

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

N°: SDRCC 21-0519/20

**TRACEY ANDERSON
(CLAIMANT)**

AND

**GORDON BENNETT
(CLAIMANT)**

AND

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

AND

**SHERI WILSON
(AFFECTED PARTY)**

DECISION

Parties in attendance at the hearing:

Claimants	Tracey Anderson Gordon Bennett
For the Respondent:	Ian Moss Amanda Tambakopoulos
Affected Party:	Sheri Wilson
Assistant to Arbitrator:	Ryan Hilborn

1. On September 26 and 27, 2021, the Claimants filed separate appeals following the Respondent's decision to uphold the assignment of the Affected Party as a judge at the 2021 World Artistic Gymnastics Championships in Kitakyushu, Japan, to be held from October 18 to 24, 2021. The Claimants have agreed to combine their appeals.
2. A decision was required by October 4, 2021, as this was the last possible date for judge name changes and due to COVID-19 and the Government of Japan's entry and visa requirements. Timing was a factor.
3. This matter was heard via telephone conference call on October 2, 2021. A short decision was issued on October 3, 2021. Prior to issuing the short decision, the Respondent filed a submission advising of the possible difficulties in obtaining visas for the Claimants. Submissions were heard from all parties on this point. Any potential problems with obtaining visas have not been a factor in this decision.

4. I find in favour of Claimant Bennett's claim. I have therefore denied Claimant Anderson's claim.

The Parties

Claimants

5. Ms. Tracey Anderson is a dedicated and well-respected international judge of high calibre. Ms. Anderson is ranked second in Gymnastics Canada's Profile 2 (P2) judge rankings. Ms. Anderson serves as a member of the International Assignments Working Group (IAWG), the group responsible for assigning judges to officiate international competitions.
6. Mr. Gordon Bennett is likewise a dedicated and well-respected expert international judge. Mr. Bennett is the top ranked Profile 1 (P1) judge and was the only Canadian Women's Artistic Gymnastics judge at the 2020 Olympic Games in Tokyo. Mr. Bennett serves as the Chair of the IAWG.

Respondent

7. Gymnastics Canada (GymCan) is a not-for-profit organization and Canada's National Sport Organization (NSO) for gymnastics in the disciplines of acrobatics, aerobics, men's and women's artistic, rhythmic and trampoline. GymCan is also responsible for assigning and overseeing judging for gymnastics competitions and, through its different working groups, develops and implements the policies and procedures that will be followed when assigning judges to officiate competitions.

Affected Party

8. Ms. Sheri Wilson is the highest ranked P2 judge. Ms. Wilson is an accomplished judge in Canadian gymnastics with international experience.

Background

9. The facts in this matter are undisputed.
10. The Respondent is able to send two judges to the 2021 World Artistic Gymnastics Championships in Kitakyushu, Japan. On August 8, 2021, the IAWG, with Claimant Anderson and Claimant Bennett both present, discussed the nomination of judges to the remaining 2021 national and international gymnastics competitions. The nomination of officials to the 2021 World Artistic Gymnastics Championships was discussed with other events, and the IAWG nominated Ms. Andree Montreuil and Ms. Natalie Turner as judges to the World Artistic Gymnastics Championships, both of whom are P1 judges. No reserve judges were named.
11. Ms. Montreuil and Ms. Turner were contacted on August 19, 2021, and informed of their nominations to the 2021 World Artistic Gymnastics Championships. Ms. Montreuil accepted the nomination while Ms. Turner declined. In the absence of a reserve judge having been named, the second judge's spot was now vacant. Both Claimants believed that they were each eligible for nomination to the vacancy. As a result, both Claimants

stepped away from the IAWG, to avoid a conflict of interest, and expressed interest in being nominated.

