

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

NO: SDRCC 24-0703

BETWEEN:

ELVIRA SAADI

(CLAIMANT)

AND

GYMNASTICS CANADA
(GYMCAN)

(RESPONDENT)

AND

COMPLAINANTS A, B, C, D AND E

(AFFECTED PARTIES)

DECISION

Appearances:

On behalf of the Claimant: Elliot Saccucci and Alessia Grossi, Counsel

On behalf of the Respondent: Stuart MacKay and Adam Raikes, Counsel

On behalf of Affected Parties:

A, C, D and E: Karen Bellehumeur, Counsel

B: Amanda Fowler and Dr. Emir Crowne, Counsel

1. On March 18, 2024, I was appointed under section 5.3(b) of the *Canadian Sport Dispute Resolution Code* (the “Code”) to hear Elvira Saadi’s appeal of a November 6, 2023 decision of a disciplinary panel of Gymnastics Canada (“GymCan”).
2. Although counsel for Affected Party B challenged my ability to fairly decide this matter pursuant to section 5.5(a) of the *Code*, that challenge was subsequently withdrawn.
3. During the administrative meeting, the parties agreed that a resolution facilitation process was unnecessary given that the parties had made previous attempts to resolve this matter during the disciplinary process and this dispute proceeded to arbitration based on written and oral submissions.
4. On June 24, 2024, I issued my decision to deny the appeal, with reasons to follow. These are my reasons.

BACKGROUND

The Parties

5. GymCan is the national governing body for the sport of gymnastics in Canada. As part of its overall purpose to ensure the safety and well-being of young gymnasts, GymCan enacted a *Complaints and Discipline Policy and Procedures* in 2019 (the “Policy”). The *Policy* established procedures for investigating and resolving reported contraventions of GymCan’s *Code of Ethics and Conduct Policy* and its *Abuse, Maltreatment, and Discrimination Policy*.
6. The Claimant is a 72-year-old former gymnastics coach. She was a two-time Olympic gold medalist and Canadian Olympic coach in 1996, 2000, 2012 and 2020. She was a co-owner and High-Performance coach at the Dynamo Gymnastics Club.
7. Affected Party A is a non-athlete third-party observer, who was a coach and colleague of Ms. Saadi for four years at Dynamo.
8. Affected Parties C, D, and E are all former athletes who were coached by Ms. Saadi at Dynamo.
9. Affected Party B is a current athlete who was coached by Ms. Saadi, including when B was a minor.

Complaints

10. On October 24, 2020, Affected Party A submitted a complaint to GymCan alleging maltreatment of athletes, together with incidents of ongoing behaviour of concern by Ms. Saadi. GymCan determined that the complaint was sufficiently

serious to provisionally suspend Ms. Saadi under the *Policy*, and Ms. Saadi was suspended effective October 27, 2020, pending an investigation.

11. Subsequently, four athletes also made complaints of maltreatment and abuse by Ms. Saadi to GymCan. Affected Party B submitted a complaint on November 2, 2020. GymCan retained an external investigator in accordance with the *Policy*. The Investigator began her investigation on November 10, 2020.
12. Affected Party C filed a complaint alleging maltreatment by Ms. Saadi on April 23, 2021, and Affected Parties D and E filed complaints by August 23, 2021. All complaints were referred to the Investigator.
13. On April 4, 2022, the Investigator submitted her report to a case manager, who in turn recommended that GymCan refer the complaints to a Discipline Committee in accordance with the *Policy*. GymCan referred the complaints to a three-person Discipline Committee (the Panel) on or about August 8, 2022.
14. Between January and February 2023, the parties participated in a mediation process which was ultimately unsuccessful.

