

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA  
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA**

No.: SDRCC 12-0167

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN:** Mariam Chamilova (Claimant)

**AND**

Gymnastics Canada (Respondent)

**AND**

Katrina Cameron  
Rose Cossar  
Alexandra Landry  
Anastasiya Muntyanu  
Anjelika Reznik  
Kelsey Titmarsh (Potentially Affected Parties)

**ARBITRATOR:** Ross C. Dumoulin

**REPRESENTATIVES:**

For the Claimant: Stephen J. Maddex  
For the Respondent: Jean-Paul Caron,  
President/CEO, Gymnastics Canada

For K. Cameron, A. Landry,  
A. Muntyanu, K. Titmarsh: Karine Joizil

**ARBITRATION AWARD**

February 27, 2012

This is an arbitration award rendered pursuant to paragraph 6.21(a) of the Canadian Sport Dispute Resolution Code (2011) (the "Code"). I was selected by the parties pursuant to paragraph 6.8(b)(i) of the Code and appointed as arbitrator by the Sport Dispute Resolution Centre of Canada (SDRCC) to hear and determine the present matter. My appointment was confirmed by the SDRCC on January 31, 2012 pursuant to paragraph 6.9(a) of the Code.

This case pertains to a dispute between Ms. Mariam Chamilova (the "Claimant") and Gymnastics Canada (the "Respondent") concerning the Claimant's request to join the Canadian Senior National Rhythmic Gymnastics Group (the "group"). The potentially affected parties are the six athletes who presently comprise the said group.

A preliminary meeting was held by conference call pursuant to paragraph 6.9(b) of the Code on February 6, 2012. It was agreed by the parties that a hearing would be held by conference call on February 20, 2012. The parties were also given an opportunity to file any additional information or submissions they wished to before the hearing that weren't already on the record by the end of the day on February 13, 2012.

On February 20, 2012, a hearing by conference call was held pursuant to sections 3.12 and 6.16 of the Code. The parties and/or their representatives were given the opportunity to present evidence by way of testimony or documentation that had not already been submitted, to question witnesses, to respond to the evidence of the other parties, to make their submissions and to reply to the submissions of the other parties.

## **THE FACTS**

According to a summary of events prepared by Ms. Danielle Frattaroli, Rhythmic Gymnastics Program Director, Gymnastics Canada, and by Ms. Cathy Haines, Chief Technical Officer, Gymnastics Canada, at the 2009 World Gymnastics Championships, the Canadian Senior National Rhythmic Gymnastics Group ranked 15<sup>th</sup> and was the top-ranked group from the Pan American countries. This ranking provided a reasonable indication that Canada had the potential to qualify a group for the 2012 Olympic Games in London. Qualification for the Olympics could take place either through a top six ranking at the 2011 World Gymnastics Championships in Montpellier in September 2011 and a top four ranking at the second Olympic qualification event in London in January 2012, or by ranking as the top country from the Pan American countries at the 2011 World Championships, thereby earning a continental allocation. Since national sports organizations are evaluated according to their international rankings, there is considerable importance attached to qualifying athletes for the Olympics. The group's ranking in 2009 demonstrated an opportunity to develop rhythmic gymnastics in Canada through the ongoing development and promotion of a national group program.

The athlete carding system is developed and approved with the Sport Canada Athlete Assistance Program (AAP). The AAP is intended to provide financial support to Canadian medal contenders and top ranking Canadian athletes in the world. The carding process helps ensure that gymnasts preparing for the Olympics will receive funding to support their training and competition costs.

Before 2010, Sport Canada considered rhythmic gymnastics as an individual sport only. In the 2009–2010 carding cycle, rhythmic gymnastics was allocated two cards for individual athletes. This number was reduced from the previous total of four cards following a Sport Canada analysis of Canadian rhythmic gymnastics international results.

With the emphasis on group preparation, Gymnastics Canada requested in the spring of 2010 that Sport Canada change the allocation of the existing two individual cards to support the group athletes for the 2010–2011 carding cycle. This was a new concept for Sport Canada and it was February 2011 before they had a clear understanding of the difference between the selection, composition, preparation and qualification process for a rhythmic gymnastic group compared to other sport teams. Two senior cards for individuals were divided into six development cards, thus covering the six gymnasts of the group equally, and the carding money for the period from July 1, 2010 to June 30, 2011 was distributed over six months. Sport Canada's regulation regarding carding is that two senior cards for one year can be converted to three development cards for one year. To provide equal funding for all six gymnasts, each gymnast received carding funds for half of the carding period. The carding cycle extends for one full year, beginning July 1<sup>st</sup>, and goes to June 30<sup>th</sup> of the following year.

The AAP required an open group selection process, i.e., an invitation is extended to any interested athletes who wish to be considered for selection to the national gymnastics group and therefore be eligible for carding. The criteria and process for the national group selection event, which was held in October 2010, were developed by the national group coach and the Gymnastics Canada

Program Director. These selection criteria were submitted to Sport Canada for verification and approval and the document was also distributed to the provinces once approved by Sport Canada.

The World Gymnastics Championships are held in September. Therefore, Sport Canada agreed that the selection event (to select the members of the group) should take place in October 2010, instead of having it before June 30, 2010. This was done to avoid disturbing the preparation of the group for the World Championships and the Pan Am Championships, which were scheduled for September and were the qualifying event for the Pan Am Games.

In May 2010, Gymnastics Canada circulated a document entitled "GROUP PROGRAM DEVELOPMENT". It states that the goal of the rhythmic gymnastics program is to place the Canadian Senior Group in the first 10 groups at the 2011 World Championships and to obtain a berth in the 2012 Olympics. It goes on to say that the condition for carding is that there be an open selection process where all Canadian athletes interested in participating could apply. The document adds that all athletes interested have to be ready to move to Toronto from October 25, 2010 to after the 2011 World Championships, or "after the second selection meet if necessary" in London in January 2012. The document announces that the selection process will take place in Toronto during the week of October 18, 2010 and that six athletes will be selected to be part of the National Senior Group. The document indicates that the qualifying event for the 2012 Olympics is the 2011 World Championships. One of the conditions of eligibility for selection to the group is the signing of the athlete agreement. A registration form was included.