12. An interim IAWG panel was formed to determine who should receive the nomination. Ms. Sheri Wilson (the Affected Party) was then nominated.
13. On September 17, 2021, the Claimants were informed of the decision to nominate the Affected Party. On this same date, the Claimants brought separate requests for review following the Respondent's internal appeal process. In these requests for review, the Claimants sought to review the Respondent's decision with respect to the nomination of the Affected Party. The Claimants were notified in separate decisions on September 20, 2021, that the IAWG's nomination of the Affected Party was upheld. The Respondent also set out a ranking list for nominations to the 2021 World Artistic Gymnastics Championships in priority order. According to the Respondent, the Affected Party and Claimants were ranked in the following order:
 1. Sheri Wilson (as the top ranked P2)
 2. Tracey Anderson (as the next highest ranked P2)
 3. Gord Bennett (as the only other judge who has a valid VISA in order to attend World Championships)
14. Both Claimants appealed the Respondent's decisions to the SDRCC.

Submissions

15. The Parties in this matter are all self-represented. As such, it should be noted that while all of the arguments the Parties made submissions on may not be re-stated in this decision, I have considered every submission and argument put before me.

Claimant Anderson's Submissions

16. Claimant Anderson is appealing the decision of IAWG to nominate the Affected Party to the 2021 World Artistic Gymnastics Championships and submits that she should be the judge nominated. Claimant Anderson's appeal raises two issues:
 - i. The 2018 ranking of judges is flawed and Claimant Anderson should be ranked above the Affected Party; and,
 - ii. That an August 17, 2021, email from Claimant Bennett indicates that Claimant Anderson should be nominated as the replacement judge.
17. On the first issue identified, Claimant Anderson disputes her rank in the judging Profile. Claimant Anderson submits that the Respondent failed to follow and apply the manner for determining seniority among Women's Artistic Gymnastics judges as it was set out at Subsection 7.8 of the Women's Artistic Gymnastics Program Manual (revised February 2016).
18. The manner for determining seniority among P2 judges is given as the following: *"Seniority determined by results of the Selection process for first two years; at mid-cycle based on FIG category plus ranking in the Selection Process."* Claimant Anderson clarified that these rankings are determined through an internal selection process, typically held every four years.

19. At the mid-cycle (2018), the IAWG determined the rankings (seniority) as follows:
 - P1-1 - Gordon Bennett
 - P1-2 - Andree Montreuil
 - P1-3 - Natalie Turner
 - P2 Sr-1 - Sheri Wilson
 - P2 Sr-2 - Tracey Anderson
 - P2 Jr-1 - Name Withheld
 - P2 Jr-2 - Name Withheld
20. The current rankings are in place, according to Claimant Anderson, until June 30, 2022.
21. Claimant Anderson believes this ranking is incorrect and asserts that she should be ranked above than the Affected Party. Claimant Anderson submits that the Respondent changed the criteria for ranking its judges with the P1 and P2 application form in 2018, wherein the second ranked P1 applicant would become the top ranked P2 judge. According to Claimant Anderson, there was no rationale, documented or otherwise, explaining this deviation from the seniority as stated in the judges regulations.
22. Claimant Anderson submits that in 2018, during the last P1 application process, only Ms. Turner and the Affected Party (Ms. Wilson) applied. Because of this change in the ranking criteria, when Ms. Turner was the successful P1 applicant, the Affected Party was then designated the P2 Sr-1 judge, ranking her ahead of Claimant Anderson, who was ranked P2 Sr-2. Claimant Anderson was made aware of these rankings on or about June 29, 2018.
23. Soon thereafter, Claimant Anderson received the anonymized results used to score the P1 and P2 applicants and discovered that she had scored higher than the Affected Party. Claimant Anderson believes that had the Respondent followed Subsection 7.8 of the Women's Artistic Gymnastics Program Manual, as it was worded at the time, that she would have been the top ranked P2 judge over the Affected Party.
24. According to Claimant Anderson, she raised the issue at the time. However, she was given assurances that it would not affect her assignments. She was unaware of any appeal process at that time, and dropped the matter as a result of the assurances.
25. On the second issue, Claimant Anderson also relies on the August 17, 2021, email sent by Claimant Bennett in his capacity as the IAWG Chair. Claimant Anderson submits that this email explicates that judges who had assignments cancelled in 2020 due to the COVID-19 pandemic were prioritized for the various assignments remaining in 2021. Claimant Anderson provides that she had an assignment in early-2020, prior to COVID-19 and the cancellation or postponement of events. She was therefore not prioritized for any of these assignments.
26. Claimant Anderson relies on the following statement from the August 17 email: *"Should any of the nominated judges decline their assignment, the recommendation is that the assignment be offered first to the remaining P2 judge"*. Claimant Anderson believes that as she is the remaining P2 judge, that she meets the FIG requirements for assignment and that the email did not stipulate any exceptions to these competition assignments, that

she should have been nominated to the 2021 World Artistic Gymnastics Championships when Ms. Turner declined her nomination.