Proceedings before the Discipline Committee

15. Both GymCan and Ms. Saadi raised procedural issues before the Panel. Specifically, Ms. Saadi sought to quash the proceedings on the grounds that the Panel lacked jurisdiction to hear the matter due to a reasonable apprehension of bias, and that her right to procedural fairness had been breached because of a fee agreement between GymCan and an Athlete Advocate representing the athlete affected parties. The Panel dismissed Ms. Saadi's request in a Preliminary decision issued May 19, 2023.
16. At the hearing before the Panel, all parties agreed that the Investigator's findings regarding the facts and breaches of GymCan's applicable policies would be adopted by the Panel, and the sole issue to be decided would be the applicable sanction.
17. The parties provided written submissions regarding the proposed sanctions on August 11 and September 1, 2023, and the Panel held a hearing to determine the appropriate sanction on September 11, 2023.
18. After considering the unchallenged facts and breaches, the Panel imposed a 10-year full suspension of membership from Gymnastics Canada and any Provincial governing body on Ms. Saadi, with credit for the time served during the provisional suspension period. The sanction included, but was not limited to, suspension from coaching, judging, officiating, content development, volunteering and membership on Gymnastics Canada's committees or Boards.

The Panel determined that, upon completion of that 10-year suspension, Ms. Saadi would be permitted to return to training coaches only, and that she could have no direct contact or engagement with athletes in any manner. She was to remain prohibited from engaging in any other Gymnastics Canada-related activity for life, which included coaching athletes directly, judging, officiating, attending competitions, developing content for training or competitions, or volunteering on Gymnastics Canada's committees or Boards. The Panel imposed additional conditions on Ms. Saadi's reinstatement upon completion of the 10-year period of suspension, including participating in education and training to the satisfaction of an independent panel (the "Sanction decision").

ARGUMENTS

Claimant

19. Ms. Saadi advances several arguments in her appeal submissions, including that all GymCan's proceedings, from the provisional suspension, the investigation and the disciplinary proceedings were unfair; that she "acquiesced" to the Discipline Committee proceedings using the Investigation report as an agreed statement of facts due to limited resources and a "strained command" of English; and that GymCan acted in contravention of the express terms of its *Policies*.
20. Ms. Saadi also argues that the sanction imposed by the Panel was not within a reasonable range of penalties that could have been imposed based on the findings of fact in the Investigation Report and the law.
21. Ms. Saadi says that, considering all the due process failings and the unreasonable sanction, I must quash the Sanction decision, replace it with a suspension of no more than 5 years inclusive of time served and order that GymCan pay Ms. Saadi's costs.

GymCan

22. GymCan argues that only issues decided by the Panel are properly before the SDRCC and that alleged issues with respect to the investigation, breaches of confidentiality, the provisional suspension and other actions by GymCan are beyond the jurisdiction of SDRCC.
23. GymCan submits that the Panel was properly constituted and free of a reasonable apprehension of bias, that the investigation and discipline proceedings were fair and that the Panel's Preliminary and Sanction decisions were reasonable and entitled to deference.

Affected Parties A, C, D, and E

24. Affected Parties A, C, D and E agree with GymCan's submission that Ms. Saadi has raised issues outside the SDRCC's jurisdiction and outside the scope of the statutory right of appeal.
25. They further argue that the Panel's Preliminary and Sanction decisions were reasonable and should not be interfered with.

Affected Party B

26. Affected Party B contends that Ms. Saadi is attempting to re-litigate the issues raised before the Panel, and that the Panel's decisions were reasonable and should be upheld.
27. Affected Party B also argues that the appeal is time barred, as Ms. Saadi failed to bring her appeal within 30 days of the Panel's decision.

ANALYSIS

Scope of Appeal

28. Section 6.11 of the *Code* provides that I have the full power to (a) review the facts and apply the law and (b) to conduct a hearing *de novo*. It also provides that the hearing must be *de novo* where the Sport Organization did not conduct its internal appeal process.
29. Section 12.1 of GymCan's *Policy* provides that appeals of a decision of the Panel may be made only in accordance with the *Policy*. Respondents may appeal any discipline decision if the decision "will suspend or expel the Respondent from registered participant status." (12.1.1 b) Appeals by a Respondent of disciplinary decisions are automatically referred to an Appeal Hearing (12.3).
30. All parties agreed to bypass GymCan's appeal process and proceed to a hearing before the SDRCC.
31. The essence of Ms. Saadi's appeal is that the Panel's Sanction decision is unreasonable. Despite the provisions of the *Code* that require the hearing to be *de novo* in the absence of an internal appeal process, Ms. Saadi expressly did not seek a *de novo* hearing. Rather, she asks that, after reviewing the facts and applying the law, I issue a declaration that GymCan's process was unfair, that it breached its own policies and denied her natural justice, and that I quash the Sanction decision and determine an appropriate sanction based on the Investigator's report. In essence, Ms. Saadi seeks to have this Panel "re-do" the work of the Panel as well as make findings about GymCan's process. I decline to do so.