The 2010 World Gymnastics Championships in Moscow were the first level of qualification for the Olympics with only the first 24 groups being invited to the 2011 World Championships in Montpellier. The Canadian group ranked 14<sup>th</sup> and again was the top group from the Pan Am countries. The top Canadian individual athlete ranked 57<sup>th</sup> and was the fourth-ranked athlete from the Pan Am countries, with a score that was 5.0 points behind the top-ranked athlete from the Pan Am countries. This pattern of individual rankings (Canadian versus other Pan Am countries) remained consistent in other competitions in 2010–2011.

At the time of the group selection event, there were two possible scenarios for Olympics qualification at the World Championships: firstly, the group could qualify for the Olympics directly from the 2011 World Championships (ranking in top six groups or being the top-ranked Pan Am country); secondly, the group could rank from 7 to 12 and would then need to continue preparations for the second Olympics qualification event in London in January 2012. These scenarios are reflected in the athlete agreement signed by all members in November 2011.

During the October 2010 selection event, Gymnastics Canada was in the midst of discussions with Sport Canada to establish the carding criteria for the 2011–2012 carding cycle which runs from July 1, 2011 to June 30, 2012. At that time, Sport Canada insisted that Gymnastics Canada needed to hold another open selection in 2011. However, this was not feasible in case the group had to participate in the second Olympics qualifying event in January 2012 in London, which would not allow for any changes in the group composition after the World Championships in September 2011. The carding

criteria also require that the group composition remain constant until the end of the carding cycle and therefore, until after the 2012 Olympics. It was not possible to predict in October 2010 if the group would attend the London 2012 Olympics qualifying event.

In October 2010, there were several uncertainties regarding the requirement for a second group selection event. The national group coach, Ms. Svetlana Joukova, was copied on the various documents that were exchanged with Sport Canada regarding the carding criteria and Gymnastics Canada relied on the coach's ability to relay this information to the parents and gymnasts who would have to make a decision concerning the acceptance or refusal of the position in the group.

One athlete missed the first day of the October 2010 group selection event and she was also injured. She asked if it was worth it for her to continue and her parents asked if there was any chance of her joining the group. Ms. Frattaroli said no, but that the athlete could be in the "releve" group or there would be a second group selection event before the Olympics.

Following the October 2010 group selection event, six athletes were selected and offered a place on the National Senior Rhythmic Gymnastics Group. The six athletes were: Mariam Chamilova, Katrina Cameron, Rose Cossar, Anastasiya Muntyanu, Anjelika Reznik and Kelsey Titmarsh. The top-ranked gymnast was Mariam Chamilova, the Claimant. The letter of offer to the Claimant, dated November 23, 2010 and signed by Ms. Frattaroli, begins as follows:

We are very happy to inform you that you have been selected to be part of the National Senior Team Group that will be representing Canada to major competitions in 2011 and in particular at the World Championships 2011 in Montpellier (France), the Pan Am Games in Guadalajara (Mexico) and if necessary the test event in London (England).

Attached to the letter was an agreement. The letter also states that Gymnastics Canada will recommend the athlete to Sport Canada for the AAP for a development card for three months for the 2010-11 carding cycle and, in July 2011, a recommendation will be sent to Sport Canada for the 2011-2012 carding cycle. The letter goes on to ask that the athlete confirm her acceptance of the position by signing the agreement and sending it, along with other documentation, to the Gymnastics Canada office by December 1, 2010.

The agreement between Gymnastics Canada and the members of the National Rhythmic Gymnastics Senior Group specifies as follows in its first paragraph:

The Athlete agrees to commit herself to the National Team Senior Group program for the duration of time between December 1, 2010 and November 1, 2011, if the group is selected during the first part of the Olympic selection at the World Championships in Montpellier, France, or until January 31, 2012 in case the group has to attend the second Olympic qualification event in England.

The agreement also provides that the athlete will train between 26 and 30 hours per week and will participate in all mandatory training camps, seminars, competitions and other related activities. The agreement specifies that in the event an athlete is not maintaining required performance, she will be

placed on probation for a period to be determined by the head coach and the assigned judges. The head coach will inform the program director, the athletes and the parents of the situation. The agreement states that it will terminate on November 1, 2011 if the group is selected during the first part of the Olympic selection at the World Championships in Montpellier.

The Claimant sent a note dated November 27, 2010 to Gymnastics Canada which she composed and which states in part as follows:

... I am aware that I made the National Senior Team Group that will represent Canada at various international competitions in 2011. It's a great honour to have made the Team, but I have decided to decline this offer and pursue my career as an individual gymnast in the upcoming 2010-2011 season.

The Claimant was later selected for the 2011 World Championships team and the Pan Am Games and competed in both events in the 2011-12 season as an individual. The remaining position in the group was offered to the seventh-ranked athlete, Alexandra Landry, and she accepted.

In January 2011, in the words of Ms. Frattaroli, Sport Canada removed the requirement for a second open selection after understanding that a change in group composition occurring less than five months before the Olympics would have a negative impact on the final phase of Olympic Games preparation. Carding allocation for the period from July 1, 2011 to June 30, 2012 was therefore done on the basis of the group selection event of October 2010 and reflected the names of the six athletes who signed the group agreement. This carding decision was reflected in an e-mail dated January 11, 2011 from Marie Gendron of Sport Canada to Ms. Frattaroli. The e-mail starts by saying, in

French, that there is good news, that an official from Sport Canada is in agreement with Ms. Frattaroli's proposal and that therefore, (the e-mail then switches to English), "For the current carding cycle – July 1, 2010 to June 30, 2011: today, we approved the 6 athletes member of the team that will represent Canada at the 2011 & 2012 Olympic qualification events." The e-mail then states that, for the 2011–2012 carding cycle, (i.e., July 1, 2011 to June 30, 2012), "you will meet with me in June 2011 and recommended the 6 athletes member of the team that will represent Canada at the 2011 & 2012 Olympic qualification events (should be the same athletes)". The e-mail then indicates that if the 6 athletes qualify for the 2012 Olympic Games, they will be eligible for the "OLY card", which is four months of senior-level carding support at \$1,500 a month. The e-mail then advises:

So your carding criteria for 2012 should simply say: the 6 athletes selected to represent Canada at the 2011 & 2012 Olympic qualification events will be eligible for nomination for 6 months of D level of AAP carding support (or something similar).

