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December 9, 2014

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Re: **Wambach et. al. v. Canadian Soccer Association**
HRTO File Number: 2014-18923-I

Please find enclosed an interim decision of the Tribunal in this matter,
dated December 9, 2014.

9 pages including this cover sheet.

Child and Family Services Review Board
Custody Review Board
Human Rights Tribunal of Ontario
Landlord and Tenant Board Ontario
Special Education (*English*) Tribunal Ontario
Special Education (*French*) Tribunal Ontario
Social Benefits Tribunal

Commission de révision des services à l'enfance et à la famille
Commission de révision des placements sous garde
Tribunal des droits de la personne de l'Ontario
Commission de la location immobilière
Tribunal de l'enfance en difficulté de l'Ontario (*anglais*)
Tribunal de l'enfance en difficulté de l'Ontario (*français*)
Tribunal de l'aide sociale



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

**Abby Wambach and Players on National Teams Participating in the FIFA
Women's World Cup Canada 2015 Listed on Schedule "A"**

Applicants

-and-

**Canadian Soccer Association and
Fédération Internationale de Football Association**

Respondents

INTERIM DECISION

Adjudicator: Jo-Anne Pickel
Date: December 9, 2014
File Number: 2014-18923-I
Citation: 2014 HRTO 1765
Indexed as: **Wambach v. Canadian Soccer Association**

WRITTEN SUBMISSIONS

Abby Wambach and Players on National)
Teams Participating in the FIFA Women's)
World Cup Canada 2015 Listed on)
Schedule "A", Applicants)
)

David Wright, Jane Letton and
Catherine Gleason-Mercier,
Counsel

Canadian Soccer Association, Respondent)
)
)

Joseph Arvay, Sean Hern and
Catherine Boies Parker, Counsel

Fédération Internationale de Football)
Association, Respondent)
)

Jérôme Valcke, Representative

[1] This Interim Decision addresses the applicants' Request to amend the Application and their Request for Interim Remedy.

BACKGROUND TO THE APPLICATION

[2] By Application filed on October 1, 2014, the applicants alleged that the respondents discriminated against them because of sex contrary to the *Human Rights Code*, R.S.O. 1990, c. H. 19, as amended (the "*Code*"). In particular, the applicants have alleged that the respondents have taken, and continue to take, action that will force women players to play games during the FIFA Women's World Cup Canada 2015 on artificial turf. The applicants allege that artificial turf is dangerous to athletes and considered sub-standard for international play. The applicants submit that the respondents' actions discriminate against them based on sex because, according to the applicants, neither respondent requires men's soccer players to play World Cup games on artificial turf. The applicants seek remedial orders that will require the FIFA Women's World Cup Canada 2015 to be played on natural grass fields.

[3] The Canadian Soccer Association ("CSA") and Fédération Internationale de Football Association ("FIFA") have denied any discrimination.

REQUEST TO AMEND APPLICATION

Parties' Positions

[4] By Request for Order During Proceedings ("RFOP") filed on October 27, 2014, the applicants sought to amend their Application to include allegations of reprisal contrary to the *Code*. The applicants allege that since the filing of the Application, the respondents have engaged in unlawful threats of reprisal. The applicants state that, as a result of these threats, three players have requested that they be removed from the list of applicants.

[5] The CSA opposed the applicants' Request and denies that any reprisal occurred. FIFA took no position due to its view that it had not been properly served with the Application.

Analysis

[6] In determining requests to amend applications, the Tribunal generally considers the nature of the proposed amendments, the reasons for the amendments, the timing of the request to amend, and the prejudice to the respondent. See, for example, *Odell v. TTC*, [2001] OHRBID No. 2, *Dube v. Canadian Career College*, 2008 HRTO 336, *Wozenilek v. 7-Eleven Canada Inc.*, 2009 HRTO 926.

[7] Applying these factors, I find it appropriate to grant the applicants' Request to amend their Application to include the reprisal allegations summarized above. The events that gave rise to these allegations occurred after the Application was filed and the applicants filed their RFOP promptly. Also, I see no prejudice to the respondents of granting the requested amendments at this early stage of proceedings.

[8] For these reasons, the applicants' Request to amend their Application is granted. The original Application is replaced with the amended Application filed with the applicants' RFOP on October 27, 2014.

REQUEST FOR INTERIM REMEDY

Parties' Positions

[9] The applicants filed a Request for Interim Remedy on October 27, 2014. They requested that the Tribunal order, as an interim remedy, that the respondents and their affiliates cease all attempts to engage in or threaten reprisals against players who have joined this Application or who are considering becoming applicants to this Application.