Claimant Bennett's Submissions

27. Claimant Bennett is likewise appealing the decision of the IAWG to nominate the Affected Party to the 2021 World Artistic Gymnastics Championships. Claimant Bennett's argument is, in essence, that he is eligible to judge at the 2021 World Artistic Gymnastics Championships and that he has priority over the P2 judges.
28. In support of his position, Claimant Bennett submits that he is a Profile 1 judge until the end of, according to Claimant Bennett, the *current* quadrennial. As a result of COVID-19 and the postponement of the 2020 Tokyo Olympic Games, the FIG extended its quadrennial to December 31, 2021. The quadrennial is a four-year planning period typically focussed around planning and performing at the Olympic Games, which occurs every four years. National Sport Organizations rely on these planning periods.
29. The quadrennial with the 2020 Tokyo Olympic Games was originally set to run from January 1, 2017, to December 31, 2020. However, in order to accommodate the 2020 Tokyo Olympic Games, the FIG made the decision to extend the quadrennial. Claimant Bennett argues that GymCan also extended its quadrennial as a result of the FIG's decision to do so. As evidence, Claimant Bennett submits that the Respondent is obligated to follow the FIG quadrennial because of recognition that FIG regulations supersede the GymCan regulations. Specifically, Claimant Bennett relies on the heading in the mobility table under Subsection 4.3 of the *Women's Artistic Gymnastics Program Manual - Section 3 (January 2020)*, which states, "FIG Regulations supersede GYM CAN BJ System requirements".
30. As further evidence, Claimant Bennett submits that as a result of the extended quadrennial, he is still a P1 judge, has been assigned as a P1 judge to competitions since the end of the Tokyo Olympics and that he has not yet transitioned into the role of Mentor Judge. According to Claimant Bennett, Subsection 4.3 of the *Women's Artistic Gymnastics Program Manual - Section 3* sets out that P1 judges transition to Mentor Judges automatically at the end of the quadrennial. Because he has not transitioned to the role of Mentor Judge, according to Claimant Bennett, he remains a P1 judge until the end of the quadrennial. He is therefore eligible for assignment to the 2021 World Artistic Gymnastics Championships.
31. Claimant Bennett submits that as a result of his eligibility, he should therefore be given priority for assignment to this specific event. Priority for assigning judges to international competitions is set out at Subsection 4.6 of the GymCan *Women's Artistic Gymnastics Program Manual - Section 3*. According to Subsection 4.6, judge eligibility to international events is assigned according to the following order of priority:
 1. P1
 2. P2
 3. P3 and the Mentor Judge
 4. Other Brevet judges
32. According to Claimant Bennett, when the Respondent assigned the Affected Party, a P2 judge, to the 2021 World Artistic Gymnastics Championships, an international competition, it failed to follow the order of priority. Instead, as a P1 judge, he should have been given

priority to replace Ms. Turner (who is also a P1 judge) following her decision not to accept the nomination.

33. As a remedy, Claimant Bennett requests that I substitute my decision for that of the Respondent and order that he be assigned as a judge to the 2021 World Artistic Gymnastics Championships in place of the Affected Party.