In February 2011, Sport Canada confirmed the carding criteria for the 2011–2012 cycle ending on June 30, 2012. The carding in this cycle was to be extended for the six athletes who competed in the 2011 World Championships and who secured the group's Continental spot in the 2012 Olympics. No further selection event was required. On February 28, 2011, Gymnastics Canada circulated a document entitled "Rhythmic Gymnastics Program Sport Canada AAP – Carding Criteria 2011–2012". The document refers to the 2011–2012 carding cycle, which runs from July 1, 2011 to June

30, 2012. Under the heading "Performance Criteria", the document states as follows:

The six athletes selected to represent Canada at the 2011/2012 Olympic qualification events for Group will be eligible for nomination for 6 months of D level of AAP carding support.

Mr. Caron, President and CEO of Gymnastics Canada, testified that this wording confirmed that there would be no further group selection event beyond the one that had been held in October of 2010. The "6 months" of carding support mentioned in the document is a reference to the payments and not to the cycle. The carding cycle runs from July 1, 2011 to June 30, 2012.

On February 28, 2011, Ms. Frattaroli sent an e-mail to coach Joukova containing the new carding criteria for 2011-2012 accepted by Sport Canada. The e-mail states that the carding criteria mean that the group would be carded from January 2011 to December 2011 and that if it qualifies for the Olympics, they will be eligible for additional carding of four months.

It was confirmed to the group parents in June 2011 that no further group selection was required before the Olympics.

On June 16, 2011, Ms. Frattaroli sent an e-mail to Sport Canada and copied coach Joukova. The e-mail states in part as follows:

...I would like to recommend the following 6 athletes for the 2011-2012 carding: They are the members of the group selected to represent Canada at the 2011 World Championships and the London Second Olympic Selection in January 2012

Katrina Cameron  
Rose Cossar  
Alexandra Landry  
Anastasiya Muntyanu  
Anjelika Reznik  
Kelsey Titmarsh

On July 21, 2011, Ms. Frattaroli e-mailed coach Joukova telling her that she had received from Sport Canada the following note:

- Extend 2011-12 Rhyth Gymn's carding cycle July 1, 2011 to August 31, 2012 (14 months). This will allow your athletes to get 7 months D cards (July 1, 2011 to Jan 31, 2012)
- Then, if your athletes qualified for the 2012 Olympic Games, they will be eligible for a 4 Months OLY card (May 1<sup>st</sup> 2012 to Aug 31, 2012) @ \$1,500/month.

An "Internal Nomination Process" (INP) document, which is entitled "Gymnastics Canada Gymnastique – Rhythmic Gymnastics Internal Team Nomination Procedures Olympic Games, London 2012", describes the selection criteria for the Olympic Games and is completed one year in advance of the Games. The said document is developed by Gymnastics Canada in collaboration with the Canadian Olympic Committee (COC). The carding criteria must be clearly defined and in place before the INP is developed for the Olympic Games and they are the foundation upon which the INP is based. The INP is developed by Gymnastics Canada, reviewed by the COC and endorsed by the Gymnastics Canada Rhythmic Gymnastics Program Committee. This process was followed. The national group coach is not a member of the Program Committee and was not formally consulted on the development of the INP. She was e-mailed a copy of the INP which was endorsed by the Program

Committee on July 21, 2011 and circulated on that date. It was also published on the Gymnastics Canada website in August 2011. The INP document states that its purpose is to “set out the process and criteria that will be used by Gymnastics Canada – Rhythmic Gymnastics to select athletes to the London 2012 Olympic Games team”. Under the heading “GROUP ATHLETES”, the document states as follows:

Athletes who qualify Canada for quota positions for the 2012 Olympic Games at the 2011 World Championships will be nominated for the 2012 Olympic Games. The selection of the Canadian team for the 2011 World Championships in Montpellier will be based on the “Senior Group Final Selection Criteria”

The above-noted Senior Group Selection Criteria for the 2011 World Championships state that the “centralized National Team Senior Group will be the nominated group for the event” and that “The athletes being part of this group are the one selected in October 2010 through the National Team Group Selection Process”. The INP document makes no mention of a second group selection event after the 2011 World Championships.

The INP document also states:

If, for reasons of injury, illness, decreased training or other serious circumstances, a nominated athlete or athletes cannot compete, alternative athletes may be nominated.

At the 2011 World Gymnastics Championships held in Montpellier in September, the Canadian National Senior Rhythmic Gymnastics Group qualified for the 2012 Olympics by finishing as the top-ranked group from America ahead of the U.S., Brazil and Mexico. The group finished 17<sup>th</sup> overall. The

group's Olympics qualification, the first in Canada's history, is to be confirmed by the Fédération Internationale de Gymnastique (FIG) at the end of February 2012.

On October 24, 2011, the Claimant sent a letter to Gymnastics Canada indicating in part as follows:

I, Mariam Chamiova, would like to join Canadian Senior National Rhythmic Gymnastics Group for the upcoming 2011-2012 competitive season... I have also been the number one ranked gymnast in Canada and awarded athlete of the year for the past two consecutive years. I have now decided to join the group as I feel that my competitive experience would help benefit the group at the upcoming competitions of the season including the 2012 Olympic Games.

In November 2011, Sport Canada informed Gymnastics Canada that the six carded athletes would receive additional Olympic carding until August 31, 2012.

On November 16, 2011, coach Joukova sent an e-mail to Ms. Cathy Haines, Chief Technical Officer, Gymnastics Canada, stating that during the past two weeks, she had seven gymnasts, including the Claimant, work together as one team and she could see how strong the team looked with the Claimant who was capable of doing "very interesting collaboration" and that she had learned "all the manipulation in the group so fast, so even I was in shock". Coach Joukova expressed the opinion that it was necessary to do a re-selection of the group based on the results of the past season and that this was the recommendation from all the Canadian judges who were involved at the World Championships and Pan Am Games.