32. While I agree that a National Sport Organization (“NSO”) cannot improperly restrict the scope of review (see *Fergusson v Equestrian Canada Equestre* (SDRCC 20-0455) and *Canadian Blind Sports Association v Richard* (SDRCC 17-0319)), I am unable to agree that section 6.11 grants me the power to review GymCan’s governance or all its processes, including the management of complaints. Ms. Saadi does not allege that the *Policy* governing the management of maltreatment complaints was improperly enacted. In fact, she relies on its provisions in asserting that she is entitled to a remedy for its alleged breaches.
33. As the Tribunal has previously said, it is not up to SDRCC to re-write NSO policies and procedures or to pass commentary on the appropriateness of all its decisions.
34. In *Adams v. Athletics Canada* (SDRCC 09-0098), Arbitrator Picher wrote:
- ... the fact that the *Code* grants to the panel the authority to substitute its decision for the decision which gives rise to a dispute should not be misconstrued as a license to impose on the world of Canadian sport what would be tantamount to a rule of NSO management by arbitrators. (p. 18)
35. I conclude that it is the Panel’s Preliminary and Sanction decisions that are properly before me, and that it is only those decisions which are subject to a robust and probing analysis, rather than all the decisions taken by GymCan in this matter.
36. This Tribunal has often held that the scope of review is a narrow one, restricted to allegations which, if established, would reveal a decision that is so tainted or “manifestly wrong” that it would be unjust to allow it to stand. (see, for example, *Palmer v. Athletics Canada* (SDRCC 08-0080))

Is the Appeal Timely?

37. Section 6.2 *Code* provides that,
- (a) unless set by agreement...regulations or other applicable rules of the relevant SO, the time limit to file a Request shall be thirty-one (31) days following the later of the date on which
- ...
- (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...
- (b) Notwithstanding Subsection 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.

38. Subsection 3.5(c) provides that “subject to the statutes, regulations, CADP or other applicable rules relevant to the Sports-Related Dispute, if all Parties agree or upon application on justified grounds, the SDRCC may extend or reduce the time limits.”
39. The Panel’s Sanction decision was issued November 6, 2023. Ms. Saadi filed her appeal with GymCan on November 18, 2023.
40. GymCan sought the position of the parties on bypassing GymCan’s appeal process and proceeding directly to SDRCC on December 5, 2023. All parties agreed. In particular, on December 11, 2023, Affected Party B’s counsel agreed that the matter should be “conclusively adjudicated” by SDRCC.
41. Following additional correspondence between the parties regarding the proper Claimant, Ms. Saadi filed her appeal to the SDRCC on February 22, 2024.
42. I find that this dispute is properly before the SDRCC by agreement of the parties. Even if I am wrong in this conclusion, I would extend the time limit in which Ms. Saadi could file an appeal. Affected Party B had knowledge of Ms. Saadi’s intention to appeal on November 18, 2023, and has demonstrated no prejudice by the filing of the appeal with SDRCC on February 22, 2024.

Did the creation of the Panel by GymCan result in a reasonable apprehension of bias?

