

**IN THE MATTER OF COMPLAINTS PURSUANT TO THE POLICIES OF PICKLEBALL  
ONTARIO and PICKLEBALL CANADA**

**Between:**

Deanna Hanes, Ryan Hanes, Gil Metcalf, Peter Milovanovic, Kim Porter  
Kingston Pickleball Club, Barrie Pickleball Club and Markham Pickleball Club

Complainants

**and**

Daphne Reid, Junior Bent, Suzanne Penner, Ron Klayman,  
Kitty Chow, Sarah Anantharajan, and Tarun Saroya

Respondents

**DECISION**

**I INTRODUCTION**

1. Pickleball Ontario (“**PO**”), incorporated under Ontario’s *Not-for-Profit Corporations Act* (“**ONCA**”), is the recognized governing body for the sport of pickleball in that Province. I understand that there are more than 20,000 individual members of PO, and about 75 affiliated clubs who are accorded voting rights regarding its affairs in proportion to the number of members in each club. PO is affiliated with Pickleball Canada (“**PC**”), the national governing body for the sport.
2. Although informed by prior events, in the latter months of 2024, serious issues about the governance of PO arose, which essentially concerned a dispute over its leadership by the Respondents, who at that time constituted the PO board of directors (the “**Board**” or “**PO Board**”).
3. Concurrently, the Board became concerned about the actions and behaviour of certain members, being the individual Complainants. In the result, several formal complaints were made, on the one hand by the Complainants individually concerning the PO Board and the Respondents<sup>1</sup>, and as well, by the PO Board concerning the individual Complainants.<sup>2</sup>

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<sup>1</sup> Eight individual complaints concerning the Respondents were submitted to both PC and PO

<sup>2</sup> The PO complaint concerning the individual Complainants was not submitted to PC.

4. PO appointed an independent third party or Case Manager to administer the process to deal with the matter, and in turn, I was appointed by the Case Manager as a Panel to adjudicate the complaints, which ultimately included the matters submitted to PC. Given the complexities involved, it is appropriate to first provide a reasonable picture of the background events and actions.

## **II BACKGROUND**

5. The 2024 annual general meeting (“**AGM**”) of PO was initially scheduled for November 25, 2024. A notice for that meeting was circulated on October 29, 2024. The notice included a call for nominations for election to the Board to be submitted by November 15, which would be “reviewed by a committee”.
6. Each of the individual Complainants put their name forward as candidates for election to the Board at the AGM. However, on November 20, the Board sent a package of materials to the PO registered delegates to the AGM under cover of a letter which included the following:

*“Due to [PO’s] increased scope and financial responsibility, the board has determined that four candidates are ineligible to apply for leadership positions. The individuals are Peter Milovanovic, Deanna Hanes, Ryan Hanes, and Kim Porter. The decision was based on their past conduct, which was inconsistent with the principles and values of Pickleball Ontario.*

*We must ensure that we uphold the basic eligibility requirements through the succession of leadership. We have a duty to be trustworthy, a duty of loyalty, a fiduciary duty and a duty of care to you, our members. It is with great difficulty that the Board has determined that to permit these individuals to apply for board membership would be a violation of these duties based on the information that we know about their past conduct in leadership positions with Pickleball Ontario...The past conduct includes the spread of misinformation, poor governance, poor conduct, poor treatment of stakeholders and breaches of Pickleball Ontario policies.”*

7. Also on November 20, the Board circulated material to the AGM delegates, which included a Report from the then President, Ms. Reid. That report included her comments under a section titled “Challenges with Detractors”, in which she claimed that PO’s progress was being undermined by unnamed individuals – “bad actors” – who had previously been on the PO Board and whose agendas included seeing PO fail.

8. The next day the individual Complainants wrote to PC to take issue with the Board's rejection of the four nominees<sup>3</sup> and raised a number of other procedural concerns regarding the imminent AGM.<sup>4</sup>
9. On November 25, the AGM convened but was adjourned to December 30 because the voting delegates did not approve the Board's agenda for the meeting.
10. Between November 28 and December 3, 2024, the Complainants filed their respective complaints with PC, naming PO<sup>5</sup>, the PO Board and the individual Respondents ("**Complaint 2**"). The complaints were also contemporaneously filed with PO. In essence, Complaint 2 alleged that by their public comments, the PO Board had demeaned the character of the individual Complainants. The three Clubs, by filing separate complaints, joined in these allegations on behalf of their relevant member(s).<sup>6</sup>
11. Shortly thereafter, on or about December 10, 2024, the PO Board advised each of the individual Complainants that their past conduct was in potential violation of the PO Code of Conduct ("**Code**") and that their memberships in PO were immediately suspended pending the final outcome of a process concerning such alleged violations ("**Complaint 3**").
12. The process was described to be a hearing before the same Board on December 28, at which the Complainants could present their case as to why they should not be suspended or expelled from membership in PO.
13. By mid-December, the Complainants had engaged counsel, who made submissions to the Case Manager that the described process was unacceptable inasmuch as it involved the Board in a clear conflict of interest, and an independent process of adjudication for Complaint 3 was necessary if their clients were to be treated fairly. The Case Manager agreed, engaged the undersigned, and the December 28 Board hearing was replaced with a subsequent independent process for adjudicating Complaint 3 that was accepted by the parties.