[10] FIFA and the CSA opposed the applicants' Request. Among other things, they submitted that the statement filed in support of the applicants' Request was deficient.

They also submitted that the applicants have not met the test for granting an interim remedy in this case.

Analysis

[11] The conditions for awarding an interim remedy are set out in Rule 23.2:

The Tribunal may grant an interim remedy where it is satisfied that:

- a. the Application appears to have merit;
- b. the balance of harm or convenience favours granting the interim remedy requested; and,
- c. it is just and appropriate in the circumstances to do so.

[12] Rule 23.3(b) of the Tribunal's Rules of Procedure requires that a Request for Interim Remedy be accompanied by "one or more declarations signed by the persons with first-hand knowledge detailing all of the facts upon which the Applicant relies".

[13] Normally, the Tribunal's power to order respondents to do or refrain from doing something is contingent upon a finding that they have violated the *Code*. Interim remedies are extraordinary in that they constitute an order to do or refrain from doing something in the absence of a finding that the *Code* has been violated. The fundamental consideration in determining whether to award an interim remedy is whether it is necessary to facilitate and ensure the Tribunal is able to award a complete, appropriate and effective remedy at the end of a hearing, should a violation of the *Code* be found. For these reasons, applicants have a significant onus to meet in demonstrating that a Request for Interim Remedy meets the three elements in Rule 23.2. See *TA v. 60 Montclair*, 2009 HRTO 369.

[14] Even assuming, without deciding, that the statement included with the applicants' Request complies with Rule 23.3(b) and that they have met the first part of the interim remedy test, I find that the other steps of the test have not been satisfied in this case.

[15] There is no doubt that allegations of reprisal for having asserted one's human rights are very serious allegations. A reprisal allegation is one in which applicants claim that they are being retaliated against and punished for seeking to enforce their rights under the *Code*. This is a very serious allegation. Such allegations not only raise possible *Code* violations; they strike at the integrity of the Tribunal's process for enforcing human rights in Ontario.

[16] As serious as allegations of reprisal can be, I am not persuaded that a cease and desist order is necessary in the circumstances of this case.

[17] Section 8 of the *Code* provides clear protections against reprisal. That section states:

Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.

[18] The Application has been amended to include the applicants' reprisal allegations. The Tribunal will hear evidence in support of these allegations in due course. Given that no evidence has yet been heard in this case, the Tribunal is not in a position to determine whether the respondents have engaged in any reprisals contrary to the *Code*. At most, a cease and desist order would order the respondents to cease any conduct they may be engaging in that would amount to a reprisal under the *Code*. Section 8 of the *Code* already provides such an obligation. Therefore, I am not persuaded that a cease and desist order is necessary or appropriate in this case.

[19] To the extent that the applicants are arguing that a cease and desist order is necessary to ensure that there are applicants who are prepared to continue the Application, I am not persuaded that a cease and desist order is necessary for this purpose. Indeed, it appears from the October 27, 2014 letter from the applicants' counsel that many additional individuals have come forward and indicated a desire to

act as applicants even following the events alleged in the applicants' Request for Interim Remedy.

[20] For the reasons set out above, the applicants' Request for Interim Remedy is denied.

NEXT STEPS

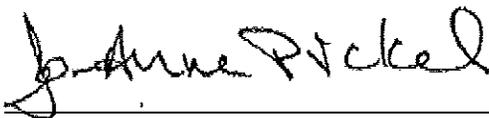
[21] By letter dated November 24, 2014, the applicants requested a case management conference call to deal with preliminary issues in this case. This request will be addressed in due course.

ORDER

[22] For the reasons set out above, the Tribunal orders:

- a. The applicants' Request to amend the Application is granted. The original Application is replaced with the amended Application filed with the applicants' RFOP on October 27, 2014. The respondents have already included submissions in response to the applicants' reprisal allegations in their Responses to the applicants' RFOP. However, if they wish, the respondents are permitted to file amended Responses addressing the reprisal allegations within 21 days of the date of this Interim Decision. The applicants may file a Reply to any amended Response(s) within 35 days of this Interim Decision.
- b. The applicants' Request for Interim Remedy is denied.

Dated at Toronto, this 9th day of December, 2014.



Jo-Anne Pickel
Vice-chair

Schedule A

Jackie Acevedo

Katherine Alvarado

Nadine Angerer

Verónica Boquete

Fabiana Da Silva Simões

Abby Erceg

Caitlin Foord

So-Yun Ji

Samantha Kerr

Alexandra Morgan

Yuki Ogimi

Heather O'Reilly

Diana Saenz

Abby Wambach

Hannah Wilkinson