

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)  
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)**

**No. SDRCC 23-0633**

**In the matter of an arbitration between:**

**SHANE FIRUS  
CAROLANE SOUCISSE  
(CLAIMANTS)**

**AND**

**SKATE CANADA  
(RESPONDENT)**

---

**AWARD**

---

**ARBITRATOR:** Allan J. Stitt

**Appearing:**

**Claimants:** Shane Firus  
Carolane Soucisse

**Witness for Claimants:** Karen O'Sullivan

**Counsel for Claimants:** Hugh Meighen  
Mark Muccilli

**For Skate Canada:** Debra Armstrong

**Counsel for Skate Canada:** Craig Stehr  
Nicole Hillard

## **I. INTRODUCTION**

1. This arbitration relates to a request by two ice dancers, Mr. Shane Firus and Ms. Carolane Soucisse (the “Athletes”) to obtain a release from Skate Canada to allow the Athletes to join and compete for the Ice Skating Association of Ireland (“ISAI”) after waiting twelve months from their last international competition. Their last international competition was the International Skating Union (“ISU”) Grand Prix on November 28, 2022.
2. Skate Canada considered the request for the release and applied its current procedure for granting such requests (“Current Policy”). Skate Canada concluded that, based on the Current Policy, the Athletes were required to wait through a waiting period of two competition seasons and could re-apply in May, 2024. The Athletes’ request was therefore denied.
3. An oral hearing was held before me on June 7, 2023. Written submissions were provided to me prior to and during the hearing. Mr. Shane Firus (one of the Athletes) and Ms. Karen O’Sullivan (the CEO of the ISAI) were the witnesses for the Athletes. Ms. Debra Armstrong (CEO of Skate Canada) was the witness for Skate Canada. Evidence-in-chief was provided mostly in writing and the witnesses were cross-examined before me. I informed the parties at the hearing that I would provide my decision and written reasons to them within seven days, on or prior to June 14, 2023.

## **II. FACTS**

4. The material facts are not in dispute. The Athletes are members of Skate Canada’s skating program in ice dancing. They have represented Canada since 2016 and have been registered with Skate Canada since 2001. They have represented Canada in Grand Prix events and one World Championship in 2018 (at which they placed 14<sup>th</sup>).
5. From 2018 to 2023, the Athletes received approximately \$141,000 in funding from Skate Canada and Skate Canada covered costs associated with competitions.
6. In 2019, a skate dancing pair that had previously competed for Denmark joined Skate Canada after being released from Denmark. For that reason, and for other reasons that will not be set out in this award, opportunities and funding decreased for the Athletes in Canada.
7. In mid-January, 2023, the Athletes spoke to the CEO of ISAI, Ms. Karen O’Sullivan, about the process of joining the ISAI. Mr. Firus is an Irish national. Ms. O’Sullivan advised the Athletes that they were required to obtain a release from Skate Canada prior to joining the ISAI.

8. The Athletes investigated the process to obtain their release from Skate Canada. The Athletes referred to their current Athlete Agreement and saw that the Athlete Agreement contained links to the Skate Canada website. The Athlete Agreement stated that Skate Canada would notify the Athletes in writing of changes to its policies, would publish any changes to its policies through its usual communications, and would post its policies, rules and regulations. The Athletes therefore clicked on the link in their current Athlete Agreement and were taken to the Skate Canada website where the then-current release policy (“Website Policy”) was posted. The Athletes reasonably assumed that the Website Policy was the current release policy in place. The relevant sections of the Website Policy on the Skate Canada website stated:
  - c. In the case of a skater who has represented Skate Canada at an ISU Championship or the Olympic Winter Games, such skater shall be released only with the approval of the Skate Canada CEO. Skate Canada will require (i) a written request by such skater; and (ii) a written request by the ISU member for whom such skater intends to compete. The Skate Canada CEO will have the discretion to impose the waiting period and will consider such matters as (i) the number of International Competitions, ISU Championships, and Olympic Winter Games such skater has participated in on behalf of Skate Canada; and (ii) the direct and indirect funding assistance provided by Skate Canada to such skater.
  - d. In extenuating circumstances, the Skate Canada CEO shall have the authority to modify the waiting periods referred to in sections 2 and 3 above.
9. The Athletes then spoke to the High Performance Director at Skate Canada, Mr. Slipchuk, who informed the Athletes that Skate Canada would not stand in the way of their release. He suggested that the Athletes communicate their request for a release by email to Laura Baker at Skate Canada. The Athletes did so on March 9, 2023. Ms. O’Sullivan also sent a letter to Skate Canada requesting the release of the Athletes.
10. Ms. Baker responded to the Athletes’ request by sending them a copy of a different release policy from the one on the website – the Current Policy. Skate Canada stated that the Current Policy was then in place and the Website Policy was an old policy, and was not applicable to their request.
11. Skate Canada then changed the release policy on its website, removing the Website Policy and replacing it with the Current Policy.

