

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

N°: SDRCC 24-0707

April 10, 2024

**AURÉLIE TRAN AND FRÉDÉRIQUE SGARBOSSA
(CLAIMANTS)**

AND

**GYMNASTICS CANADA (GYMCAN)
(RESPONDENT)**

AND

**CASSIE LEE, SHALLON OLSEN AND AVA STEWART
(AFFECTED PARTIES)**

BEFORE

**MICHELLE M. SIMPSON
(ARBITRATOR)**

Representatives for the Parties:

For the Claimants:

Katerine Dussault
Thina Nguyen (Aurélien Tran)
Pierre Privé (Aurélien Tran)

For the Respondent:

Andrew Price
Jenny Trew
Christian Gallardo

For the Affected Party Lee:

David Lee
Lisa Cowan
Binh Au

For the Affected Party Olsen:

Jared Goad

For the Affected Party Stewart

Debbie Siemon
Ryan Stewart

DECISION WITH REASONS

1. This is an Arbitration Final Award rendered pursuant to the Sport Dispute Resolution Centre of Canada's ("SDRCC") jurisdiction set out under Section 2.1 of the Canadian Sport Dispute Resolution Code (the "Code"). I was appointed as Med-Arb Neutral by the SDRCC pursuant to the Code and the Parties agreed that I was to arbitrate this one issue between the Parties.
2. The Claimants and Respondent identified the persons to be named as Affected Parties relative to the issue to be arbitrated.
3. The Claimants, the Respondent and the Affected Parties all met via Zoom with the Arbitrator to discuss the issue and the arbitral process.
4. The Affected Parties were advised that the original claim by the Claimants to the SDRCC involved several issues, all of which were resolved through the mediation phase of the med-arb process except for one issue. Having not been resolved, the one remaining issue is now to be arbitrated. The Affected Parties were identified by the Parties as being persons who would be affected by the outcome of the Arbitrator's decision and therefore, they were invited by the Arbitrator to make submissions through this arbitral process.
5. Timelines for delivery of submissions of documents to the Arbitrator were agreed to by the Parties. The Parties sought an early decision from the Arbitrator; preferably by March 31, 2024. The Parties agreed to forego any oral hearing and agreed to make their submissions to the Arbitrator in writing.

Positions of the Parties

The Claimants

6. The Claimants, Aurélie Tran and Frédérique Sgarbossa argue that although there was a collaborative work effort spread out over more than 3 months to reach Gymnastics Canada's published Internal Nomination Process for the 2024 Olympic Games (the "INP"), the Claimants submit this appeal to the SDRCC on the basis that

the latest final version of the INP (PIN-14/02/2024/A) contains unjustifiable changes which go against the principles of justice and fairness and could cause significant prejudice to the national team athletes, Aurélie Tran and Frédérique Sgarbossa.

The Respondent

7. The Respondent argues that changes to the INP were made through a consultative approach with coaches, athletes and others being consulted and informed throughout the process. Athletes would have known that certain competitions would be important to their overall scores. The INP contained a typographical error where an important sentence was omitted from the INP relative to the table containing the list of competitions relating to selection criteria 1.2. The Respondent seeks to correct that typographical error. As a result of newly published dates for some competitions and new competitions being announced, it was important to expand the list of competitions from which scores could be taken under criteria 1.2. By expanding the list of competitions from which scores could be secured by athletes under criteria 1.2, the Respondent is expanding the number of athletes who could potentially qualify under selection criteria 1.2 of the INP.

The Issue

8. The specific focus of the appeal is the contents of the list of competitions to be used in relation to selection criteria 1.2 of the INP. The INP was first published September 22, 2023, then it was revised on January 16, 2024, and again on February 14, 2024.

Arguments & Evidence Advanced by the Claimants

9. Arguments and evidence advanced by the Claimants included the following:
- A. Section 17.0 of the INP permits modifications to the INP under certain circumstances and those circumstances do not exist here. In particular, there are no “exceptional circumstances” here and there are no circumstances that have prevented GymCan from assigning athletes to the competitions identified in the table containing the competition list for criteria 1.2.
 - B. Based on a reading of the INP and comparing the list of competitions used for criteria 1.2 and that for criteria 3, there was a clear intent on the part of the drafter of the INP to limit the number of competitions to be used in relation to criteria 1.2.