Respondent's Submissions

1. Response to Claimant Bennett

34. The Respondent accepts Claimant Bennett's interpretation of the assignment priority of judges to international competitions. However, the Respondent submits that Claimant Bennett is no longer eligible as a P1 judge. According to the Respondent, GymCan is not obligated to follow the FIG quadrennial and has ended the current quadrennial at the conclusion of the 2020 Olympic Games. This, according to the Respondent, is in keeping with its traditional practices of ending its quadrennial after an Olympic event and prior to the next World Championships.
35. In its submissions, the Respondent explains that National Sport Organizations typically work on a four-year planning cycle (the quadrennial) which runs in the time between Olympic Games. The quadrennial leading up to the 2020 Tokyo Olympics was extended as a result of COVID-19, which has resulted in a shortened planning cycle leading into the 2024 Olympics and created some planning difficulties for GymCan.
36. The Respondent reasoned that in a typical quadrennial, one not impacted by COVID-19, a World Championship event would not be held three months after the Olympic Games. Typically, the World Championships would occur in the calendar year after the Olympic Games. As a result, the top ranked P1 judge would normally transition into the role of Mentor Judge in the period between the Olympic Games and before the World Championships. As such, had the Olympic Games not been postponed, Claimant Bennett would have already been "mobilized" to the role of a Mentor Judge, which would have made him ineligible for these World Championships.
37. It is against this backdrop that the Respondent submits it made the unanimous decision to nominate Ms. Montreuil and Ms. Turner to the 2021 World Artistic Gymnastics Championships. According to the Respondent, the decision to nominate Ms. Montreuil is due to her being the most experienced Canadian judge eligible for the 2024 Olympic Games. The decision to nominate Ms. Turner was made as she is the next highest ranked Profile 1 judge. In addition to their status as P1 judges, the Respondent notes that the decision to select judges based on rank eligibility was intentional as this was seen as an opportunity to develop Canadian judges and to promote eligibility for selection as judges to the 2024 Olympic Games. The time between the Olympic Games and the end of the year was also seen as an opportunity to get an early transition into the next quadrennial.
38. When Ms. Turner declined her nomination to the 2021 World Artistic Gymnastics Championships, the IAWG's decision to nominate the Affected Party, the highest ranked P2, was made in accordance with the Respondent's objective of developing judges.
39. The Respondent submits that Claimant Bennett *was* the highest ranked Canadian P1 judge. However, he completed his maximum period of eligibility at the completion of the 2020 Olympic Games and, as a result, Claimant Bennett is now a Mentor Judge. As a

result of this transition, Claimant Bennett is ineligible for 2024 Olympic Games consideration and his assignment to the 2021 World Artistic Gymnastics Championships would defeat the objective of using this as a development opportunity. The Respondent also notes as further evidence that there has never been an instance in which a Canadian judge for the most recent Olympic Games has been selected as judge to the following World Championships.

40. As a result, the Respondent submits that its decision to assign the Affected Party should be upheld.
41. The Respondent raised as a preliminary issue that the claim brought by Claimant Bennett should be considered before that of Claimant Anderson, as Claimant Bennett's claim is based on priority consideration given to Profile 1 judges. The Respondent submits that finding in favour of Claimant Bennett would negate Claimant Anderson's claim.

2. Response to Claimant Anderson

42. The Respondent submits that Claimant Anderson has been the second ranked P2 judge in GymCan's judge priority rankings list since the most recent list was published in 2018. The Respondent states that Claimant Anderson has not appealed these rankings and submits that decisions have been made in the intervening three years based on these judge rankings.
43. The Respondent provided reasons for the Affected Party's being ranked ahead of Claimant Anderson. These included that the Affected Party is able to move towards a P1 ranking during this quadrennial and that the Affected Party has met all the eligibility requirements for that consideration. According to the Respondent, Claimant Anderson does not meet these requirements currently and is therefore ranked behind the Affected Party. The Affected Party also participated in the most recent P1 competition, but Ms. Turner was the successful candidate. Ms. Turner was therefore designated a P1 judge and the Affected Party was designated as the highest ranked P2 judge. Additionally, Claimant Anderson was ineligible to compete for the P1 ranking in 2017 as she had not reached her third quadrennial as an internationally eligible judge.
44. The Respondent rebuts the arguments submitted by Claimant Anderson regarding the August 17, 2021, letter she received from Claimant Bennett acting in his role as Chair of the IAWG. According to the Respondent, while the letter outlined efforts to ensure that international judges received equitable assignments, the World Championships is considered a major event with explicit priority process. The World Championships are distinguished in terms of importance from events like the World Cup or Challenge Cup. Accordingly, the listing of 2021 World Artistic Gymnastics Championships in the email was purely to highlight the competitions remaining in 2021, not to imply that the 2021 World Artistic Gymnastics Championships were an opportunity for an additional judging assignment to replace those missed as a result of COVID-19.