12. Ms. Armstrong, the CEO of Skate Canada, testified that a Skate Canada administrative error resulted in the Website Policy being on the website for years after it had been replaced by the Current Policy. She testified that the Website Policy was not the appropriate policy to be applied to the Athletes' request for release.
13. Ms. Armstrong further testified that the Athletes had been informed of the change from the Website Policy to the Current Policy when the Current Policy had been sent to the Athletes as an attachment to an email on May 25, 2021. The subject line of the email was "2021-2022 Sport Canada Carding -APPLICATION". There were seven attachments to the email including the Athlete Agreement for that year. Nothing in the body of the email referred to the fact that there was an attachment that changed the Website Policy to the Current Policy or that there was a change of policy with respect to athlete releases. The Athletes did not review the attachment that contained the Current Policy.
14. I note that there was written argument and significant evidence at the hearing as to whether the Website Policy or the Current Policy was the applicable policy for Skate Canada to apply to determine whether the Athletes should be granted a release in 2023. At the commencement of Skate Canada's final oral argument at the end of the hearing, Skate Canada informed me that Skate Canada was not maintaining its position that the Current Policy was the appropriate policy to apply. Skate Canada conceded that the Website Policy was the correct policy to be applied and that it should have been applied to the application by the Athletes. It is important to note, however, that when Skate Canada considered the application of the Athletes for a release, it applied the Current Policy – the policy that Skate Canada now concedes was not in effect at the time.
15. Ms. Baker erroneously applied the Current Policy and informed the Athletes and the ISAI on March 29, 2023, that pursuant to the Current Policy, the Athletes' request for a release was denied and that the Athletes and the ISAI could re-apply after May 1, 2024.

### **III. REQUEST FOR ARBITRATION AT SDRCC**

16. On April 5, 2023, the Athletes submitted a Request for Arbitration to the Sport Dispute Resolution Centre of Canada (SDRCC). The Request for Arbitration stated that the SDRCC has jurisdiction to decide the arbitration because the dispute is a Sports-Related Dispute and the Skate Canada Athlete Agreement refers Sports-Related Disputes to the SDRCC.
17. Although Skate Canada did raise the issue of jurisdiction in its Answer to the Request for Arbitration, no challenge was made to the SDRCC jurisdiction in Skate Canada's written argument or at the oral hearing.

18. I find that the SDRCC does have jurisdiction to hear this dispute.
19. I was appointed as the arbitrator to decide the issues in this dispute.

#### **IV. ISSUES**

20. As stated above, although one of the issues presented to me in the arbitration was which of Skate Canada's release policies was to be applied, that issue is no longer before me. Although the Skate Canada CEO stated at the oral hearing that Skate Canada applied the Current Policy, although she believed the Current Policy should be applied, and although Skate Canada's written argument stated that Skate Canada was taking the position that the Current Policy should be applied, Skate Canada conceded at the oral hearing (after the evidence of the witnesses) that the Website Policy was the appropriate policy to be applied.
21. There are therefore two issues to be decided in this arbitration:
  - (i) What is the applicable waiting period for the Athletes to obtain a release pursuant to the Website Policy?
  - (ii) What is the starting date for the waiting period?

#### **V. ARGUMENTS**

##### Issue (i) The Applicable Waiting Period

22. The Website Policy does not set out a specific waiting period for the release of the Athletes. Section c of the Website Policy (the section that applies to the Athletes and is reproduced above) states that the CEO of Skate Canada has the discretion to impose "*the* waiting period" (emphasis added). The Athletes argue that the use of the word "the" instead of "a" suggests that there is a specific waiting period, and that the reader must look elsewhere to determine the length of the waiting period. They argue that the discretion only relates to whether to apply the waiting period, not its length.
23. The Athletes argue that the Skate Canada CEO does not have discretion to alter *the* waiting period (if a waiting period is to be imposed), unless there are "extenuating circumstances" (as set out in section d of the Website Policy). Skate Canada and the Athletes agree that there are no extenuating circumstances in this case. The Athletes argue that, in order to determine *the* waiting period, recourse must be had to the ISU Regulations. The Athletes note that there are defined terms used in section c of the Website Policy (as evidenced by the use of capital letters), such as the term ISU Championships, that are not defined in the Website Policy. These terms are defined in the ISU Regulations.

24. The Athletes argue that the reader must therefore refer to the ISU Regulations to interpret and understand the Website Policy.

25. Rule 109(2)(c) of the ISU Regulations states:

A Skater may compete for the respective ISU Member in International Competitions, ISU Events and ISU Championships only after a waiting period of twelve months since the Skater competed for any other ISU Member in any such competition has elapsed.