- C. The sentence allowing the Selection Working Group (“SWG”) to add the list of other suitable international competitions sanctioned by the Fédération internationale de gymnastique (“FIG”) to the list for criteria 3 does not exist relative to criteria 1.2. Its omission was deliberate.
- D. Changing the list of competitions during the selection process and after some of the competitions which are included in the list of competitions have concluded and results are known to GymCan:
 - a. opens the door to a reasonable apprehension of bias relative to GymCan manipulating the criteria to permit certain athletes to gain an advantage relative to qualifying for selection,
 - b. opens the door to potential abuse of power by GymCan and the undermining of a participant’s right to fair play, transparency, fairness and equity in the selection process,
 - c. leaves athletes having had no opportunity to make an informed decision about selection of the competitions in which they would participate,
 - d. breaches Article 10 of the Olympic Movement’s Code of Ethics.
- E. The competitions that are being added to the list are sub-par events where uniform judging standards may not be in evidence.

10. Nowhere in the Claimants’ submissions could I find a description of the specific prejudice caused to the Claimants by the January and February changes to the INP. It was in the Respondent’s and Affected Parties’ submissions that it was said that the motivation for the Claimants to make this appeal to the SDRCC was because the Claimants did not secure scores in the list of competitions which are now, after the revisions, being included in the INP in relation to the establishment of criteria 1.2 of the INP. Consequently, the Claimants now find themselves at a disadvantage relative to those who have secured scores from the competitions that have, by amendment, recently been included in the INP.

Arguments & Evidence Advanced by the Respondent

11. Arguments and evidence advanced by the Respondent included the following:

- A. The changes made to the INP are within the parameters of Section 17.0 of the INP which permits modifications to the INP under certain circumstances and those circumstances are present namely:
- i. A typographical error. Relative to criteria 1.2, at the bottom of the list of competitions should have been the same words inserted relative to criteria 3 list of competitions namely: “The SWG will add to the list other suitable international competitions sanctioned by the FIG as they are announced.” In a nutshell, there was a typographical error caused by the omission of these words in the INP relative to criteria 1.2.
 - ii. Changes in the FIG calendar. The additions or deletions of events in the list of competitions table as it relates to criterial 1.2 are due to changes in the FIG calendar that would prevent athletes from having enough opportunities to surpass the reference score on a given apparatus and would therefore have a material impact on the SWG’s ability to fairly apply the outlined process.
 - iii. The addition of two premiere gymnastics competitions. Elite Canada and 1’International Gymnix were added to the calendar after the initial INP was published.
- B. The changes to the INP were made with the intention of providing athletes with a fair number of opportunities to reach the reference scores in the changing competition landscape. The increase in the number of competitions will ensure that all members of the Olympic Long list (29 athletes) have at least one eligible opportunity to earn a world leading performance. The prior list provided only 23 athletes with this opportunity.
- C. Criteria 1.2 must be put into perspective. As currently written, criteria 1.2 does not mean that hitting the reference score names an athlete to the Olympic Team. Criteria 1.2 merely puts the athlete in a pool with the potential to earn one spot to be filled at the Olympic Trials. The selection is dependent upon an athlete matching her previous performance at the Trials and outperforming her peers at the Olympic Trials. It is not mandatory to fill this spot on the team if the requirements are not met.

- D. Changes to the INP were made by informed discussions with relevant stakeholders.
- E. Pursuant to Section 2.4 of the INP, performances at Elite Canada are used in the distribution of new assignments in bullet #2 therefore, contrary to the Claimants' assertions, the date changes to Elite Canada did impact the list of performances.
- F. GymCan disagrees with the Claimants' assertion that there is a difference in the quality of the events being added to the list of performances. It is reasonable to assume that in sanctioning the event, FIG is upholding a uniform judging standard. Also, criteria 1.2 requires that the athlete repeat the performance at the Olympic Trials where uniform judging standards should not be an issue.
- G. The Claimants are not being treated unfairly; they are looking to improve their chance of selection to the Olympic Games by removing the eligible exceptional performances of their peers from the selection process.