On November 23, 2011, coach Joukova wrote to Mr. Caron stating that she was in shock when the night before, she found on the Gymnastics Canada website the selection criteria for the 2012 Olympic Senior Group. She also states that to bring the Claimant in “is best what we can do to make stronger Canadian Group”. On November 30, 2011, coach Joukova and another coach e-mailed Mr. Caron stating that the Claimant has to step in and that an official re-selection should be done. The coach has not indicated a need to hold another open selection event.

Ms. Naida Chamilova, the Claimant’s mother, testified that the Claimant started training at 9½ years old. She did rhythmic gymnastics in Ottawa for 3½ years. Then, she did extra training in Moscow for four years at the Olympic Centre and was part of the Russian junior team in her last year. She returned to Canada in April 2008. She acquired group experience in rhythmic gymnastics in in 2003/04 in Ottawa and in 2007/08 in Russia. The Claimant made the Canadian National Junior Team. She moved to Toronto and joined the Kalev Club. She has been Canada’s number one gymnast for three years. In 2011, she won all the Canadian competitions in which she participated. Naida Chamilova supported her daughter’s decision to decline the offer to be a part of the group in consultation with coach Joukova. They knew the chances were not high for her to qualify for the Olympics as an individual gymnast. They thought they would have a chance to try again in a second section. They were told it was an annual process, however, the Claimant’s mother acknowledged there had been no previous selection process for the rhythmic gymnastics group before 2010. She testified that the coach told them that there would be a second selection, so she had no doubt about

it. If she had doubt, they would have reconsidered the decision and the Claimant would have joined the group.

The Claimant testified that once she made the rhythmic gymnastics group, Gymnastics Canada told her she couldn't do both group and individual gymnastics. She consulted the coach and decided she would join the group after the second selection and would compete as an individual gymnast. Coach Joukova told her she could do this. She received the contract which was for one year, so she concluded there would be a second selection. She declined the offer to join the group "for one year". She expected another selection in 2011 and would have joined the group without a doubt if she had thought there was only one selection because her chances to qualify for the Olympics were much lower as an individual gymnast. After the Pan American games, the Claimant had heard nothing from Gymnastics Canada, so she wrote the letter of October 24, 2011 stating that she wanted to join the group. No one had told her there would be no second selection. She found out after the Pan Am games on November 21, 2011 that there would be no second selection and no opportunity to join the group. The claimant testified that she would be a good addition to the group.

Ms. Joukova testified that she coached the Russian national gymnastics team in Moscow then, in 1994, she was invited by club Kalev in Canada to work in the club and to develop Canadian gymnastics. She has been coaching gymnastics in Canada for 18 years and has a total of 30 years coaching experience in rhythmic gymnastics. She has reached the highest level in Canada as a coach.

It was Ms. Joukova's evidence in chief that in October 2010, she talked with Ms. Frattaroli regarding the open group selection. There was a "good opportunity" for the Canadian Senior Group to be the best for the Pan American continent. She talked with the Claimant regarding the decision to either join the group or continue as an individual gymnast for one year. It was discussed that since the Claimant had the best technique, it would not be a good strategy to put her in the group because it would show the uneven levels of the gymnasts. She talked to Ms. Frattaroli about this and for the Claimant to "stay for a second selection". The Claimant had "the chance for the next selection". Ms. Joukova testified that it would be a big benefit to have the number one gymnast in the group. In rhythmic gymnastics, if one gymnast doesn't do "difficulty", the team doesn't get the points. The coach was of the opinion that there is enough time to prepare for the Olympics. It would not be a problem because the Claimant is a very high-quality gymnast and a hard worker. The coach is sure that she could bring the team together and it would have a chance to fight for the top 8 at the Olympics. The current team would probably not have a chance. Sometimes, it's physical ability. Two current members of the group are "a little bit weak".

Under cross-examination, Ms. Joukova acknowledged that no member of the group is on probation at the present time and that she did not notify any weak gymnast or her parents of poor performance. She told Ms. Frattaroli the reasons that the Claimant was thinking of declining the offer to be part of the group.

I asked Ms. Joukova if Ms. Frattaroli told her there would be a second group selection event. Her answer was that she asked Ms. Frattaroli if the

Claimant “can have chance to join the group” and Ms. Frattaroli’s answer was, “of course, if the selection will be there”. To Mr. Maddex’s leading questions, coach Joukova testified that Ms. Frattaroli told her the Claimant could try in the next selection. The witness had not made mention of this in her evidence in chief.

Mr. Jean-Paul Caron, President and CEO of Gymnastics Canada, testified that during and after the October 2010 group selection process, Gymnastics Canada never issued a statement that there would be another open group selection process in the fall of 2011 after the World Championships. If coach Joukova promised a second group selection opportunity to the Claimant, it was not made on behalf of Gymnastics Canada and it should have been brought up with Ms. Frattaroli. Had a second group selection event in the fall of 2011 been planned, the information would have to have been distributed nationally over the summer of 2011. No date, or tentative date, was ever set for a second group selection event. The training and plan for the group covering the period of October 2011 to March 2012, which was developed by Ms. Frattaroli and approved by coach Joukova in July 2011, makes no mention of a second group selection event.

Ms. Frattaroli testified that six months before the Olympics is really late to change the group. It takes much longer than six months to put a group together. The same routine is performed by the six gymnasts. Synchronization is necessary. Under cross-examination, Ms. Frattaroli testified that the Claimant is a very young gymnast and that she had a very slight chance to qualify for the Olympics as an individual gymnast. She added that the best solution for the Claimant to go to the Olympics was to join the group and that she told

coach Joukova this. She did not tell coach Joukova that it was best for the Claimant to wait until after 2011 to join the group.

Ms. Rose Cossar, one of the six athletes, and the captain, of the Senior Rhythmic Gymnastics Group, testified that for the 2008–2012 cycle, she knew that the best chance to make the Olympics was to join the group, so this is what she decided to do. Early in 2011, it was clear to her and to the whole team that no second selection would occur. This was not clear in November 2010 and she was in doubt at that time. Ms. Cossar also submitted her position in writing before the hearing. Her position statement reads in part as follows:

Mariam is an excellent gymnast and would have been an asset to the group had she made the decision to join the group in October 2010.