Affected Party's Submissions

45. The Affected Party submits that the proper policies and procedures were followed in her nomination to replace Ms. Turner as a judge at the 2021 World Artistic Gymnastics Championships. The Affected Party believes that members of the IAWG used their technical knowledge and experience to make this decision, acted in good faith and in the best interest of the program when they selected her as a judge for the 2021 World Artistic

Gymnastics Championships. The Affected Party submits that she has consistently been ranked as the top P2 judge for the past quadrennial and is the only P1-eligible P2-ranked judge.

46. The Affected Party, in speaking to Claimant Anderson's claim, submits that the selection and ranking of the P1 and P2 judges was done independently and with different participants, with the rankings communicated to the judges on or about June 29, 2018. These rankings were not appealed at the time.
47. The Affected Party also made submissions related to the claim of Claimant Bennett. The Affected Party submits that the IAWG reviewed the traditional criteria for assignments of judges for the first World Championships following the Olympic Games for the past several quadrennials and determined that the judge at the Olympic Games preceding the next World Championships "moved sideways" after their appointment as an Olympic Games judge. This was done in order to prioritize the development of the P1 judges who will officiate at the major international competitions for the new cycle leading into the next Olympic Games.

Standard of Review

48. While this matter was brought before me as an appeal, I have heard this matter *de novo*. In general, the Standard of Review for Arbitrators is set out at s. 6.11(a) of the Canadian Sport Dispute Resolution Code (SDRCC Code). This section reads as follows:

a) The Panel, once appointed, shall have full power to review the facts and apply the law. In particular, the Panel may substitute its decision for the decision that gave rise to the dispute or may substitute such measures and grant such remedies or relief that the Panel deems just and equitable in the circumstances.

49. Speaking to s. 6.11(a) (s. 6.17(a) as it was then), Arbitrator Patrice Brunet has held that this section provides SDRCC Arbitrators "*with a scope of review that is unrestricted to review the facts and the law, thereby conducting a review de novo.*" Therefore, according to Arbitrator Brunet, "*the Arbitrator has jurisdiction to review the facts, apply the law and consider the matter de novo.*"¹
50. As such, I have heard this matter *de novo* in the manner set out by Arbitrator Brunet.

Issues

51. The following issues must be determined in this matter:
 1. Which Appeal should be considered first?
 2. Is Claimant Bennett eligible as a P1 judge?
 3. What is the correct order of priority for judges at the 2021 World Artistic Gymnastics Championships?
 4. Did the Respondent err in ranking the Affected Party above Claimant Anderson?

¹ *Canadian Blind Sports Association (CBSA) v Simon Richard*, SDRCC 17-0319 at paras 18 and 27.

Analysis

1. Which Appeal should be considered first?

52. The Respondent argued that Claimant Bennett's appeal should be considered before that of Claimant Anderson as Claimant Bennett has submitted an appeal relating to priority. According to the Respondent, should Claimant Bennett be successful in his appeal, it would be unnecessary to evaluate Claimant Anderson's appeal.
53. Claimant Anderson has acknowledged that if it is determined Claimant Bennett has priority, that his assignment would be fatal to her appeal.
54. I accept the submissions of the Respondent on this point and will determine Claimant Bennett's claim first.