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<sup>3</sup> Mr. Metcalf was not declared ineligible.

<sup>4</sup> This first complaint, which was labeled 'Complaint 1' for procedural convenience, was not adjudicated as part of this process, although it was included in the materials submitted.

<sup>5</sup> While PO was named as a Respondent, no allegations were made, nor has any sanction been sought against PO itself. The PO Board and the Respondents were, at the time, one and the same.

<sup>6</sup> Deanna Hanes and Ryan Hanes (Kingston); Kim Porter (Barrie); Peter Milovanovic (Markham).

14. On or about December 19, the Complainants also appealed their provisional suspensions, and after hearing from counsel for PO, I rendered a decision on December 26 lifting those suspensions.
15. Notwithstanding the independent process established for Complaint 3 and the appeal of the provisional suspensions, on December 24 the individual Complainants filed complaints with PC pursuant to PC's Whistleblower Policy concerning the propriety of those suspensions, alleging that such action by the Board was vexatious and in retaliation for Complaint 2 ("**Complaint 4**").
16. For its part, PC had also appointed a case manager to deal with Complaint 2 under the PC policies. By his decision of December 29, and to avoid duplicate proceedings, the PC case manager referred Complaints 2 and 4 to be adjudicated along with Complaint 3 by the PO Case Manager and myself. Procedural directions were given to the parties, which resulted in fulsome written submissions and materials having been delivered on all complaints by February 14, 2025.
17. On December 30, the adjourned PO AGM resumed, but again did not proceed, the agenda for the meeting having once again not been approved.
18. On January 6, 2025 the PO Board received a request by the requisite number of PO members to convene a Special General Meeting,<sup>7</sup> the stated purpose of which was to consider a resolution to remove the Respondents from the Board. The Board denied the request.<sup>8</sup> In view of that outcome, a member of PO called the Special Meeting as provided for in the ONCA.<sup>9</sup>
19. On February 12, 2025 the Special General Meeting was held, resulting in the removal of the Respondents as members of the Board (collectively, sometimes the "**Former Board**"), and the election of an entirely new Board, which did not include any of the Complainants.
20. On March 4, 2025, the new PO Board advised the Case Manager that it was withdrawing Complaint 3. On March 11, 2025, counsel for the Complainants confirmed that their clients would be pursuing Complaints 2 and 4 and provided further submissions regarding sanction of the Respondents, in light of PO's withdrawal of Complaint 3 and

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<sup>7</sup> See ONCA, Section 60(1).

<sup>8</sup> On January 29, the Board made a request for certain interim relief, principally to prohibit the Complainants from further efforts to remove the PO Board. For the reasons set out in my decision of February 1, this request was denied.

<sup>9</sup> See ONCA, Section 60(4).

the outcome of the Special General Meeting. On March 13 Ms. Reid, on behalf of herself, Ms. Penner and Mr. Klayman provided a brief response.

21. The Case Manager advised the parties on March 18 that the adjudication would proceed by way of a documentary hearing only, that is, on the basis of the written evidence and submissions received.

### **III THE COMPLAINTS and THE RESPONSES**

22. I have carefully considered the original complaints and all of the evidence and submissions provided by the parties concerning them. As in the vast majority of cases such as this, the burden of proof rests with the Complainants, to be satisfied on a balance of probabilities. What follows is a summary of the salient points that are material for the purposes of my adjudication.

#### **(a) Complaint 2**

23. The individual Complainants alleged that the PO Board repeatedly made inappropriate and defamatory remarks about them. Their submissions identified three specific instances in which they say the Board did so. The Clubs echoed these allegations as regards the individual Complainants who are members of their respective clubs.
24. The first instance of the alleged conduct was the November 20 email communication from the Board to PO members in which allegations were made concerning the “past conduct” of four identified Complainants who were declared in such communication not to be eligible for election as directors.
25. The second instance of the alleged conduct was the November 20 report by Ms. Reid in the package of material provided to members registered for the November 25 AGM including the section titled “Challenges with Detractors”.
26. This section claimed that “bad actors” were “intent on undermining our progress” and warned that these bad actors would “often resort to fabricating misleading narratives in an effort to detract from our accomplishments” and “would prefer that you remain unaware of their own past misdeeds or lack of contributions during their tenure on the board.” Additionally, the section alleged that the supposed bad actors “strive to conceal their personal agendas, which often reveal a vested interest in seeing Pickleball Ontario fail rather than flourish.”

