to make submissions and had ample evidence to refute the allegations made against her. She was not given the opportunity to present her evidence or respond to the allegations.

90. TORL imposed Bailey's suspension based on Gugolj's Report and his opinion on appropriate sanctions, but the Report failed to consider any evidence from Bailey and Gugolj only made one attempt to contact her. Further, TORL never allowed Bailey to make submissions on the Report or their proposed sanction before she was suspended.
91. I am satisfied that TORL's failure to follow procedure and making a decision uninfluenced by bias materially affected the decision.
92. It is apparent that TORL was unwilling to consider Bailey's perspective. That unwillingness surely affected the decision to suspend her because that decision was based on an entirely one-sided perspective.
93. Bailey's suspension and the manner in which it was imposed is the subject of this appeal — not the findings of Gugolj's Report or Bailey's conduct. Hearing from Bailey may have changed or eliminated her suspension

DISPOSITION

94. Bailey's appeal is allowed. Her suspension is lifted with immediate effect. There are no further restrictions on her participation in ringette.
95. Since Bailey is no longer suspended, any communications on the TORL website or any other website indicating that she is suspended must be removed prior to 12 noon Pacific Time on January 10, 2025.
96. Section 84 of the Complaints Policy permits the appeal panel to uphold the appeal and refer the matter back to the initial decision-maker for a new decision, or to uphold the appeal and vary the decision.
97. In this instance, there is no point in referring the matter back to the initial decision-maker. Bailey has served 47 days of the 52-day November Suspension. Having this matter restarted would needlessly extend this dispute between Bailey and TORL without accounting for the fact that she has already been suspended for 57 days since October 24, 2024. This suspension cannot be undone if the decision-maker concludes the allegations against Bailey are not substantiated and she should not be disciplined, or if the decision-maker decides a shorter suspension was warranted.
98. I decline to vary the decision to suspend Bailey because I am not making any findings as to whether or not Bailey violated the Player Releases Policy or the TORL Bylaws. The decision to suspend her was based on a finding she had violated the TORL Bylaws.

Additionally, and as noted above, varying the decision does not eliminate the portion of the suspension that Bailey has already served.

99. In accordance with section 90 of the Complaints Policy, this decision is final and binding.
100. In accordance with section 85 of the Complaints Policy, this decision will be considered a matter of public record. I do not have authority to require TORL to issue and publish an apology to Bailey, as requested by Bailey; however, this decision may be published in accordance with the Publication Guideline appended to the Complaints Policy, even though this is not a disciplinary decision.
101. Ringette BC will maintain a record of this decision in accordance with section 11 of the Publication Guideline appended to the Complaints Policy.

Dated this 9th day of January, 2025



Kate Scallion
Appeal Panel
Jones Emery LLP
Victoria, BC