Evidence & Arguments of the Affected Parties

12. Each of the Affected Parties argues in favour of retaining the extended list of competitions identified in the table relating to criteria 1.2 for various reasons. Clearly, if the extended list of competitions found in the table were to return to its original form (i.e. as was written in September of 2023), all three Affected Parties would lose scores which would otherwise be included in the calculations under criteria 1.2 of the INP.

Revision of the Claimants' Original Claim

13. After all submissions were received by the Arbitrator, the Claimants filed a "New Claim." The Claimants indicated that they were now willing to permit inclusion into the list of competitions for criteria 1.2, the four competitions being:

- 52nd FIG AG World Championships, Antwerp (BEL) September 30-October 8, 2023
- XIX Pan American Games, Santiago (CHI) October 20-November 5, 2023
- Vera Caslavská Sokol Grand Prix, Brno (CZE) November 25, 2023
- International Gymnix 2024, Montreal (CAN) March 8-10, 2024

14. The inclusion of these four listed competitions into the INP for criteria 1.2 would satisfy the needs of all three Affected Parties.

15. GymCan's response was that it was willing to return to the original competition list (INP-2023-Sep-22) for Criteria 1.2 with a few notable changes. Those changes were to include not just the four competitions mentioned by the Claimants in their New Claim but also:

- 2024 FIG Challenge Cups
- 2024 Luxembourg Open

16. The revised competition list proposed by GymCan is attached to this Decision.

17. Neither the Claimants nor the Affected Parties provided any written response relative to the merits of GymCan's proposal even though the Arbitrator extended the deadline for submissions from any of the Parties including the Affected Parties.

Analysis of the Claimants' New Claim

18. I find that the Claimants' New Claim is in fact a withdrawal of any objection the Claimants may previously have made to the addition of the four competitions which took place prior to the revisions made to the INP in relation to criteria 1.2. In other words, the Claimants are no longer arguing that Antwerp, Santiago, Brno and International Gymnix, should be excluded from the competitions to be included in the table containing the list of competitions related to criteria 1.2 in the INP. Accordingly, that portion of the amendment to the INP is no longer an issue between the Claimants and the Respondent. Effectively, the agreement of the Claimant and Respondent to add the four competitions relative to criteria 1.2 in the INP satisfies the needs of the Affected Parties and in fact removes their need to stand as Affected Parties in these proceedings.

19. Given the fact that the New Claim satisfies the needs of the Claimants, the Respondent, and the Affected Parties, there is no need for the Arbitrator to make any decision regarding the addition of these 4 competitions relative to criteria 1.2 in the INP. The Arbitrator confirms the agreement of the Parties that all four competitions remain included in the INP as currently published.

20. What remains in contention is the addition of FIG World Challenge Cups 2024 listed as follows:

- Antayla (TUR) March 29-31

- Osijek (CRO) April 4-7
- Varna (BUL) May 23-26
- Koper (SLO) May 30-June 2

and Luxembourg Open 2024, Luxembourg, (LUX) April 12-13, 2024.

21. All of the above competitions had yet to occur when the last version of the INP (which included all four of these FIG World Challenge Cups) was published. This fact should go a long way to satisfying item D of the Claimants' original Claim. This leaves the Claimants' arguments set out in items A, B, C and E (now referenced as "D" below) to be addressed by the Arbitrator namely:

- A. Section 17.0 of the INP permits modifications to the INP under certain circumstances and those circumstances do not exist here. In particular, there are no "exceptional circumstances" here and there are no circumstances that have prevented GymCan from assigning athletes to the competitions identified in the table containing the competition list for criteria 1.2.
- B. Based on a reading of the INP and comparing the list of competitions used for criteria 1.2 and that for criteria 3, there was a clear intent on the part of the drafter of the INP to limit the number of competitions.
- C. The sentence allowing the SWG to add the list of other suitable international competitions sanctioned by the FIG to the list for criteria 3 does not exist relative to criteria 1.2. Its omission was deliberate.
- D. The competitions that are being added to the list are sub-par events where uniform judging standards may not be in evidence.

22. Relative to item A, section 17.0 of the INP does permit modifications to the INP due to a typographical error. Section 17.0 states in part "...This is to allow for changes to this document that may become necessary due to: -a typographical error, a lack of clarity in a definition or wording."

23. GymCan's evidence is that GymCan, in error, omitted the sentence "The SWG will add to the list other suitable international competitions sanctioned by the FIG as they are announced." when referring to the competitions relating to criteria 1.2. The sentence was clearly included relative to the list of competitions in the INP in relation to criteria 3.