27. The Complainants alleged that this part of Report clearly referred to the individual Complainants who had been critical of the Board. The Report also paralleled the language of the November 20 email, including the term “past conduct”, which had been used to explain why Ms. Hanes, Mr. Hanes, Mr. Milovanovic, and Ms. Porter were declared ineligible to be directors.
28. The third instance of the alleged conduct concerned Ms. Reid’s opening remarks to the PO member delegates at the failed November 25 AGM. According to the Complainants, Ms. Reid claimed that PO was under “constant attack” from a “small number of clubs who are only looking at their own self-interest.”
29. The Haneses, Mr. Milovanovic and Ms. Porter submitted that the November 20 email and Report, as well as Ms. Reid’s opening remarks on November 25, were public allegations that defamed and attacked their characters, were bullying and libelous, and that the Board had intended to damage their reputations in the pickleball community, all in breach of provisions of the Code concerning the responsibilities and obligations of individual PO members and directors.
30. In his complaint, Mr. Metcalf, who was not declared ineligible to stand for election, stated that he was not given sufficient time to submit his resume for inclusion in the November 25 AGM package. He also supported the other four Complainants and raised several governance questions.
31. The three clubs complained about the communications in the November 20 email and report regarding their respective members, whose characters and reputations they highlighted. They also submitted that from Ms. Reid’s opening remarks about the “small number of clubs” at the November 25 AGM, one could infer that she was saying that the Kingston, Barrie and Markham Pickleball Clubs were the ones “attacking Pickleball Ontario and acting out of self-interest.”
32. Concerning the director eligibility issue, the Board’s response of February 7 was that background and behaviours of nominees for election are “subject to a fulsome review and eventual debate for all members should they be put forward as an eligible Candidate” and so the Complainants should not have been surprised by the Board’s scrutiny. In doing so, the Board asserted that it was functioning as a nominating committee, even though acknowledging that PO did not have such a committee. In any

case, the Board submitted that the four individuals were permitted to run for election at the December 30 AGM.<sup>10</sup>

33. Concerning their public communications, the Board submitted that such comments were true and that the Board was entitled to its opinions regarding the actions of the Complainants and the negative impact of those actions on PO.
34. In its February 14 reply, the Complainants acknowledged the Board's entitlement to hold even unsubstantiated opinions but submitted that this did not include the right to publicly present those opinions as facts to the entire PO membership. As to the eligibility issue, the Complainants submitted that the Board's attempt to justify its actions by acting as a non-existent nominating committee was absurd and that, simply put, it had no authority to decline Board nominations.

**(b) Complaint 4**

35. By way of background, following the aborted November 25 AGM, on or about December 10, 2024, each of the individual Complainants received a "Notification of Disciplinary Action" from the Board, alleging that their past conduct was in potential violation of the Code and that until the final outcome of the process to deal with such allegations was known, their memberships in PO were immediately suspended.
36. That process was to be a hearing before the same Board on December 28 as to whether the Complainants should be suspended or expelled from membership in PO. This was Complaint 3, which has since been withdrawn by PO.
37. The Complaint 3 allegations were very serious. In general terms, they included: misrepresentation and providing false or misleading information; conflict of interest; making or circulating false and harmful statements; undermining organizational integrity and the integrity of the board and its members; actions against the organization; reputation harm via public channels; behavioural and ethical misconduct; actively working against the interests of the governing body and its decisions.
38. It is of note that the Board had already declared four of the individual Complainants ineligible to serve on the Board. The obvious effect of the provisional suspensions was to prohibit all of the individual Complainants from participating in any PO activity, such as voting for their clubs or standing for election at the upcoming December 30 AGM.

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<sup>10</sup> I was not provided with any evidence of this permission. It may simply have been a reference to my earlier decision lifting the provisional suspensions.

39. By about December 20, the parties were well aware of PO's appointment of a Case Manager to deal with Complaints 2 and 3, my appointment, and the establishment of an independent adjudication process, and the Complainants had appealed their provisional suspensions.
40. Nevertheless, on or about December 24, the individual Complainants filed complaints under the PC Whistleblower Policy. They expressed concern about the "fairness of the process" for dealing with Complaints 2 and 3 and alleged that Complaint 3 was initiated by the Board as "a vexatious action that is clearly retaliatory in nature", the latter in reference to Complaint 2. This is Complaint 4.
41. On December 26, 2024 I rendered a decision concerning the appeal of the provisional suspensions. I concluded that since no advance notice of the suspensions or opportunity to be heard had been provided by the Board or PO, the imposition of the suspensions was not in accordance with the PO Bylaws or ONCA and was neither fair nor reasonable. The suspensions were set aside, the immediate effect of which was to restore the right of the individual Complainants to vote and stand for election at the upcoming AGM.<sup>11</sup>
42. The Board's response of February 7 was that Complaint 4 was duplicative, unnecessary and intended to disrupt the disciplinary complaint process. They argued that well before Complaint 4, the independent adjudication process had been adopted and both sides were agreeable that such process would be fair, and the appeal of the provisional suspensions was already underway.
43. I turn now to an examination of the various laws, bylaws and policies that may be material to this adjudication.

