

**IMPORTANT NOTE: *This version is a translation of the original French version***

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

**File N°.: SDRCC 25-0762**

**AUDREY ROUSSEAU  
(Claimant)**

**AND**

**GYMNASTICS CANADA (GYMCAN)  
(Respondent)**

**AND**

**TEGAN SHAVER  
KAHLYN LAWSON  
(Affected Parties)**

**Before:**

Patrice Brunet (Arbitrator)

**Appearing:**

For the Claimant: Ms. Jacinthe Émard  
Ms. Audrey Rousseau

For the Respondent: Ms. Jenny Trew

For the Affected Party  
Tegan Shaver: Ms. Amanda Tambakopoulos

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**REASONED DECISION**

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## **I. JURISDICTION**

1. The Sport Dispute Resolution Centre of Canada (“**SDRCC**”) was established under *the Physical Activity and Sport Act* (the “**Act**”) assented to on March 19, 2003.<sup>1</sup>
2. Pursuant to Section 10 of the Act, the SDRCC has the exclusive authority to provide the sport community with a Canada-wide alternative dispute resolution service for sport disputes, including those between sport organizations and their members.
3. All parties agreed to recognize the jurisdiction of the SDRCC in this case.

## **II. The Parties**

4. Ms. Audrey Rousseau (the “**Claimant**”) is a 25-year-old Canadian artistic gymnast. She is a member of the Canadian national artistic gymnastics team and competed in the World Gymnastics Championships in Kitakyushu, Japan, in 2021.
5. Gymnastics Canada (“**GymCan**” or the “**Respondent**”) is the national organization responsible for the organization and promotion of gymnastics at the national level, in the disciplines of artistic gymnastics, rhythmic gymnastics, acrobatic gymnastics, trampoline and tumbling. It is a member of the International Gymnastics Federation (“**FIG**”).
6. Tegan Shaver and Kahlyn Lawson (together, the “**Affected Parties**”) are Canadian female artistic gymnasts, both members of GymCan.

## **III. INTRODUCTION**

7. On January 27, 2025, the Claimant filed a request with the Ordinary Tribunal of the SDRCC, pursuant to Article 10 of the *Gymnastics Canada Appeal Policy* and Section 6.1 of the *Canadian Sport Dispute Resolution Code* (the “**Code**”), to appeal the decision of the Carding Working Group (“**CWG**”) not to recommend her to Sport Canada for carding.
8. Pursuant to Section 3.6 of the Code, the SDRCC held an administrative call between the Parties on February 5, 2025, to discuss administrative matters of procedure.
9. On February 10, 2025, the Parties attended a mandatory Resolution Facilitation session, pursuant to Subsection 4.2 (b) of the Code.
10. On February 11, 2025, I agreed to act as the Arbitrator in the case after being appointed by mutual agreement between the Parties, in accordance with Subsection 5.3 (b) of the Code.
11. On February 18, 2025, I held a preliminary conference with the Parties, as provided for in Subsection 5.7 (a) of the Code, to discuss the next steps in the case, the language of the proceedings, the designation of representatives, and the affected parties. It was agreed that the Parties could file their submissions and exhibits in the language of their choice, and that the services of an interpreter would be provided by the SDRCC at the

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<sup>1</sup> *Physical Activity and Sport Act*, S.C. 2003, c.2.

hearing, pursuant to Section 3.8 of the Code. The Respondent identified two affected parties that I added: Tegan Shaver and Kahlyn Lawson.

12. On February 21, 2025, the Claimant filed her written submissions.
13. On February 26, 2025, the Affected Parties were notified and invited to participate in this procedure in accordance with Section 6.5 of the Code. On February 27, 2025, Tegan Shaver confirmed her participation in the proceeding. Kahlyn Lawson did not respond to the SDRCC invitation.
14. On February 28, 2025, the Respondent filed its written submissions.
15. The Affected Parties were invited to come forward if they wished to make written submissions, failing which they could make oral submissions during the hearing. They did not express a desire to make written submissions, and Ms. Amanda Tambakopoulos made oral submissions at the hearing on behalf of Tegan Shaver.
16. A hearing was held by videoconference on March 3, 2025. At this hearing, the Claimant, the Respondent and the Affected Party (together, the **"Parties"**) completed their oral submissions on their respective positions.