24. Although the evidence shows a consultative approach taken to the development of the contents of the INP, GymCan is the body issuing the INP. GymCan had the final decision as to what is inserted into the INP. GymCan's evidence is that, through GymCan's error, there was an omission of the sentence in question. There was no evidence introduced to the contrary and therefore I find it a fact. Typographical errors can include omissions. Accordingly, I find that the omission of the relevant sentence was a typographical error which is permitted under Section 17.0 of the INP.

25. Relative to the Claimants' items B and C, GymCan states that the omission of the above sentence was an oversight on GymCan's part. This evidence flies in the face of the Claimants' assertion that the drafters of the INP intended to limit the number of competitions in relation to criteria 1.2 of the INP and therefore deliberately left the sentence out in the revised INP to limit the number of competitions to be considered for criteria 1.2 of the INP.

26. The Claimants' argument in item D above that the competitions being added are sub-par events where uniform judging standards may not be in evidence has been refuted by the Respondent. I agree with the Respondent that it is reasonable to assume that in sanctioning the event, FIG is upholding a uniform judging standard. Also, criteria 1.2 of the INP requires that the athlete repeat the performance at the Olympic Trials where uniform judging standards should not be an issue.

27. Based on the above, I find that GymCan is well within its rights under section 17.0 of the INP to correct the omission and to insert into the INP relative to criteria 1.2 the following words:

“The SWG will add to the list other suitable international competitions sanctions by the FIG as they are announced.”

28. This finding permits GymCan to add to the list of competitions relative to criteria 1.2 the four FIG World Challenge Cups for 2024 which are listed in the attached list of competitions.

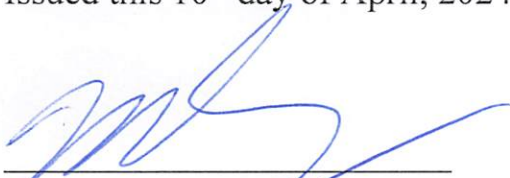
29. The only remaining controversial addition to the list of competitions relative to criteria 1.2 is the Luxembourg Open 2024 which is a competition that has yet to occur.

30. No evidence has been led to show that there is any prejudicial effect upon the Claimants, or the Affected Parties should this competition be added to the list of competitions. I find that by adding this additional competition to the criteria under

1.2, all athletes including the Claimants and Affected Parties, have the potential to access one more competition at which to generate scores that could be included under criteria 1.2 of the INP.

31. For all of these reasons, I find that the attached list of competitions should be incorporated into the INP and circulated forthwith by GymCan to everyone concerned.

Issued this 10th day of April, 2024



Michelle Simpson, Arbitrator
at Edmonton, Alberta

The competitions are:

- 52nd FIG AG World Championships, Antwerp (BEL) September 30 – October 8, 2023
- XIX Pan American Games, Santiago (CHI) October 20 – November 5, 2023
- Vera Caslavská Sokol Grand Prix, Brno (CZE) November 25, 2023
- FIG Apparatus World Cups 2024:
 - i) Cairo (EGY) February 15-18
 - ii) Cottbus (GER) February 22-25
 - iii) Doha (QAT) April 17-20
 - iv) Baku (AZE) March 7-10
- FIG World Challenge Cups 2024:
 - i) Antalya (TUR) March 29-31
 - ii) Osijek (CRO) April 4-7
 - iii) Varna (BUL) May 23-26
 - iv) Koper (SLO) May 30 – June 2
- International Gymnix 2024, Montreal (CAN) March 8-10, 2024
- EnBW DTB Pokal Team Challenge, Stuttgart (GER) March 15-17, 2024
- Luxembourg Open 2024, Luxembourg (LUX) April 12-13, 2024
- XV Trofeo Città di Jesolo, Jesolo (ITA) April 20-21, 2024
- Pacific Rim Championships 2024, Cali (COL) April 21-28, 2024
- 2024 Senior Pan American Championships, Santa Marta (COL) May 22-25, 2024
- June 6 to 9: Canadian Championships / Olympic Trials

- Calendar updates per the FIG website as of March 28, 2024
The SWG will add to the list other suitable international competitions sanctioned by the FIG as they are announced.