2. Is Claimant Bennett a Profile 1 Judge?

55. The first issue in this matter is whether Claimant Bennett is currently a P1 judge and, therefore, eligible for assignment to the 2021 World Artistic Gymnastics Championships.
56. There is no dispute that Claimant Bennett was the top ranked P1 judge as of the 2020 Tokyo Olympic Games. The point of contention is whether Claimant Bennett remained as such following the Olympic Games.
57. Claimant Bennett has argued that he is the top ranked P1 judge until the end of the current quadrennial, which, according to him, ends on December 31, 2021. According to the Respondent, Claimant Bennett is no longer eligible for the assignment to the 2021 World Artistic Gymnastics Championships because he is no longer the top ranked P1 judge. The Respondent has asserted that they are not obligated to follow the FIG quadrennial and that they have implemented their own quadrennial, which began with the conclusion of the Olympic Games. The Respondent also argues that Claimant Bennett has acted as a judge at the Olympics and is therefore ineligible for acting as a judge at the 2021 World Artistic Gymnastics Championships, based on past practices.
58. While the Respondent has asserted that it is in the new quadrennial running to the end of the 2024 Olympic Games, the Respondent was hard-pressed to show when the decision to end the quadrennial was made, who made it and how it was communicated to its stakeholders. The earliest example the Respondent could show was in a September 16, 2021 press release. In reviewing statements contained in this press release, the messaging is contradictory. On the one hand, the press release indicates that the 2021 World Artistic Gymnastics Championships is the *"first World Championships of this Paris quadrennial"*, and, alternatively, that the competition, *"will bring the extended Tokyo Olympic cycle to a close."* The first quote is from the Respondent while the second is from Ed Van Hoof, the Head National Team Coach for the men's artistic gymnastics team.
59. I take this contradictory messaging to indicate the confusion around which quadrennial the Respondent was operating under. The confusion appears to be as a result of FIG extending its quadrennial to December 31, 2021, without the Respondent clarifying its intention to do otherwise. It is also significant to note that, while both Claimants are on the IAWG and are involved in the nomination and assignment of judges to international competitions, neither Claimant was operating under a belief that the Respondent had entered the new quadrennial.

60. This press release was not put out until after the initial assignment of judges to the 2021 World Artistic Gymnastics Championships and a day before the decision to assign the Affected Party in the place of Ms. Turner was made known to the Claimants and the Affected Party. I find that this further demonstrates the inadequacy of the attempts made by the Respondent to clarify its position on the quadrennial.
61. In addition to this confusion around the quadrennial, I find that the Respondent has acted with its judges as if it is still in the old quadrennial. The mobility table at Subsection 4.3 of the *Women's Artistic Gymnastics Program Manual - Section 3* provides for the transitions of the P1 judge to Mentor Judge and the Mentor judge to the Master. These transitions are to occur automatically at the end of the quadrennial. However, neither Claimant Bennett nor the current Mentor Judge, Ms. Liz Armitage, have transitioned into their new roles. While the mobility chart permits for a maximum of two Mentor judges, it indicates that this is done "under extraordinary circumstances." No such circumstances have been argued or submitted.
62. Further, both Claimant Bennett and Ms. Armitage have been assigned, post-Olympic Games, to judge competitions in their capacity as P1 judge and Mentor Judge, respectively. Claimant Bennett was assigned to a competition in August while Ms. Armitage will act as a Mentor Judge in November 2021. These assignments further indicate that the Respondent is operating in the same quadrennial as the FIG.
63. In reviewing these facts, I find that there is insufficient evidence to support the claim that the Respondent has transitioned into the next quadrennial and that, instead, the Respondent has acted with its judges' assignments as if it is still in the previous quadrennial.
64. I therefore find that Claimant Bennett is a P1 judge and that he is eligible for assignment to the 2021 World Artistic Gymnastics Championships.
65. Separate from this finding is the argument put forward by Claimant Bennett that the Respondent is obligated to follow the quadrennial as set out by FIG, relying on a heading of the Mobility table. I disagree with Claimant Bennett's interpretation of this wording and find that this wording is specific with regard to FIG regulations regarding judging requirements. I find that this heading is not in relation to the quadrennial.
66. The Respondent made submissions on the challenges it, and many NSOs, find themselves in as a result of COVID-19 and the postponement of the 2020 Tokyo Olympic Games. Specific to the Respondent is the fact that the Olympic Games and the World Championships are not typically held in the same year. I recognize the difficulty the Respondent has faced and the many unique obstacles and challenges in planning for these World Championships.
67. I have written in a previous decision that:

Given the ongoing COVID-19 pandemic and its impact on sport, there must be flexibility afforded to NSOs and the manner in which they respond to the manifold difficulties they face as a result. Given that the global sporting community has been impacted on every level by COVID-19, sport organizations have had to do their best to meet these unprecedented challenges. In order to ensure the future success of their programs, sport organizations need to be

given a wide berth for making responsive decisions. While this is the case, this responsibility should be exercised judicially and reasonably.²