Now with a very tight training and competition schedule leading up to the Olympics in August 2012, there are several obvious obstacles in changing the group composition. The individual event is very different from the group event in that it requires an intricate collaboration of 5 gymnasts and 5 apparatus. A gymnast from the individual event would require a period of retraining in body and apparatus techniques.

The group has already developed and bonded as a group and it would require a period of time to integrate a new gymnast into the group.

A group is not made of 6 individual gymnasts. It is made of 6 group gymnasts. For this reason, it is not helpful to make judgements and evaluations of group gymnasts as individual gymnasts. For example, one gymnast may have particular strengths in a group skill such as lifts requiring strength or in handling multiple apparatus or in co-ordinating

their movements with other group members. These skills, and many others, are not present in the individual gymnast event and are not required by an individual gymnast.

As gymnasts evolve into a group, they move and behave as one body. They are not independent gymnasts but part of a group collective with shared rhythm, elements, and reactions...

Further, it is not possible to identify a “weakest” gymnast in a group since each gymnast has her strengths and weaknesses and the routines have already been constructed around these strengths and weaknesses...

. . .

... at this late stage, it is questionable 1. whether there is enough time to make the transition and 2. whether the group in its current state could handle such a change without risking further damage to the gymnasts’ physical and emotional well-being...

The possible compromise of adding Mariam as an alternate to the group, or as a seventh gymnast, to be used in case of injury or underperformance is problematic. There is an obvious conflict of interest in that the national group coach, Svetlana Joukova, is also the personal coach of Mariam...

Ms. Kelsey Titmarch, another of the six athletes comprising the group, also submitted a statement that reads in part as follows:

My name is Kelsey Titmarsh and I have been a group member since 2003. Over the years I have spent in group I have seen many people come and go and have learned how difficult it is for new team members to fit in, and for the whole group to become as one.

I see that this year has been much easier than in previous years so far. This is because of a few different

factors. This year unlike other years we haven't had to start from scratch with a new member joining our team...

I see already that having a seventh gymnast train on the side is very un-beneficial. It causes unneeded tension, stress and is an overall disturbance to the development of the team. It will cause separation within the team and will negatively effect the team's preparation for the 2012 Olympic Games.

It is my position that to be the best group possible to compete at the Olympic Games in London we need to continue training hard with the current 6 group members... The six of us can do this and make Canada proud.

Alexandra Landry, also one of the six members of the group, submitted a statement that reads in part as follows:

As a member of the RG Canadian Senior Group since 2009, I believe adding a new member to the team will simply be detrimental to the chemistry already present between the current group members and other factors. Chemistry is as big of a necessity as skill when it comes to group work and rhythmic gymnastics. Chemistry takes a lot of time to build up between gymnasts in a group, but when it's present, you can truly see a difference in the team. It took our group just about 8 months to develop the chemistry and the group dynamic, which I believe is one of the main reasons as to why we were able to qualify for the 2012 Olympic Games

Considering I have been in the group for 4 cycles and experienced many changes of gymnasts in the team, I know exactly what it's like adjusting to a new teammate and the amount of time it takes for that person to settle in and be able to master all the components (synchronization, work ethics, individual mind set vs. group mindset) of being a

group member. The team is at its strongest point at the moment considering the fact that the members have been consistent for more than 14 months. One of the big principal of our group is “6 bodies, 1 mind” and that can only be achieved after spending countless hours, training together and most importantly **competing** together. It would simply be too late to incorporate a new member, who has zero group experience, when the Olympic Games are 6 months away.

The last few weeks of training have shown that having a seventh gymnast on the side can only be harmful to the productivity and to the quality of our training. It causes tension between the team and a distraction during this crucial preparation time.

To conclude, I strongly believe that the current members of the RG Canadian Senior Group... should be the ones to represent Canada at the 2012 London Olympic Games, also considering that it was those exact same gymnasts that qualified Canada at the 2011 World Championships in Montpellier. Keeping this team together will allow Canada to reach the goal set for the Olympic Games.

The Claimant's request of October 24, 2011 to join the group was considered by Ms. Frattaroli and Ms. Haynes. Based on the criteria established in the Internal Nomination Procedures for the 2012 Olympic Games, the request was denied. A written response was provided to “Ms. Chamilova” on December 1, 2011. After a further review by Mr. Caron of the process, documentation and written correspondence, he concluded in a letter dated December 20, 2011 to “Ms. Chamilova” and coach Joukova that there was “no valid evidence that would confirm that a second open Group selection after the 2011 World Championships is required, needed or expected.” Mr. Caron indicated that the substitution of a gymnast in the group can only be

considered within the provisions of the RG INP which specify substitution for reasons of injury, illness, decrease in training or other serious circumstances. Mr. Caron added that the Claimant's request could be reconsidered if it were in the best interest of the group's preparation for the 2012 Olympics and with the clear understanding that the Claimant "is in the position of a substitute athlete who would not replace a current NTSG member", except in case of injury, illness, decrease in training or other serious circumstances, as provided in the INP document.

On January 16, 2012, Mr. Caron wrote a letter to the Claimant, her mother, the two coaches, the athletes of the group and their parents. He stated that Gymnastics Canada had undertaken an extensive review and consultation process about the feasibility of adding the Claimant as a seventh member of the group. The letter further specifies that there are to be no changes in the composition of the group unless a gymnast is unable to compete for reasons of sickness, injury, decreased training, or serious circumstances such as consistent underperformance. The latter must be substantiated by repeated detailed, precise monitoring results and the total absence of progress in spite of training plans to address the weaknesses of the gymnast.

On January 18, 2012, coach Joukova sent an e-mail to Gymnastics Canada stating that as head coach, her strong recommendation was to put the Claimant in the group in order to replace a weak gymnast.

In a letter dated January 23, 2012 to the Claimant's mother, Mr. Caron stated that, in addition to the review of the Claimant's request, numerous

meetings were held with the group coaches and consultations were held with sport experts outside the gymnastics community to further assess the request. The conclusion was that it was not in the best interest of the group's preparation for the 2012 Olympics to integrate a seventh member in the position of substitute athlete. Mr. Caron recommended, if both parties agreed, and if the Claimant wished to appeal the decision, that the matter be referred to resolution facilitation, mediation or arbitration with the SDRCC. He provided the SDRCC's website.