43. Ms. Saadi argues that there was a reasonable apprehension of bias arising from the fact that GymCan established a Panel to evaluate the conduct of Ms. Saadi at the same time it was a defendant in a class proceeding which alleged various forms of maltreatment by a number of Registered Participants including Ms. Saadi.
44. Ms. Saadi advanced the same argument before GymCan’s case manager, contending that the Panel lacked the jurisdiction to hear the complaints and sought a stay of proceedings.
45. GymCan referred the objection to the Panel to decide. In its decision denying the application, the Panel considered the decision of *Curtis et. at v. Manitoba Securities Commission* (2006 MBCA 135) and found it to be inapplicable to its proceedings.
46. Ms. Saadi continues to rely on *Curtis*, arguing that the Panel’s Preliminary decision was wrong. She contends that a reasonable apprehension of bias is created by a tribunal that acts simultaneously as a defendant in a class action proceeding “that is attempting to shift blame to an individual” and as a regulator involved in disciplining that same individual.

47. In *Curtis*, the Securities Commission, the regulator of public securities, was named as a co-defendant in a class action suit along with Mr. Curtis and others at the same time as the Securities Commission was seeking to take enforcement action against Mr. Curtis and the other respondent parties in its own internal hearing. The internal hearing considered alleged conduct that overlapped with the conduct complained of in the class action.
48. The Manitoba Court of Appeal determined that the members of a panel of the Securities Commission, which was charged with determining a contravention of the Securities Act, were functionally the same as the administration of the Commission. The Court of Appeal concluded that a reasonably informed person would not draw a distinction between members of the Commission and Commission staff and that there was an appearance of a lack of impartiality where there was a material overlap between the issues in the class proceeding and the alleged contravention.
49. GymCan relies on *New Brunswick (Financial and Consumer Services Commission) v. Emond and Drapeau* (2015 NBFCST 6 (CanLII)) in which the New Brunswick Financial and Consumer Services Tribunal considered *Curtis*. The Tribunal found sufficient distinctions between the regulatory scheme in *Curtis* and that established by the New Brunswick *Financial and Consumer Services Commission Act* to conclude that there was no reasonable apprehension of bias. Those distinctions included the separation of the adjudicative and regulatory functions of the Securities Commission.
50. I find, as did the Panel, that the Securities Commission regulatory structure in *Curtis* was markedly different than the one established by GymCan and that there can be no reasonable perception of bias even when there may be material overlap between the issues in the class action proceeding and those before the Panel.
51. Section 10 of the *Policy* sets out the process for appointment to the Discipline and Appeal Committees as follows:

Gymnastics Canada will maintain a Discipline and Appeal Panel roster of 10 to 15 qualified individuals from across the country, from which a Discipline or Appeal Committee of three will be struck when required, depending on the circumstances of each case.

....

No current member of the Gymnastics Canada Board of Directors, committees, or current Director of a Gymnastics Canada Member or Club can be on the

Discipline and Appeal Panel. Current staff members or contractors are also restricted from sitting on the Discipline and Appeal Panel. (Section 10)

...

11. Discipline Committee and Procedures

11.1 Discipline Committee

The Discipline Committee is convened by the Chief Executive Officer from the Discipline and Appeal Panel roster as per section 9 (sic) above.

The composition of the Discipline Committee shall be as follows:

- a. Three persons will be appointed, of which one is named as Chair, and one as committee secretary;
- b. The Chair shall not be a registered participant of Gymnastics Canada;
- c. No more than one of the remaining two committee members may be a registered participant of Gymnastics Canada.

In making the appointments, every attempt will be made to ensure the following:

- a. that no association exists between the Complainant or the Respondent and a Discipline Committee member, either actual or apparent;
- b. that no Discipline Committee member has been involved in any preliminary stage of the complaint;
- c. that no Discipline Committee member has a pre-set attitude, conflict with or apparent interest in the ultimate outcome.

...

52. GymCan's *Policy* ensures that members of the Panel charged with deciding allegations of maltreatment are not members, employees, directors or contractors of GymCan. The members of the Panel play no part in the policy or decision-making functions of GymCan. There is no overlapping membership between GymCan, its membership or policy making boards and the members of the Panel. As was found in the *Emond and Drapeau* case, GymCan's responsibility to investigate and adjudicate complaints of maltreatment have been assigned to bodies that are functionally independent of GymCan.