68. While I have noted that a “wide berth” should be given to sport organizations in order to make responsive decisions in the face of COVID-19, these decisions should be made “judicially and reasonably.” I note that there is nothing prohibiting the Respondent from changing its quadrennial. Instead, I find that the Respondent is not bound to the quadrennial as set out by FIG and that it is not precluded from setting out a planning timeline that suits its needs. However, I note that such changes must be acted upon, must be reasonable and should be explicit and demonstrable. I do not find that was the case here.

3. *What is the correct order of priority for judges at the 2021 World Artistic Gymnastics Championships?*

69. Subsection 4.6 of the *Women’s Artistic Gymnastics Program Manual - Section 3* sets out a priority in assigning judges to international competitions. According to this priority:

Brevet judges are eligible to be assigned to an international competition, according to the following priorities:

1. Profile 1
2. Profile 2
3. Profile 3 and Mentor
4. Other Brevets

70. In his submissions, Claimant Bennett argued that for international competitions, P1 judges are to be assigned in priority to P2 judges. The Respondent agreed with Claimant Bennett’s interpretation of Subsection 4.6. Further, the Respondent acknowledged in its response to Claimant Anderson that the World Championships is an event with clear priority, which is the priority set out above.

71. However, the Respondent argued that its decision to assign Ms. Turner as a judge to the 2021 World Artistic Gymnastics Championships was because of its desire to develop Ms. Turner and its 2024 Olympic Games eligible judges. When Ms. Turner declined the nomination to this event, the decision to nominate the Affected Party was done in keeping with its goal of developing future Olympic eligible judges. Claimant Bennett, as the top P1 judge who has been a judge at an Olympic Games, is ineligible for assignment to a future Olympic Games.

72. I accept the arguments of both the Respondent and the Affected Party that the decision to assign the Affected Party in the place of Ms. Turner was done with the best intentions. However, I find that the priority in assigning judges is clear and uncontradicted. In reviewing Subsection 4.6, I find that Ms. Turner’s assignment to the 2021 World Artistic Gymnastics Championships was done in keeping the assignment policies and procedures and note that there is nothing prohibiting the Respondent from assigning Ms. Turner in the manner it did, regardless of Claimant Bennett’s status as the top P1.

73. I therefore find that the correct priority of judges is the P1 judge, in this case Claimant Bennett, before the P2 judges.

² *Kamara v Boxing Canada*, SDRCC 21-0489 at para 57.

4. Did the Respondent err in ranking the Affected Party above Claimant Anderson?

74. Despite my findings regarding Claimant Bennett, an analysis of Claimant Anderson's appeal is warranted as it is integral to determine what the ranking of judges should be.
75. Claimant Anderson submitted her appeal on the basis of two arguments. The first argument was with regard to the 2018 rankings of judges. I find that I am unable to consider this argument. Section 6.2 of the SDRCC Code sets out the following time limits for filing a request:
- (a) Unless set by agreement, statute, regulations or other applicable rules of the relevant SO, the time limit to file a Request shall be thirty (30) days following the later of the date on which:*
- (i) the Claimant becomes aware of the existence of the dispute;*
 - (ii) the Claimant becomes aware of the contested decision; and*
 - (iii) the last step in attempting to resolve the dispute occurred, as determined by the SDRCC. The SDRCC may, in its discretion, refer this issue to a Panel.*
- (b) Notwithstanding Section 3.5(c), the time limit may be waived with respect to a Request upon agreement of the Parties or under exceptional circumstances. Any issue pertaining to the waiver of the time limit will be referred to a Panel.*
76. The rankings in question were communicated to Claimant Anderson on or about June 29, 2018; approximately three years ago. Claimant Anderson advised that she raised the rankings as an issue at the time they were communicated, however, she was told that these rankings would not negatively impact her assignments. While I find some of the arguments made by Claimant Anderson were compelling, given the delay in bringing a claim, I am unable to extend the time limit for filing a request from 30 days to three years. I therefore cannot consider this matter.
77. The second argument submitted by Claimant Anderson is based on the August 17 letter from Claimant Bennett in his capacity as Chair of the IAWG to Ms. Anderson. On this point, I accept the argument advanced by the Respondent that these communications were made to outline the remaining judging opportunities and to outline the IAWG efforts to ensure that international judges receive equitable assignments. I also accept the Respondent's submissions that the World Championships is considered a major event with explicit priority process which is distinguished from events like the World Cup or Challenge Cup. I further accept the Respondent's description that the listing of the World Championships in the email was done to highlight the competitions remaining in 2021, not to imply that the World Championships are an opportunity for an additional judging assignment to replace those missed judging opportunities as a result of COVID-19.
78. I therefore find that the Respondent has not erred in ranking the Affected Party above Claimant Anderson.