On January 26, 2012, the Claimant submitted to the SDRCC a request for resolution of a sports-related dispute, pursuant to section 3.4 of the Code.

## **THE POSITIONS OF THE PARTIES**

### **Gymnastics Canada:**

Gymnastics Canada elected not to make any further submissions beyond the documents presented in evidence and the testimonies of their representatives.

### **The Claimant:**

Mr. Maddex submitted on behalf of the Claimant that national sports organizations have tremendous authority and responsibilities over their athletes. He cited the decision in *Canadian Amateur Boxing Association and Canadian Olympic Committee* (Picher), July 10, 2004, wherein arbitrator Picher holds, at

page 25, that a national sports organization is in a quasi-fiduciary relationship to the athletes it is responsible for.

At the relevant time, the Claimant was 16 years old – a minor. It was argued that a full fiduciary duty is owed to a minor athlete. There is a duty to provide all the information that she would need to make her decision. The expectation in November 2010 was that there would be a second selection event. Ms. Frattaroli didn't tell the Claimant and her mother of the doubt that existed with regard to the holding of that second selection event. This was a breach of Gymnastics Canada's fiduciary duty towards the athlete. It failed in its duty to notify and inform the athlete and to work in her best interests. Joining the group provided an almost certain chance of qualifying for the Olympics. Once the Claimant declined the offer, it became impossible for her to join the group. It was fundamentally unfair to morph her declining to join the group for one year into a decision that she would never join the group.

It was submitted on behalf of the Claimant that the selection criteria were not rationally connected to the goal of having the best group possible for the Olympics. An arbitrator has the power to change the criteria or to come to a reasonable conclusion. In the case at hand, the criteria were not criteria at all, but rather a rubber stamp on who would comprise the group. There was no selection process. The contracts signed by the group expired in 2011. Another selection process and new contracts are therefore needed.

The remedies requested were, firstly, to compel Gymnastics Canada to have another open selection; secondly to give the Claimant the opportunity to take back the decision she made; or thirdly, that the arbitrator substitute the

decision of Gymnastics Canada with a decision to add the Claimant to the group as a seventh member or as one of the six members.

**The Potentially Affected Parties:**

Although Ms. Joizil represented only four of the six potentially affected parties, her submissions apply equally to all six affected parties and I will treat them as such.

Ms. Joizil submitted that, under section 6.7 of the Canadian Sport Dispute Resolution Code, in a team selection dispute, the onus is on the respondent to demonstrate that the criteria were appropriately established and that the selection decision was made in accordance with such criteria. This onus was met in that the INP document specifies that athletes who qualify Canada for quota positions for the 2012 Olympic Games at the 2011 World Championships will be nominated for the 2012 Olympic Games. The Claimant made the team in 2010, so she is not arguing that the criteria were not appropriate.

The Claimant was led to believe, and hoped, that there would be another chance, another open selection. She knew that she was 57<sup>th</sup> in the world and forth in the Americas and that the group was first in the Americas. When she made her decision, she had the Group Program Development document which states that the athletes had to be ready to move to Toronto from October 25, 2010 to after the World Championships in 2011, or after the second selection meet in London in 2012, "if necessary". With this information in hand, the Claimant declined the offer to join the group. Other group

members were also under 16 years old, they had to make the same type of decision, with the same information, and they decided to join the group. The Claimant's considerations for her decision to decline a position with the team are immaterial as there was no need for a second selection process because of the group's results at the 2011 World Championships.

Counsel argued that there should be no intervention by the tribunal unless the selection process was arbitrary or in bad faith. She relied upon the case of *Nicole Forrester and Athletics Canada* (Hedley), March 18, 2010. In that decision, at paragraph 49, arbitrator Hedley quotes from the decision in *Judith Island/Dax Adam and Equine Canada* (Sanderson), 2004, in which arbitrator Sanderson states that only if the selection process is conducted in an unfair manner, or the decision was made arbitrarily, discriminatorily or in bad faith, should an arbitrator set aside the committee's decision. Only if the decision was unjust is a remedy available pursuant to section 6.17 of the Code. An arbitrator's power to substitute the decision should not be a licence to the management of the NSO. It was also argued that a remedy must be available to the athlete and none is in the case at hand.

Ms. Joizil referred me to the case of *Kyle Tramble and Athletics Nova Scotia Canada Games Appeal Committee* (McInnes), August 7, 2009, where the arbitrator states, at paragraph 5, that the criteria for eligibility had been known to all athletes for a lengthy period of time prior to the selection process.

It was submitted that no evidence was produced justifying the removal of any athlete. No one was on probation, which is what is supposed to happen in the event an athlete is not maintaining required performance, according to

the agreement between Gymnastics Canada and the members of the group. Gymnastics Canada seriously considered the request made by the Claimant and the applicable rules under the INP do not allow her to join the group at this point in time. The tribunal should not assess the performance of the team. The affected parties have described the commitment that is necessary and the difficulty of adding a member. It would not be in the group's and Canada's best interests to add a member at this time.

The tribunal was urged to dismiss the Claimant's request and to maintain the decision by Gymnastics Canada to refuse her claim as well-founded.

**Rose Cossar:**

Ms. Cossar, one of the affected parties, was not represented by counsel. She made the following submission: the well-being of the group is the most important consideration so that its members will be ready for the Olympics.

**DECISION**

The decision that is being challenged in this case is not a team selection decision. Gymnastics Canada's selection in November 2010 of the six athletes that would comprise the Canadian Senior National Rhythmic Gymnastics Group is not being challenged by the Claimant. In fact, she was selected to be part of that group, but declined the offer. The decision at issue is Gymnastics Canada's decision to deny the Claimant's subsequent request to join the group.

An examination of the evidence leads me to conclude, for the following reasons, that Gymnastics Canada's decision to deny the Claimant's request to

join the group was reasonable and in accordance with the appropriately established criteria.