#### **IV LAWS, BYLAWS and POLICIES.**

44. One of the several problems presented by the various complaints concerns the applicable standards and governing rules and regulations against which they are to be assessed. What is not in dispute is the applicability of the PO Code; it is the standard which the Complainants say the Respondents' actions have breached or violated and are deserving of sanction.

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<sup>11</sup> I have elsewhere noted the submission of the Respondents that the Complainants were in fact entitled to run for election at the December 30 AGM.



45. To be clear, it is the case that the Complainants have characterized the actions of the Respondents in several ways, such as defamatory comments, actions contrary to provisions of the PO Bylaws and/or ONCA etc. Be that as it may, the issue for me is straightforward: do the actions complained of violate the Code?
46. As it relates to these complaints, the Code includes responsibilities and obligations for both members and directors of PO. For convenience, Schedule A excerpts those provisions of the Code which the Complaints ultimately submit are relevant.
47. Section 5 of the Code provides that an individual who is found to have violated the Code may be subject to sanctions pursuant to PO's Complaints and Discipline Policy ("**CDP**"). The CDP provides a detailed process not dissimilar to such policies in place for other sport governing bodies<sup>12</sup>, to deal with complaints and sanctions.
48. However, and while the point is not free from doubt, I was told that in November 2024, the Board revoked the CDP and in its place implemented a Conflict Resolution Policy ("**CRP**") to address conflicts "between members of [PO]".
49. The CRP and CDP are quite different. The CRP directs that member conflicts are to first be resolved at the club level, failing which by a PO ruling, which may in turn be challenged by arbitration or appeal, provided the challenger – not PO - assumes any cost of their challenge. But as to any detail regarding matters of process and sanctions, the CRP is entirely silent.
50. When the Complainants submitted Complaint 2, they explicitly asked that it be dealt with in accordance with the CDP. However, the Board advised the Complainants that the CDP was an 'old policy' and that their complaints could be resubmitted under the CRP. Complaint 2 was not re-submitted, but the Board's direction was raised in Complaint 4 as part of the Complainants' concerns about fairness of the process.
51. In the absence of a clear policy context, the parties were advised early on by the Case Manager that the adjudication would proceed in compliance with the principles of procedural fairness and that as necessary, consideration would be given to relevant aspects of PO's bylaws and its policies. Obviously, certain provisions of ONCA may also be relevant.
52. As a practical matter, the cloudy situation regarding the CDP and CRP becomes material only if the Respondents' actions are first found to have violated the Code.

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<sup>12</sup> Indeed, the CDP is essentially identical to the PC Complaints and Discipline Policy ("**PC-CDP**").

## V ISSUES

53. Based on the events and details of the Complaints 2 and 4 described above, I believe that their adjudication requires that I address the following issues:

- What is to be done with Complaint 3, and the allegation that it was a retaliatory action by the PO Board?
- Was the Board's declaration that the four Complainants were ineligible to stand for election to the Board a breach of the Code by any, some or all of the Respondents?
- Were the provisional suspensions of the Complainants by the Board a breach of the Code by any, some or all of the Respondents?
- Do the public comments made orally and in writing concerning the Complainants by the Board amount to a breach of the Code, by any, some or all of the Respondents?
- If there has been a breach of the Code, what is the appropriate sanction?

### **(a) Complaint 3**

54. PO has withdrawn Complaint 3. Ms. Reid expressed surprise that "the adjudication process could be halted before its conclusion." The process has not been halted; the party who initiated Complaint 3, that is, PO, has, for whatever reason(s), determined that it does not wish to pursue that complaint.

55. As such there is no Complaint 3 for me to adjudicate, nor is it necessary for me to determine whether it was a retaliatory action by the PO Board, as alleged in Complaint 4. It will be referred to only as necessary to understand the context of the outstanding Complaints 2 and 4.

### **(b) Election Ineligibility**

56. The Board's communication of November 20 does not cite any specific authority for the declaration that four of the Complainants would not be eligible for election as directors of PO. That is because there was no such authority available.

57. ONCA identifies certain conditions that will disqualify persons from being a director of a corporation such as PO<sup>13</sup>. None of the Hanses, Mr. Milanovic or Ms. Porter met any of those conditions.<sup>14</sup>
58. Prior to November 20, none of the four Complainants were the subject of any disciplinary proceeding, nor had they been suspended. Thus, they were members of PO in good standing eligible to serve as directors under Section 7.3 of the PO Bylaws.
59. I accept the Complainants' submission that by publishing serious allegations of "past conduct" about these individuals to the PO membership at large, that is, commencing a disciplinary action against them, the Board failed to respect an appropriate degree of confidentiality as required by the Code.
60. I reject the suggestion that although PO did not have an established nominating committee at the time, nevertheless the Board was entitled to act as such, on the basis that it was entitled to scrutinize the backgrounds and behaviours of potential board members and peremptorily judge whether they were appropriate candidates
61. First, it is the members of PO, not the Board, who determine the suitability of candidates for election to the Board. Second, it is obvious that the Board was conflating responsibilities between itself and PO members here:

*"It is not a breach of the Code of Conduct or ONCA for these members to be then questioned on their behavior when considering an election to a leadership role. Or to have those concerns raised with membership which will be discussed when the AGM resumes..." [Emphasis mine]*

The Board's submission actually recognizes that if there are concerns or questions regarding board candidates, those concerns should be put to the members for consideration.