53. I agree with the Panel's decision that sections 10 and 11 of the *Policy* "ensure the *ad hoc* and independent nature of the panel constituted to respond to specific complaint and distinguishes it from the Securities Commission in *Curtis*." (at para. 27)

54. I am not able to agree with Ms. Saadi's argument that a reasonably informed person would perceive that the Panel would find in GymCan's favour simply because there was some overlap in the issues before it and the issues in the class action proceeding or that the Panel would be 'tempted to cast blame' on Ms. Saadi to absolve GymCan of responsibility for damages alleged in the class action proceeding. I find that a reasonably informed person would conclude that Ms. Saadi would be given a fair hearing by the Panel given its independent and *ad hoc* nature.

The Panel

Was Ms. Saadi given a fair hearing by the Panel?

55. Where a party stands to lose their job as well as employment opportunities for coaching across Canada, they are entitled to a high level of procedural fairness (*Paterson v. Skate Canada*, 2004 ABQB 969 at para. 65). Sections 11.2.2 and 11.2.4 set out the principles and procedures for Discipline Committee hearings. In my view, these provisions ensure a high level of procedural fairness.

56. In a preliminary application, Ms. Saadi also sought to quash the Panel's proceedings on the basis that GymCan entered into a separate agreement to pay the legal fees of Ms. Bellehumeur, which both denied Ms. Saadi's right to procedural fairness and constituted a breach of the *Policy*.

57. Relevant sections of the *Policy* are as follows:

8. Responsibility for the Costs of Filing and Dealing with Complaints

8.1 Complainant Responsibilities Regarding Costs

The Complainant shall be responsible for all costs associated with the filing of a complaint or an appeal, any communications with the Case Manager, travel and accommodation to attend a disciplinary hearing or an appeal hearing, as well as those costs associated with any legal or any other type of representation.

8.2 Respondent Responsibilities Regarding Costs

The Respondent shall be responsible for all costs associated with the filing of a complaint or an appeal, any communications with the Case Manager, travel and accommodation to attend a disciplinary hearing or an appeal hearing, as well as those costs associated with any legal or any other type of representation.

11.2.2 Principles for the Hearings of the Panel

The Committee shall be empowered to conduct the hearing in accordance with this Policy.

...

b. The principles of natural justice will be applied:

iii. an athlete has the opportunity to have an "Athlete Advocate" present at the hearing.

58. The Panel dismissed Ms. Saadi's arguments on this ground, noting that Section 8 of the *Policy* separated the responsibility for the costs of filing and dealing with complaints and did not "attempt to regulate the fee payment of counsel for Athlete Advocates." It also noted that section 11.2.2.b.iii provided for the use of an Athlete Advocate to safeguard the rights of athletes against conduct contrary to the *Policy*, and that it did not preclude using a particular type of fee payment schedule for the services of the Athlete Advocate. The Panel found no breach of the *Policy*.
59. Ms. Saadi argues that the *Policy* expressly required that complainants, respondents and GymCan all bear their own legal fees and that she was entitled to a process where no one party was disadvantaged over another. She alleges that she was significantly prejudiced in making full answer and defense to the allegations as a result of GymCan's decision to pay the legal fees of several of the athlete complainants.
60. Ms. Saadi argues that the Panel's decision not to stay the proceeding was wrong, and in being forced to participate in the Panel's proceedings without any contribution towards her legal fees denied her natural justice.
61. In my view, the Panel's interpretation of the *Policy* was incorrect. Section 8.1 is clear: The Complainant "shall be responsible for all costs ... as well as those costs associated with any legal or other type of representation" (my emphasis). Section 11.2.2.b.iii relates to the principles of natural justice and the ability of a complainant to have an advocate assist them. In my view, the provisions of Section 11.2.2.b.iii cannot override the clear words of Section 8.1.
62. GymCan agreed to pay Ms. Bellehumeur's fees to act as an Athlete Advocate. Ms. Bellehumeur concedes that Affected Parties C, D and E (the athletes) regarded her as their counsel. In effect, the Athlete Advocate, whose fees were paid by GymCan, acted for three athletes before the Panel. I find that, in paying legal fees to Ms. Bellehumeur, GymCan was in breach of section 8.1 of the *Policy*.
63. Despite this breach however, I am unable to find that Ms. Saadi was denied the right to a fair hearing. As the Panel noted (at para. 37 of its Preliminary Decision),

citing the Supreme Court of Canada's decision in *Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)* 2007 SCC 2), "procedural fairness does not imply a guarantee of equality of resources to all parties in terms of funding legal representation."