26. The Athletes argue that the CEO *must* have recourse to ISU Regulations (and specifically Rule 109(2)(c)), and must therefore impose a waiting period of 12 months (absent extenuating circumstances).

27. The Athletes argue that sections c and d of the Website Policy must be read together, and it is not logical for both sections to provide the CEO of Skate Canada with discretion to determine the length of the waiting period. A more logical reading, according to the Athletes, is that section c gives Skate Canada the discretion as to whether or not to impose the one year waiting period (a binary choice), and section d gives Skate Canada the authority to alter the waiting period in extenuating circumstances. The Athletes concede that it would be appropriate for Skate Canada to impose the one year waiting period for granting a release, pursuant to section c of the Website Policy.

28. The Athletes provide other reasons as to why the one year waiting period was reasonable in this case, but I do not find it necessary to reproduce those arguments here.

29. Skate Canada argues that, while Skate Canada is bound by ISU Regulations, the issue of an athlete's release is not an international matter and the decision as to the appropriate waiting period is to be decided by the ISU member (i.e., Skate Canada), without reference to Rule 109 of the ISU Regulations.

30. Skate Canada argues that the ISU Member (Skate Canada) has the authority to issue (or not issue) a permit releasing the athlete to compete with another ISU Member and that the ISU does not issue the permit. Once the ISU receives the permit from its member, the ISU will ascertain the effective date of the Clearance Certificate that it must issue before an athlete is permitted to compete for the new ISU Member. The ISU will date the Clearance Certificate with an effective date of one year from the date of the athlete's last international competition. That is the purpose (and effect) of Rule 109(2)(c) of the ISU Regulations, according to Skate Canada.

31. Skate Canada argues that section c of the Website Policy gives Skate Canada the power to exercise its discretion as it deems fit with respect to the waiting period, taking into account the factors set out in section c. Skate Canada argues that since section b of the policy provides that athletes who have not competed in international competitions should be required to wait one year, it is not logical for athletes who have competed in international competitions (and have received more funding) to also wait only one year. There should be an assumption, Skate Canada argues, that the waiting period should be longer than one year.
32. Skate Canada argues that section d of the Website Policy does not suggest that there is a prescribed waiting period in section c. Skate Canada argues that discretion should be exercised pursuant to section c, and section d would be triggered if circumstances change at a later date, after the exercise of discretion pursuant to section c.
33. Although Skate Canada did not apply the Website Policy when making its decision, Skate Canada argues that its analysis and exercise of discretion would have resulted in the same conclusion that it reached (that the Athletes' request for a release should be denied and they should be able to re-apply in May, 2024), even if it had applied the Website Policy.
34. Skate Canada also noted that there is no routine waiting period applied by ISU Members around the world.
35. I note that both the Athletes and Skate Canada provided evidence of waiting periods for other skaters who have moved from one ISU Member to another. While I have reviewed the evidence presented to me in that regard, I do not propose to set out those examples in these reasons.

#### Issue (ii) The Start Date

36. The Website Policy is silent as to whether the start date of the waiting period for the Athletes is the date of the last international competition at which the Athletes competed (November 28, 2022), or the date that the Athletes (and the ISAI) submitted the request to join another ISU Member. The Athletes argue that the appropriate start date is the date of their last international competition while Skate Canada argues that the start date is the date of a completed request to Skate Canada.
37. The Athletes argue that recourse to the ISU Regulations is necessary for determining when the waiting period commences. Rule 109(2)(c) states that the start date is the date of last International Competition, ISU Event, or ISU Championship. For the same reasons as set out above, they argue that Skate Canada is required to start the waiting period from the date of the last international competition.

38. The Athletes note that the purpose of the waiting period is to protect the investment of the skating federation in the athlete. The waiting period ensures that an athlete does not compete for a new skating federation shortly after receiving funding to compete for another federation. The Athletes state that their position is therefore consistent with the purpose of the waiting period.
39. Skate Canada argues that the more appropriate time to commence the waiting period is when Skate Canada receives the request for a skater to transfer to a new ISU Member.