62. In my view, the disqualification of these individuals was a form of disciplinary action taken by the Board without due process and in disregard of the principles of fairness. Questioning on one's behaviour assumes some sort of process, but here there were neither questions nor process, merely the unilateral action of the Board to disqualify, and without any opportunity to hear such questions let alone answer them.

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<sup>13</sup> ONCA, Section 23(1).

<sup>14</sup> Again, Mr. Metcalf was not declared ineligible.

63. The Board's submission of February 7 supports my concerns. Only then were the Complainants provided with any meaningful particulars about their alleged "past conduct"- clearly a dollar short and a day late, given that their disqualification had occurred well before.
64. I find that the disqualification of Ms. Hanes and Porter and Messrs. Hanes and Milovanovic on November 20 by the PO Board was a breach of multiple sections of the Code, including Sections 3(a)(i)(b) and (e), and 3(a)(iv); 3(b)(i)(e)(h) and (i), and 3(b)(iv). Such action having been taken by the Board in the name of the Board as a whole, I find that it was a violation by each of the Respondents.

### **(c) Provisional Suspensions**

65. I previously determined<sup>15</sup> to lift the provisional suspensions imposed on the individual Complainants, as this action was not the result of a fair or reasonable process. The issue then concerned *process*. The current question is a different one: was the action of the Board imposing those suspensions a violation of the Code?
66. Apart from issues of fair process, the substance of Complaint 4<sup>16</sup> under the PC Whistleblower Policy is that the Board's December 10 decision to suspend was also motivated by the Board's wish to retaliate against the Complainants for making Complaint 2.
67. As such, it was an abuse of the Board's authority, an action taken out of fear of criticism, a failure to behave with decorum and therefore a breach of the Code. It is also submitted that by targeting these individuals, the Board breached the standard of care imposed on it by ONCA, the PO Bylaws and the Code.
68. The Board's response is straightforward. Given that the suspensions had been appealed, and an independent adjudication process had been agreed to, there was no need for these complaints, which were a tactic used to try and disrupt the adjudication process. That may well be, but once again, that is a different question; the issue here, whether or not the provisional suspensions imposed by the Board were retaliatory is whether they were a violation of the Code.

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<sup>15</sup> Decision – In the Matter of an Appeal of Provisional Member Suspensions Imposed by Pickleball Ontario, December 26, 2024

<sup>16</sup> Although not directly relevant to the issue before me, I do have some concerns about whether the PC Whistleblower Policy contemplates complaints of this nature.

69. In my decision regarding the appeal of the provisional suspensions, I pointed out that while the PO Board is entitled to suspend a PO member pending the outcome of a discipline hearing, the member must be given notice and the opportunity to be heard *before* the imposition of a sanction.<sup>17</sup>
70. Moreover, ONCA provides that any such discipline power must include the circumstances and manner in which it may be exercised, must be exercised in good faith and in a fair and reasonable manner, which requires advance notice of the disciplinary action and an opportunity to be heard before that action is effective.<sup>18</sup>
71. In my decision, I found that the provisional suspensions were imposed without any advance notice, and without any opportunity to be heard in advance; the proposed December 28 hearing was to be concerned with whether the Complainants' memberships in PO would be *finally* suspended or terminated.
72. I repeat my conclusion from that decision:

*"To suspend the [Complainants] without affording any advance notice or right to be heard when the [PO] Bylaws and ONCA both require same is neither fair nor reasonable. To uphold the suspensions would be to legitimize inappropriate disciplinary action by the Board, which I decline to do."*<sup>19</sup>

73. I reiterate my earlier conclusion that the Board's provisional suspension of the Complainants was inappropriate. Apart from being unfair and unreasonable, it was contrary to the requirements of ONCA and the PO Bylaws and as such was a violation of the Code, including Sections 3(b)(i)(h) and 3(b)(iv). Such action having been taken by the Board in the name of the Board as a whole, I find that it was a violation by each of the Respondents.

**(d) Public Communications and Comments**

74. I have said elsewhere that there has been a long simmering dispute about the governance and leadership of PO, and it is, in my view, both a pity and shameful that such disagreements have led to these Complaints, which bring with them the stresses and costs of litigation, amongst other negatives.