64. Many regulatory and disciplinary bodies such as human rights tribunals, as well as the Court of Arbitration for Sport, ensure that vulnerable and often legally unsophisticated parties have access to a form of legal aid. This is done to ensure that those vulnerable parties, typically claimants, can access legal processes to advance or defend their rights. In the instance of the Court of Arbitration for Sport, the legal aid scheme is administered by the governing body of the Court (which in this case would be akin to GymCan). There are many models of providing financial support to one party to a proceeding.
65. I agree that GymCan's decision to directly fund the Athlete Advocate seems unfair to Ms. Saadi and that the process for establishing what was akin to a legal aid fund ought to have been governed by clear guidelines and greater transparency.
66. Even if I am incorrect in concluding that Ms. Saadi's procedural rights were not breached by the Panel, the proper remedy would be to refer this dispute back to GymCan to convene a new Panel. Given that Ms. Saadi's seeks, ultimately, a sanction hearing *de novo* before the SDRCC on the findings of the Investigation report rather than seeking to have the matter sent back to GymCan, I conclude that the remedy she seeks is being achieved through this appeal.

Was the Sanction decision unreasonable?

67. While Ms. Saadi accepts the Investigator's factual findings as well as the Investigator's conclusions about what sections of the *Policy* had been breached, she contends that the sanction is grossly unreasonable and indefensible. Ms. Saadi also says that the Sanction decision was internally inconsistent. She argues that, despite finding that a lifetime ban was 'disproportionate retribution or punishment' and therefore unreasonable, it then imposed, what is, effectively, given her age, a lifetime ban.
68. The Investigator found sixteen different violations of five policies and eleven different categories of maltreatment over a period of 13 years. The substantiated complaints included both psychological abuse and physical abuse, and included body shaming, name calling and criticizing athletes, yelling and screaming at them, creating a toxic environment, and exercising an excessive amount of control over them, restricting their food and water intake, aggressive physical contact, dispensing non-prescribed and/or unapproved pills/supplements,

forcing athletes to train and compete while injured or too exhausted to do so safely, rejecting medical opinions and recommendations of professionals when those conflicted with her own personal views, and ignoring policies and procedures.

69. In summary, the Investigator found over 100 violations of various GymCan policies, including the *Abuse, Maltreatment and Discrimination Policy*, the *Code of Ethics and Conduct Policy*, and the *Safe Sport Policy* and that those violations had a detrimental effect on the physical and mental health of the athlete complainants.
70. The Panel considered the sanctioning principles identified in GymCan's 2019 *Policy* as well as the Universal Code of Conduct to Prevent and Address Maltreatment in Sport ("UCCMS") and GymCan's 2022 Discipline and Complaints Policy (para. 18). It also considered case law on sanctions applied in disciplinary hearings in other professions, primarily teachers, in light of the similarities in the power dynamics (para. 19).
71. The Panel determined that the 2019 *Policy* was open-ended in terms of sanctions and factors to be considered in determining an appropriate sanction. It further found that the UCCMS principles usefully informed the list of sanctioning considerations in the 2019 *Policy*.
72. The Affected Parties all sought a lifetime ban for Ms. Saadi, while GymCan proposed a full suspension of membership from Gymnastics Canada and any Provincial gymnastics bodies for no less than 7 to 10 years.
73. Ms. Saadi argued that a lifetime ban was not appropriate, as it had never been imposed on a coach for non-sexual offences. Ms. Saadi conceded that an appropriate penalty should be at the top of the reasonable range and proposed that a suspension of five years was appropriate.
74. The Discipline Panel considered that its primary function was to protect the public, that is gymnasts and other participants in the sport, and to maintain high professional standards, and not to exact retribution (para. 43).
75. The Discipline Panel then considered Ms. Saadi's conduct, including that she exploited her position of authority and trust to excuse her misconduct and to manipulate athletes and members of the gymnastics community; threatened gymnasts' competitive ambitions; instilled and normalized a culture of fear which allowed her to manipulate gymnasts' weight and demean them and reject medical opinions and policies and procedures that conflicted with her own views and strategies; and took her frustrations out on gymnasts, or ignored and rejected them for poor training or competitive results.