Order

79. Pursuant to s. 6.11 of the SDRCC Code, I have substituted my decision for that of the Respondent. I would have preferred to send this matter back to the Respondent for redetermination, however, during the hearing, I canvassed the Respondent on whether this matter could be returned with direction for redetermination. The Respondent submitted that it would make the same decision to appoint the Affected Party regardless of

directions given. Even if the Respondent is not bound to assign Claimant Bennett to the 2021 World Championships, the Respondent is required to arrive at a fair and reasoned decision and not to simply predetermine the matter. As a result, I have determined that this matter cannot be sent back to the Respondent.

80. Therefore, I order that Claimant Bennett be assigned as the replacement judge to the FIG Artistic World Championships in Kitakyushu, Japan, subject to his being able to get a visa. I order that Ian Moss approach Sport Canada, FIG and the Japanese Embassy and make best efforts to get a visa for Claimant Bennett. In the event Claimant Bennett is unable to get a visa, I order that the Affected Party will be assigned as his reserve, subject to being able to get a visa.

Issues Arising After the Hearing

81. Following the hearing, I was advised that there were difficulties in obtaining a visa through the Japanese consulate. An emergency hearing was called and all of the Parties were reassembled on October 3, 2021, to canvass how this matter might be addressed. The statements made by the Parties did not factor into this decision.
82. Following the release of my short decision on October 3, 2021, the Respondent asked to meet so that I might clarify what “best efforts” are understood to mean. The Respondent also requested the rationale for my decision. I informed the Respondent that the meeting was unnecessary as “best efforts” are to be taken in their common sense meaning. The Respondent was also informed that the long decision would explain my rationale. I was confident that since the Respondent had acted with the best of intentions in its initial appointment, and that they conducted themselves throughout the hearing with the highest respect, that they would use this common-sense approach to using their “best efforts”. I understand that their “best efforts” were successful and that they obtained a visa for Mr. Bennett.

Conclusion

83. I find that Claimant Bennett is a P1 judge until such time as the current quadrennial ends. I also find that the priority for assignment to the 2021 World Artistic Gymnastics Championships is Claimant Bennett as the only remaining eligible P1 judge before the P2 judges.
84. As a result, I find that Claimant Bennett should have been assigned as a judge to the 2021 World Artistic Gymnastics Championships over the Affected Party according to the Priority set out at Subsection 4.6 of the *Women’s Artistic Gymnastics Program Manual*.
85. I therefore find in favour of Claimant Bennett.
86. I deny Claimant Anderson’s appeal on the basis that I have granted Claimant Bennett’s appeal. However, I note that the Respondent did not err when it nominated the Affected Party over Claimant Anderson, based on the 2018 judge rankings. I find that these rankings stand and that the Respondent’s reading of the August 17 email is the correct one.

87. I would like to commend the parties in this matter for the manner in which they conducted themselves and the collegial tone shown. The Parties in this matter were self-represented. The decision to self-represent did not act as a hindrance in any way. All of the Parties presented their positions extremely well. The Parties treated one another with respect and kindness and it is clear that the Parties hold each other and the Respondent holds its judges in the highest esteem.

Signed in Ottawa, this 14th day of October, 2021

A handwritten signature in black ink, appearing to read 'D. Bennett', written over a horizontal line.

David Bennett, Arbitrator