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<sup>17</sup> PO Bylaws, section 5.2

<sup>18</sup> ONCA, section 51.

<sup>19</sup> See footnote 9, paragraph 23.

75. When the apparent goal of the Complainants' ire – the removal of the Board – was achieved at the Special General Meeting of February 12, I necessarily asked the parties whether their intention was to proceed with the adjudication of their Complaints.
76. I was pleased when PO advised that it was withdrawing Complaint 3, and frankly somewhat disappointed when counsel advised the Case Manager that the Complainants intended to pursue Complaints 2 and 4, particularly in light of the results of the Special General Meeting.
77. It would seem that the effective trigger to the PO leadership dispute was the decision of the Complainants to put their names forward for election to the Board and openly solicit support for their candidacies from PO member clubs.
78. Whether that was in fact the case is beside the point, but the Board's November 20 letter to members in which it publicly declared four of the named Complainants "ineligible to apply for leadership positions...based on their past conduct...in leadership positions with Pickleball Ontario" amounted to far more than just a counter-campaign. Indeed, it purported to end their campaigns.
79. If this was not sufficient, the "Challenges and Detractors" portion of the President's Report also sent to the AGM delegates on November 20 (but presumably drafted some time earlier) clearly fanned the flames even further, given its targeted approach to calling out, albeit not by name on this occasion, "bad actors", their "past misdeeds or lack of contributions during their tenure on the board" and a "vested interest in seeing Pickleball Ontario fail rather than flourish."
80. As for Ms. Reid's opening remarks at the November 25 AGM, I accept the Complainants' submission that she included her opinion that PO was under "constant attack" from a "small number of clubs who are only looking at their own self interest."
81. For completeness, the individual Complainants themselves variously described the November 20 communications as defamatory, offensive, bullying and libelous, and deliberately damaging of their reputation. Mr. Milovanovic alleged that Ms. Reid's opening remarks, which as far as I know only concerned unnamed clubs, were also defamatory.
82. So, from an objective standpoint, in the immediate lead up to the November 25 AGM, four of the Complainants had been the subject of a Board communication to the PO membership advising that the Board would not permit them to stand for election to the

Board because of their past conduct, including in PO leadership positions, but without any specifics, purportedly to respect their privacy.

83. Concurrently, the Board had also advised AGM delegates that it was contending with individual “bad actors” guilty of “misdeeds or lack of contributions during their tenure on the board.” On the evidence before me, I am satisfied that the “Challenges and Detractors” section of Ms. Reid’s report was aimed at all of the Complainants, including Mr. Metcalfe, and I so find.

84. I have no detailed evidence about the November 25 AGM, other than it did not proceed. However, in light of these public communications, and purporting to prohibit the Complainants from running for election via the normal governance process, their decision to make Complaint 2 is understandable.

85. The Code addresses expectations of conduct and appropriate behaviour of all those connected with PO, including individuals and Board members. The Complainants alleged that the actions of the Board violated the vast majority of these responsibilities. As to the Code, their subsequent submissions were somewhat narrower,<sup>20</sup> but asserted that – apart from the issues of eligibility and provisional suspensions - the Board’s written and oral communications also breached PO’s Bylaws as well as ONCA, summarized here:

- Publicly targeting or criticizing the individual complainants was a misuse of and/or disregard for leadership;
- The publication of the names of the four ineligible Complainants was a breach of the Board’s obligation to maintain confidence;
- The public criticism and provisional suspensions amounted to a failure of the Board to act with decorum;
- Ms. Reid’s conduct as President of PO was motivated by self-interest to remain in that office;
- The standard of care imposed on the Board in the Code (Section 3(a)(viii) and 3(b)(iv))<sup>21</sup>, the PO Bylaws (Section 7.2) and ONCA (Section 43(1)) was breached by targeting the individual Complainants, which undermined the integrity of PO’s governance process.

86. In her email to me of March 13, Ms. Reid asserts that the Former Board took its fiduciary responsibilities seriously, and that its actions were taken in the best interests of PO and

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<sup>20</sup> See Schedule A.

<sup>21</sup> See also Section 3(b)(i)(h).

the pickleball community itself. She says that the Former Board’s “communications and decisions were meticulously crafted with the guidance of legal counsel, ensuring strict compliance with our bylaws, policies and governing regulations.” She characterized the way in which the Board addressed the “improprieties” of the Complainants as proceeding “with caution and fairness rather than acting prematurely.”

87. I disagree with Ms. Reid’s characterizations. It is quite clear that the Former Board did not want to contend with at least four of the five Complainants running for office at the November 25 AGM. In addition to essentially eliminating that problem by *fiat*, without any regard for due process or their responsibilities and obligations as directors, the manner in which the Board’s response was publicly communicated was prejudicial to the interests of those four Complainants.