76. The Panel found that Ms. Saadi's experience as a high-performance coach should have led to her know that her conduct was prohibited by GymCan's policies. The Panel noted the Investigator's findings that Ms. Saadi was dismissive or sought to justify her conduct when complaints about her conduct were raised with her. The Panel found this to be an aggravating factor.
77. Specifically, the Panel noted that, while addressing the Panel, Ms. Saadi expressed regret for having hurt her athletes but found that she had not "gained any insight or understanding as to the seriousness of her wrongdoing and its consequences on the Complainants and did not meaningfully take responsibility for the harm caused by her conduct." (para 47). The Panel found that Ms. Saadi's lack of insight to be an aggravating factor.
78. The Panel considered the nature and duration of Ms. Saadi's relationship with the athletes, the prolonged nature and abusive effect of her behaviour, the fact that multiple athletes were minors at the time and especially susceptible to the negative effects of her misconduct, as well as Ms. Saadi's inability to correct that behaviour when it was communicated to her (para. 48).
79. The Panel determined that a lifetime ban against Ms. Saadi "could be characterized as disproportionate retribution or punishment" and that it was not appropriate in the circumstances since its primary consideration was protection of athletes and the gymnastics community and not to exact retribution (para. 49).
80. The Panel wrote that they considered "each complaint, the findings of the Investigator's report, each victim impact statement, and ... the physical and psychological harm caused by the misconduct and abuse found by the Investigator" (para. 51) in arriving at their sanction decision.
81. The parties agreed that there is little reported jurisprudence on the issue of sanctions in similar circumstances, and of those, most are specific to teachers. Other similar cases that may have been publicly reported contain an insufficient factual foundation to assess any degree of comparability.
82. All parties agreed that the case of Maggie Haney, an elite gymnastics coach in New Jersey, was the most comparable. However, apart from New York Times articles which refer to some of the facts, the actual decision is unreported. In that case, U.S.A. Gymnastics suspended Ms. Haney from gymnastics for eight years for bullying the athletes, shaming them about their weight which led to eating disorders, and forced them to train with injuries. Ms. Haney's suspension was later reduced to five years because an arbitrator found that U.S.A. Gymnastics had failed to provide Ms. Haney proper notice of several allegations in advance of the hearing.

83. According to the New York Times report, six individuals complained about Ms. Haney's conduct, and following a "weekslong disciplinary hearing" an independent hearing panel determined that Ms. Haney would be "barred from membership in the federation and any coaching of U.S.A. gymnastics athletes or its member clubs" for eight years followed by a two-year probationary period. After that probationary period expired, the hearing panel determined that Ms. Haney would be allowed to reapply for membership after submitting proof she had completed SafeSport courses. As with Ms. Saadi's arguments regarding the bias allegations arising from the class action proceedings, Ms. Haney contended that U.S.A. Gymnastics "used her as a scapegoat after its missteps in the [Larry] Nassar case, in which the organization failed to protect its gymnasts from a sexual predator."
84. The Panel found that the case of Ms. Haney was most applicable given the similarities in the length of the misconduct, the non-sexual nature of the misconduct and the factual findings in both cases of physical and psychological abuse. (para 38 and 39). The Panel noted that:
- ... the behaviour reported in Haney was similar to Ms. Saadi, including berating, using physical violence, rejecting gymnasts who struggled, belittling those who complained, creating a culture of fear and control, and failing to maintain proper boundaries with gymnasts. Gymnastics Canada is of the view that Ms. Saadi's conduct was more severe than Haney's because Ms. Saadi rejected medical opinions, dispensed non-prescribed pills and supplements and instructed gymnasts to consume them. (Para 39)
85. There is no dispute that the Panel had the power to decide on a sanction under Section 11.3 of the *Policy*.
86. I find that the Panel considered all relevant factors and did not consider irrelevant ones. It fully considered all the cases put before it, including that of Ms. Haney. It considered the reported differences between Ms. Haney's case and the non-disputed evidence before the Panel, including the evidence that Ms. Saadi dispensed non-prescription medication and supplements to the athletes.
87. While I agree that the length of the sanction imposed by the Panel is higher than any other reported cases, I am unable to find that it is unreasonable or disproportionate. I note that Ms. Haney was originally sanctioned with an eight-year ban which was reduced to five on appeal due to a denial of due process. The appellate arbitrator found that the initial panel should not have considered the allegations of four athletes. According to the newspaper reports, if the arbitrator on appeal found that the initial panel ought not to have considered the