Firstly, in January 2011, Sport Canada removed the requirement for a second open selection after understanding that a change in group composition occurring less than five months before the Olympics would have a negative impact on the final phase of Olympic Games preparation. It was not possible to predict at that time if the group would attend the London Olympic qualifying event to be held in January 2012. Carding allocation for the July 1, 2011 to June 30, 2012 carding cycle was therefore done on the basis of the group selection event of October 2010 and reflected the names of the six athletes who signed the group agreement. The carding criteria for 2011-2012 mentions the “six athletes selected to represent Canada at the 2011/2012 Olympic qualification events for Group”. The carding criteria require that the group composition remain constant until the end of the carding cycle and therefore, until after the 2012 Olympics. In the absence of a requirement for a second selection, there was no good reason to grant the Claimant’s request to join the group.

Secondly, the “Internal Nomination Process” (INP) document is founded upon the carding criteria and developed in collaboration with the COC. Its purpose is to set out the process and criteria used to select rhythmic gymnastics athletes for the 2012 Olympic Games. It states that “Athletes who qualify Canada for quota positions for the 2012 Olympic Games at the 2011 World Championships will be nominated for the 2012 Olympic Games.” In my view, it is only fair and right to choose the athletes whose performance at the World Championships qualifies the group for the Olympics to represent Canada

in the group rhythmic gymnastics competition at those Olympics. Why wouldn't you have the six athletes who were on the team that finished first among all the other Pan-American countries, thus qualifying for the Olympics, be the ones who participate in those Olympics? It is not only fair, but wise to send your winning team. The evidence of three team (group) members, Ms. Cossar, Ms. Titmarsh and Ms. Landry, establishes that group rhythmic gymnastics is very much a team sport, not an individual one.

Thirdly, Gymnastics Canada had concluded by January 23, 2012, after two reviews and a consultation process, that a second open selection was not needed and that it was not in the best interests of the group's preparation for the 2012 Olympics to integrate the seventh member in the position of substitute athlete. By then, only six to seven months remained until the 2012 Olympics. Ms. Frattaroli, the Program Director, testified that six months before the Olympics is really late to change the group and that it takes much longer than six months to put a group together.

Fourthly, coach Jukova consulted judges and Gymnastics Canada consulted sport experts on the issue of adding the Claimant to the rhythmic gymnastics group. However, no one bothered to consult the six athletes who comprise the group. It is these six gymnasts who made the commitment (along with their parents), put in the hours of training, performed the routines, competed and experienced in their hearts, minds and bodies what is *really* going on within the group. In their 14 months together, they have experienced and know things that no coach, judge or expert could know. Surely, their insights can contribute to the debate of whether or not it would be reasonable

to add the Claimant to the group. Three of them eloquently expressed their views. Rose Cossar said this:

Now with a very tight training and competition schedule leading up to the Olympics in August 2012, there are several obvious obstacles in changing the group composition. The individual event is very different from the group event in that it requires an intricate collaboration of 5 gymnasts and 5 apparatus. A gymnast from the individual event would require a period of retraining in body and apparatus techniques.

The group has already developed and bonded as a group and it would require a period of time to integrate a new gymnast into the group.

A group is not made of 6 individual gymnasts. It is made of 6 group gymnasts.

... at this late stage, it is questionable 1. whether there is enough time to make the transition and 2. whether the group in its current state could handle such a change without risking further damage to the gymnasts' physical and emotional well-being...

Kelsey Titmarch:

I see already that having a seventh gymnast train on the side is very un-beneficial. It causes unneeded tension, stress and is an overall disturbance to the development of the team. It will cause separation within the team and will negatively effect the team's preparation for the 2012 Olympic Games.

Alexandra Landry:

As a member of the RG Canadian Senior Group since 2009, I believe adding a new member to the team will simply be detrimental to the chemistry already present between the current group members and other factors.

Chemistry is as big of a necessity as skill when it comes to group work and rhythmic gymnastics. Chemistry takes a lot of time to build up between gymnasts in a group...

...The team is at its strongest point at the moment considering the fact that the members have been consistent for more than 14 months. One of the big principal of our group is “6 bodies, 1 mind” and that can only be achieved after spending countless hours, training together and most importantly **competing** together...

The last few weeks of training have shown that having a seventh gymnast on the side can only be harmful to the productivity and to the quality of our training. It causes tension between the team and a distraction during this crucial preparation time.

These views testify to the potential harm to the group of adding a new member, especially at this point in time.

Fifthly, even to this day, let alone in October 2011, the process in place to substitute an athlete has not been followed and the criteria to replace an athlete have not been met. The agreement between the athletes and Gymnastics Canada specifies that in the event an athlete is not maintaining required performance, she will be placed on probation and the head coach will inform the Program Director, the athletes and the parents of the situation. None of this has been done. Furthermore, the INP document specifies that if, for reasons of injury, illness, decreased training or other serious circumstances, an athlete cannot compete, an alternative athlete may be nominated. The evidence presented falls far short of establishing that one of the six athletes “cannot compete”. In all fairness, any “weak athlete” should have been warned about the problem from the outset and should have been regularly

monitored with the results going regularly to the Program Director. The evidence did not establish that this was done.

Sixthly, the agreement the six athletes signed with Gymnastics Canada states that they agree to commit themselves to the group program for up to 14 months, that they are to train between 26 and 30 hours per week and that they are to participate in all mandatory training camps, seminars, competitions and other related activities. The six athletes who signed agreements have fulfilled those requirements. It would therefore be grossly unfair, in light of the above-noted considerations, to tell one of them that she is not going to the Olympics and to simply replace her, which is what the Claimant requested in October 2011.

The following evidence and considerations also compel me to find not only that Gymnastics Canada's decision to deny the Claimant's request was appropriate, but also that the Claimant was not treated unfairly and that Gymnastics Canada was not in breach of any duty towards her.

Firstly, in late November 2010 when the Claimant had to decide whether or not to accept the offer to be part of the National Senior Rhythmic Gymnastics Group, Sport Canada had not yet determined whether or not there would be a second open selection. There were still several uncertainties regarding this issue and Gymnastics Canada simply did not know whether or not a second selection would occur and therefore could not give a definitive indication to the Claimant on this issue. Ms. Frattaroli did tell the Claimant's coach that the best solution for the Claimant to go to the Olympics was to join the group.