88. At the November 25 AGM, I find that Ms. Reid’s ‘Opening Remarks’ as PO President were more likely to have been made on behalf and with the approval of the entire Board. However, the evidence is that her remarks were not directed at any of the individual Complainants or any specific PO clubs by name. There is no evidence that her opinion – which is what I find her statement amounted to – was directly referring to the club Complainants. I cannot conclude that it amounted to a violation of the Code. Neither is there evidence that any of the Barrie, Kingston or Markham clubs have been negatively affected by her remarks.

**(e) Summary of Findings**

89. To summarize:

- I find that all of the Respondents, acting as the Former Board, violated the Code by misusing their authority under ONCA and the PO Bylaws in an attempt to prohibit four of the Complainants from seeking election to the PO Board, by declaring them to be ineligible;
- I find that all of the Respondents, acting as the Former Board, violated the Code by abusing their authority under ONCA and the PO Bylaws to suspend the individual Complainants in an unfair and unreasonable manner;
- I find that all of the Respondents, acting as the Former Board, violated the Code by abusing their authority and fiduciary duties under ONCA and the PO Bylaws to publicly target the individual Complainants in its November 20 written communications concerning their alleged past conduct;



- The principal issues in Complaint 4 concerned the fairness of the adjudication process and validity of the provisional suspensions; at that time, the parties had agreed to a process and the validity of the suspensions was under appeal. To that extent and having otherwise made findings regarding those suspensions, I conclude that Complaint 4 was unnecessary, and it is dismissed.

90. Having found that certain actions and communications of the Respondents, in their capacity as PO Board members, breached the Code, I turn now to the question of an appropriate sanction.

## **VI SANCTION**

91. In their original January 31 submissions, the Complainants submitted that because the Respondents have violated the Code, they should:

- (a) Provide a written apology;
- (b) Be removed from the PO Board;
- (c) Be declared ineligible to stand for election to the PO Board in the 2025 term;
- (d) If (b) and (c) are unavailable, be suspended from PO for 1 year;
- (e) In the alternative to (d), Ms. Reid should be suspended from PO for 1 year and the remaining Respondents for 6 months.

### **Position of the Complainants**

92. The Complaints cited the CDP and its directions regarding sanctions for their initial position that the Board's conduct was sufficiently severe to attract the highest level of sanction and that the Respondents should accordingly be removed from their positions of authority.

93. Given the apparent revocation of the CDP, or at least the cloud over its continued application in favour of the CRP, which does not address sanctions, the Complainants argued that in light of the referral by PC of Complaints 2 and 4 to this process, removal of the Respondents is a sanction that is available in this process under the PC CDP.

94. As to the alternative of suspension from membership in PO, the Complainants submitted that the PO Bylaws and ONCA generally allow the PO Board to do so, and in these circumstances, the Panel can and should assume that authority.

95. In making this alternative submission, the Complainants provided a list of factors or principles, largely drawn from the Universal Code of Conduct to Prevent and Address Maltreatment in Sport, which they submitted I should consider in determining an appropriate sanction.
96. Citing the reputational harm, fear of further retaliation, financial strain, and negative health effects of the Former Board's actions, it was submitted that a suspension would satisfy the need for a sanction having a strong deterrent effect. Given Ms. Reid's signing of the November 20 Report, it was also submitted in the further alternative that her conduct warranted a longer suspension than the remainder of the Respondents.
97. In asking the parties for their intentions after the Special General Meeting of February 12, I also asked for any updated views they might have regarding sanctions.
98. The Complainants suggested that the result of the Special Meeting meant that the removal sanction "is no longer relevant" and all of the Respondents should be suspended from membership in PO for one year in light of their abuse of authority, in order that the trust of the PO community can be regained and for reasons earlier cited.
99. I was also referred to the Thunder Bay Decision<sup>22</sup>, in which the members of that city's pickleball club board were suspended from participation in any capacity, in any program, practice, activity, event, or competition sponsored, organized by, or under the auspices of PO for 6 months, for infractions of the Code.

### **Position of the Respondents**

100. Ms. Reid submitted that the Former Board's actions and decisions were made in the best interests of PO and the broader community, on the advice of counsel to "ensure compliance with [PO's] governance framework", with restraint, and with a "steadfast belief in due process". In the result, she requested that the Complaints against the Respondents be dismissed in their entirety.

### **Findings and Conclusion**

101. The facts that have been presented to me do not align with Ms. Reid's submission. I cannot accept that the Former Board had much, if any, regard for due process in dealing with concerns about and sometimes severe criticism of their leadership. My findings as

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<sup>22</sup> Decision – In the Matter of a Complaint Made Pursuant to the Pickleball Ontario Complaints and Discipline Policy, Gascon ats Wabinski et. al. (December 28, 2003).

regards the eligibility and provisional suspension issues, far from indicating the Former Board's compliance with PO's governance framework, demonstrate a disregard for same.