complaints of four athletes, that would have left the complaints of two athletes to be considered. A five-year suspension for findings of maltreatment of two athletes over a shorter period of time than that conceded to by Ms. Saadi does not render Ms. Saadi's sanction of 10 years unreasonable.

88. The Panel considered its primary function to be that of protection of members of GymCan, and importantly, the athletes. The Panel expressly stated that it found that a lifetime ban was disproportionate. The sanction was for a full suspension of membership for ten years, with credit served for the provisional suspension period. At the time the sanction decision was issued, Ms. Saadi had been provisionally suspended for approximately three years. The Panel took into account the delays in the Investigation and hearing process.
89. There is no doubt that, given Ms. Saadi's age, the Panel's sanction could be perceived as a functional lifetime ban. At the end of the period of full suspension, she will be approaching 80 years old.
90. While I agree that the sanction imposed was higher than the most comparable case, I cannot agree it was unreasonable or manifestly wrong. There were factors that distinguished, and arguably made Ms. Saadi's conduct worse than Ms. Haney's, including the insistence that the athletes take undetermined substances which arguably had, or had the potential to have, serious physical consequences and the fact that the maltreatment occurred over a longer period of time.

Did the Panel deny Ms. Saadi natural justice by publishing the Sanction decision?

91. On November 18, 2023, the Panel ordered that the Sanction decision be publicly released. However, before it did so, the Panel sought the position of the parties. Ms. Saadi indicated that she intended to appeal the decision and asked that it not be publicly released. The Panel nevertheless ruled that the Sanction decision could be published, stating that it was in the sport community's interest to have full transparency, and in the gymnastics community's interest to have the reasons for its decision. The Panel also found that there would be no prejudice to Ms. Saadi in making the decision public, as the results of any appeal would also be made public.
92. The *Policy* expressly provides that, where the Panel has determined that a Major Infraction has occurred, it may publish the disciplinary sanction (section 11.3 j.) as part of the disciplinary penalties. I am unable to conclude that the Panel breached the *Policy* in publishing the sanction decision. I note Ms. Saadi's argument that the 2022 *Complaints Policy* as well as the 2022 *Appeal Policy* unambiguously mandate that publication may occur after the initial internal

appeal deadline has passed. However, as Ms. Saadi emphasized in her reply submissions, it is the 2019 *Policy* that is applicable in this appeal.

93. I further note Ms. Saadi's argument that section 11.3 j. only provides for publication of the disciplinary sanction itself (i.e. the mere fact of a suspension) rather than the reasons for that sanction. I disagree. There is nothing in section 11.3 j. that restricts publication to the mere outcome of the hearing. I find that, as part of the sanction, the Panel was able to publish the full reasoned sanction decision.

CONCLUSION

94. In conclusion, I find that the Panel's decision was well reasoned and based on the facts and law before it. I find that it fell within a range of possible, acceptable outcomes and decline to interfere with it.

95. The appeal is denied.

96. I thank all parties for their thorough and helpful submissions and respectful and effective advocacy on behalf of their clients.

COSTS

97. I order that all parties bear their own costs.

DATED: June 27, 2024, Vancouver, British Columbia

A handwritten signature in black ink, appearing to read 'Carol Roberts', written in a cursive style.

Carol Roberts, Arbitrator