Secondly, when the Claimant had to make her decision on whether or not to accept the offer to be part of the group, Gymnastics Canada had supplied her, her mother and her coach with sufficient information, in writing, to allow her to make a reasoned decision. The Group Program Development document, which was circulated in May 2010, states that the athletes have to be ready to move to Toronto from October 25, 2010 to after the 2011 World Championships, or “after the second selection meet if necessary”, which was in London in January 2012. As well, the letter of offer to the Claimant states that the group would be representing Canada at the 2011 World Championships and, if necessary, at the “test event in London (England)”. Therefore, the Claimant knew that the commitment was to possibly cover two Olympic qualifying events in September 2011 and in January 2012 and that the same group of six would remain together to compete at these two events, if necessary. When she declined the offer, the Claimant, her mother and her coach knew, or should have known, that she would be missing these two crucial group Olympic qualifying competitions. It was reasonably foreseeable that this could jeopardize her future chances of getting into the group. There is a certain logic to the proposition that the six gymnasts who signed on to be part of the group for a period that included the only two Olympic qualifying events would be the ones to go to those Olympics if they were successful in qualifying for them. Moreover, the letter of offer to the Claimant also states that Gymnastics Canada would recommend the athlete to Sport Canada for development cards for the 2010–2011 and 2011–2012 carding cycles, the latter of which goes to June 30, 2012. Therefore, an athlete reading the agreement

would know that signing it would result in carding up to the end of June 2012, which is only two months before the Olympics.

Thirdly, the agreement provided that the athlete will train between 26 and 30 hours per week and will participate in all mandatory training camps, seminars, competitions and other related activities. Therefore, the Claimant, her mother and her coach knew that by declining the offer to be a part of the group, she would miss at least 10 to 14 months of *group* training, which could amount to as many as 1,820 hours, plus competitions, leading up to the Olympics. A world-class athlete should know that this could hamper her chances, in the eyes of her NSO, of later joining the group before those Olympics.

Fourthly, Gymnastics Canada sent e-mails, or copies of e-mails, to the Claimant's personal coach on February 28, 2011, on June 16, 2011 and on July 21, 2011. These e-mails indicated that the six athletes in the group would compete in the two Olympic selection events, that Gymnastics Canada was recommending them to Sport Canada for the 2011-2012 carding cycle, that they would be eligible for, and that Sport Canada was going to give the six an additional four-month card covering them to August 31, 2012, which is the end of the Olympics.

Fifthly, I find that there was no evidence to the effect that Gymnastics Canada induced the Claimant into the error of believing that there would be a second open selection for the group. In my view, the evidence of coach Joukova did not establish this. She did not testify to it in her evidence in chief and, in answer to my question, she stated that Ms. Frattaroli told her

that the Claimant could have a chance to join the group “if the selection will be there”. It flies in the face of logic to believe that Ms. Frattaroli would tell her best gymnast through her coach that there would be a second group selection when in fact, Gymnastics Canada didn’t know if this would be the case because it hadn’t yet been determined. Gymnastics Canada never issued a statement that there would be a second open group selection and the training schedule which was approved by the coach makes no mention of one. If Coach Joukova told the Claimant this, the statement was not made on behalf of Gymnastics Canada. No date, or tentative date, was ever set for a second group selection event.

In the case of *Canadian Amateur Boxing Association and Canadian Olympic Committee* (Picher), July 10, 2004, the NSO deliberately withheld from its member athletes notification of a change in the Olympic qualifying standard. The athletes were thereby misled. Arbitrator Picher justifiably found this to be unconscionable, and this prompted him to speak of a quasi-fiduciary relationship between the NSF, the COC and the athletes. In the case at hand, there was nothing remotely close to a deliberate attempt to mislead the Claimant.

The evidence of coach Joukova and her reference to Canadian judges who never testified or even issued any written statements do not convince me to overturn Gymnastics Canada’s conclusion that it was not in the best interests of the group’s preparation for the 2012 Olympics to integrate a seventh member as a substitute. The evidence of three of the six gymnasts substantiates that conclusion. In *Nicole Forrester and Athletics Canada* (Hedley), March 18, 2010, arbitrator Hedley held, at paragraph 54, that

“there must be an extremely compelling case made in order that the results of the team selection process can be interfered with, even if an irregularity appears in the process.” No such compelling case was made out here. In *Kyle Tramble and Athletics Nova Scotia Canada Games Appeal Committee* (McInnes), August 7, 2009, arbitrator McInnes observes, at paragraph 10, that “It is not my function to determine which competitor is best qualified to compete. My sole obligation is to ensure procedural fairness and the integrity of the selection process.”

For the reasons outlined above, I find that the Claimant was treated fairly by Gymnastics Canada in the selection process and beyond. It is also my determination that Gymnastics Canada was not in breach of any duty towards her and that its decision to deny the Claimant’s request to join the group was reasonable and in accordance with appropriately established criteria.

On February 24, 2012, pursuant to section 6.21(c) of the Code, this tribunal issued the following decision without reasons:

The request of the Claimant is hereby denied. There will be no substitute athlete or seventh athlete added to the Canadian Senior National Rhythmic Gymnastics Group at this time. The members of the said Group will continue to be the six athletes who currently are part of the Group. These six athletes are:

Katrina Cameron  
Rose Cossar  
Alexandra Landry  
Anastasiya Muntyanu  
Anjelika Reznik  
Kelsey Titmarsh

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Any future additions, substitutions or other changes to the Group will be subject to the policies, procedures and criteria that are in place.

For all of the preceding reasons, the tribunal hereby confirms the above-noted decision.

I would like to add that Gymnastics Canada is very fortunate to have such a highly qualified and expert coach as Svetlana Joukova. She has devoted many years of her career to achieving excellence among Canada's gymnasts. There is no doubt in my mind that much of the success of the senior rhythmic gymnastics group in qualifying for the Olympics is owed to her. The six devoted members of the group are in good hands as they prepare for the Olympics.

Mariam Chamilova, the Claimant, is obviously an exceptional world-class athlete whose youth allows her many more years of international competition for Canada.

Dated at Ottawa this 27th day of February, 2012.



Ross C. Dumoulin  
Arbitrator