102. And while it may be Ms. Reid's opinion that the Former Board was acting in the best interests of PO, the facts suggest that its primary interest was in keeping the Complainants away from the leadership, direction and management of PO. Whether that is or isn't in PO's best interests is another issue, and as I have said elsewhere, it is not for me to determine who is best able and qualified to assume such an important task. That is for the members of PO to decide.
103. The Complainants' submission that removal from the Board is "no longer relevant" and accordingly, suspension from PO membership is the appropriate sanction, is troubling. The rationale for this submission seems to be that the Respondents have already been removed from the Board by reason of what I understand to be an overwhelming majority of the member votes at the February 12 Special Meeting.
104. However, I cannot draw a meaningful distinction between the overriding PO governance dispute that had been simmering for many months, which came to a head late last year, and the salvos of complaints that the parties resorted to in the midst of that dispute. As the Complainants seem to acknowledge, the gravamen was simply a fight about who was going to prevail in that dispute.
105. In essence, the main goal of the Complainants was to effect a change in PO's leadership, and they have been successful. I simply cannot ignore that fact. The argument seems to be that because the Respondents weren't removed from the PO Board because of the complaints, suspending their individual membership privileges is the only appropriate sanction. In my view, the fact that the members of PO voted to remove the Respondents from the Board is a significant message and is highly relevant in the context of determining an appropriate sanction.
106. That said, I am left with assessing whether a year-long suspension of the Respondents from all of their PO membership privileges by reason of their actions as Board members is appropriate.
107. I acknowledge that suspensions from membership privileges were found appropriate in the Thunder Bay Decision, and yet – apart from not being bound by that decision - any reinstatement from those suspensions was made conditional on each respondent completing a governance essentials course or program at their own expense, to the

satisfaction of PO. That is, it was the performance of the respondents in that case *as board members*, not as club members, that seems to have informed the adjudicator.

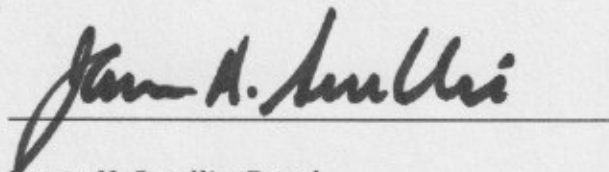
108. Accordingly, I impose the following sanctions:

- (a) Each of the Respondents may not stand for election to the PO Board in the 2025 term, including at the adjourned PO AGM;
- (b) Should any of the Respondents subsequently wish to put their name forward as a candidate for election to the PO Board, it is apparent, based on this record, that the Respondents should take steps to enhance their knowledge of and improve their practices as fiduciaries of an active sport organization. As such, they must first complete the Canadian Centre for Ethics in Sport "Governance Essentials" course<sup>23</sup> at their own expense, to the satisfaction of the then current Board of PO.
- (c) PO is free to publish this decision in its discretion.

109. That said, I would strongly encourage such publication to the PO community at large. First, I suspect the PO community is likely already aware of these disputes. Second, there is the matter of the twice-adjourned 2024 AGM that needs to be successfully convened, and publication may be of assistance in that regard. Third, I also understand that PO is undertaking a review of its Bylaws and policies.

110. As such, a transparent understanding of the circumstances surrounding this unfortunate matter – and its outcome - will hopefully benefit PO members and assist in informing the community as to what is needed to put their governing body on an even keel.

DATED at Calgary this 26th day of March, 2025.



James H. Smellie, Panel

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<sup>23</sup> Available online at <https://www.cces.ca/governance-essentials>

## Schedule A – Code of Conduct Provisions

### 3. Roles/Responsibilities

#### a) Individuals

Individuals participating in Pickleball Ontario programs, activities and events have a responsibility to:

i. Maintain and enhance the dignity and self-esteem of Pickleball Ontario members and other individuals by:

b. Focusing comments or criticism appropriately and avoiding public criticism of players, coaches, officials, organizers, volunteers, employees, or members

viii. Comply, at all times, with Pickleball Ontario’s bylaws, policies, procedures, and rules and regulations, as adopted and amended from time to time;

#### b) Board of Directors and Committee Members.

In addition to the individual responsibilities described in section 1 [sic] of this policy Pickleball Ontario’s Board of Directors (the “Board”), and Committee Members will have additional responsibilities to:

i. Function primarily as a member of the Board and/or committee(s) of Pickleball Ontario; not as a member of any other particular member or constituency;

a) Act with honesty and integrity and conduct themselves in a manner consistent with the nature and responsibilities of Pickleball Ontario’s business and the maintenance of individuals’ confidence;

e) Be independent and impartial and not be influenced by self-interest, outside pressure, expectation of reward, or fear of criticism;

f) Behave with decorum appropriate to both circumstance and position and be fair, equitable, considerate, and honest in all dealings with others;

h) Exercise the degree of care, diligence, and skill required in the performance of their duties pursuant to the laws under which Pickleball Ontario is incorporated;

iv. Conform to the bylaws and policies approved by Pickleball Ontario.