## VI. ANALYSIS

### Issue (i) The Applicable Waiting Period

40. As stated above, Skate Canada applied the wrong policy when determining the waiting period. It argued that its analysis would have been the same if it had applied the correct policy. There is no evidence to support this assertion and I cannot know how Skate Canada would have applied the appropriate policy at the time the Athletes applied to skate for another ISU Member. I therefore do not accept this argument.
41. Since Skate Canada did not apply the Website Policy (and, in fact, insisted until just prior to final oral argument that the appropriate policy to apply was the Current Policy), I must either send the matter back to Skate Canada to apply the correct policy, or interpret the policy myself. I choose to do the latter.
42. I note that it was not argued by Skate Canada that I should send the matter back to Skate Canada to apply the correct policy (if I find in favour of the Athletes), and I decline to do so.
43. Given Skate Canada's insistence that the Current Policy was the correct policy to apply (until final argument at the oral hearing) and given that it was clear to me at the oral hearing that Skate Canada is absolutely convinced that a waiting period of at least two-years is appropriate, I conclude that Skate Canada is not able to set aside its firm beliefs and ignore the error it made in applying the wrong policy, and apply the Website Policy fairly and without a preconceived result.
44. I must therefore interpret the Website Policy to determine the appropriate waiting period for the Athletes.



45. It is agreed that the Website Policy does not set out a length of time for the waiting period for the Athletes. The Website Policy does grant discretion in section c for Skate Canada to set *the* waiting period, and then discretion in section d to change the waiting period from that required by section c, in extenuating circumstances.
46. First, the exercise of discretion should not be unfettered and should not be exercised arbitrarily. The athletes should be able to reasonably anticipate how the discretion will be exercised. Athletes should not be left completely in the dark, with no idea of how the discretion will be exercised, to determine the waiting period.
47. Second, it is not logical for the Website Policy to grant the CEO of Skate Canada the ability to exercise discretion to set the waiting period at any length of time pursuant to section c, and then the authority to exercise complete discretion again in extenuating circumstances pursuant to section d. It is also not logical to assume that section d was meant to apply only to extenuating circumstances that occurred after the exercise of discretion in section c. If that were the intent, the section should have so stated it.
48. Further, section c refers to *the* waiting period, not *a* waiting period.
49. It is therefore more logical to conclude that section c should be interpreted to give the CEO of Skate Canada the discretion to determine whether the waiting period of a set time should be applied, and then the discretion in section d to alter the time in extenuating circumstances.
50. The issue for me to determine, therefore, is the appropriate length of the waiting period required to be set pursuant to section c of the Website Policy, were Skate Canada to have applied section c appropriately. The Athletes argue that there is a requirement to refer to the ISU Regulations to determine the length of the waiting period. I find that it would be reasonable to look to the ISU Regulations to obtain guidance as to the appropriate length of the waiting period under section c of the Website Policy.
51. It was reasonable for the Athletes to read the Website Policy and the ISU Regulations Rule 109(2)(c) and conclude that the appropriate waiting period is one year. No other more logical interpretation of section c was presented to me. I therefore find that the waiting period for the Athletes pursuant to the Website Policy is one year.

52. I want to be clear that I make no comment as to whether my analysis would have been different if there had been a specific provision in the Skate Canada Website Policy section c setting out the amount of time for the waiting period. It is not necessary for me to make that determination. In the case before me, there is a policy with no set time in section c, and there are defined terms in the Website Policy that require reference to the ISU Regulations. It is therefore reasonable to refer to the ISU Regulations and conclude that the Website Policy intended that the ISU Regulations set the waiting period, and therefore that ISU Regulation, Rule 109(2)(c) set that waiting period at one year.

#### Issue (ii) The Start Date

53. Section c of the Website Policy is also silent as to the start date for the waiting period. For the same reasons as those set out above, I find it is reasonable to refer to the ISU Regulations to determine the start date for the waiting period. It is then reasonable to conclude that the waiting period commences at the date of the last international competition, for the reasons argued by the Athletes (set out above). The start date for the waiting period for the Athletes should therefore be November 28, 2022.
54. I note that it would be illogical for the start date for the waiting period to be the date of receipt of the request to transfer to a new ISU Member, as was argued by Skate Canada. That would mean that an athlete who waited three years after their last international competition, and then made a request to join another ISU Member, would have to wait an additional period of time (one year, for example), before the transfer could be approved. That does not make sense.
55. I also note that in sections a and b of the Website Policy (for athletes who have not competed in international competitions), specific reference is made to the commencement of the waiting period being the receipt of the request. No such reference is found in section c. That further suggests that the commencement date should be the date of the last international competition and not the date of receipt of the request.

#### **VII. ORDER**

56. I therefore order that the Athletes be released from their obligations to Skate Canada as of November 28, 2023.

**VIII. COSTS**

57. If the parties wish to make written cost submissions to me, the Athletes must provide those submissions to me on or before June 19, 2023. Skate Canada must provide to me its submissions by June 22, 2023, and the Athletes must provide to me their reply submissions, if any, on or before June 23, 2023.
58. I want to thank counsel for their extremely helpful written and oral submissions.

Dated at Toronto, Ontario this 14<sup>th</sup> day of June, 2023.

A handwritten signature in black ink that reads "Allan J. Stitt". The signature is written in a cursive style with a large, looped initial "A".

---

Allan J. Stitt, Arbitrator