#### IV. **BACKGROUND**

17. This case concerns the Respondent's decision, as made by the CWG, not to recommend the Claimant to Sport Canada for carding under the Athlete Assistance Program ("**AAP**").
18. The Gymnix Challenge competition took place in Montreal from March 8 to 10, 2024. The Claimant participated with permission from GymCan. She qualified for and participated in the finals.
19. A few days prior to the competition, on March 4, 2024, the Claimant received by email the Respondent's weekly newsletter, the *WAG Weekly Update*, which indicated the following:

##### **3) Clarifications**

*Gymnix - Athletes who are competing in the Second Session are representing their club and should therefore wear their Club leos. Athletes listed on the Google Spreadsheet under the Second Session will have their scores counted as an Assignment towards the INP. If your name is no longer listed on the Google sheet, we are still expecting you at Gymnix and your scores will count for Rankings and Carding, however it means you have been assigned to two other meets that will count for your INP scores. [Our emphasis]*

20. Following the Gymnix Challenge, the Respondent informed the gymnastics community in its weekly newsletter of March 27, 2024, that the scores from the competition finals would not count toward the rankings. The Respondent's communication reads as follows:

## **2) Assignments & Rankings : Updates**

**Gymnix Challenge finals** are **NOT** used for any ranking purposes - this is due to the fact that it was easier for athletes to make the Challenge finals than the l'International Gymnix finals and would give the athletes who were not named to the NT for this event an advantage over those who were.

*[Translator's note: The French and English versions of this newsletter are not identical. The excerpt reproduced above is taken from the English version, and does not constitute a verbatim translation of the French text as it appeared and was cited in the original decision.]*

21. In its weekly newsletter of May 7, 2024, the Respondent released an initial version of the *AAP Carding Criteria – 2025* (the “**Criteria**”), dated April 30, 2024. This document was finalized on August 23, 2024, and officially released to the gymnastics community on September 9, 2024.
22. On September 9, 2024, the Respondent published an update of the women’s artistic gymnastics rankings in its weekly newsletter based on the carding points earned during the year. The Claimant’s score was 76 points, including the 5 points she earned from her results at the Gymnix Challenge finals.
23. On November 12, 2024, the Respondent released a new update of the carding point rankings. The Claimant’s score was reduced to 71 points, excluding the 5 points obtained at the Gymnix Challenge finals. Another ranking update was released on December 2, 2024, still excluding the points from the Gymnix Challenge finals.
24. On December 3, 2024, Ms. Jacinthe Émard, the Claimant’s coach, contacted the Respondent to report that the points from the Gymnix Challenge finals had been omitted from the carding point rankings.
25. On December 4, 2024, following Ms. Émard’s intervention, the Respondent published an updated version of the carding point rankings in its weekly newsletter that included the points obtained at the Gymnix Challenge finals.
26. On December 5, 2024, the CWG met to select the athletes to be nominated for carding in 2025. The selection was based on the latest version of the Criteria, dated August 23, 2024, as well as the carding point rankings updated on December 4, 2024, which included the points obtained in the Gymnix Challenge finals.
27. The nominations were shared with the gymnastics community via the weekly GymCan newsletter on December 11, 2024, and officially submitted to Sport Canada on December 13, 2024. The Claimant was one of the nominated athletes.
28. On December 20, 2024, a GymCan coach contacted the Respondent to inform it that he believed an error had been made in the carding rankings and nominations due to the inclusion of the scores from the Gymnix Challenge finals, which should not have been counted. He subsequently provided the Respondent with supporting documents to this effect on December 29, 2024.

29. On January 22, 2025, the Respondent informed the Claimant that the carding nominations had been revised to align with the carding rankings as they stood on December 2, 2024. As a result, the Claimant was excluded from the list of athletes recommended to Sport Canada for carding.

**V. APPLICABLE LAW AND STANDARD OF REVIEW**

**APPLICABLE LAW**

30. The onus of proof in carding disputes is established in Section 6.10 of the Code, which reads as follows:

***6.10 Onus of Proof in Team Selection and Carding Disputes***

*If an athlete is a Claimant in a team selection or carding dispute, the onus will be on the Respondent to demonstrate that the criteria were appropriately established and that the disputed decision was made in accordance with such criteria. Once that has been established, the onus shall be on the Claimant to demonstrate that the Claimant should have been selected or nominated to carding in accordance with the approved criteria. Each onus shall be determined on a balance of probabilities. [Our emphasis]*

31. The 2025 AAP carding criteria for women's artistic gymnasts were established by GymCan in its August 23, 2024 document, *AAP Carding Criteria – 2025*.
32. According to Section 1 of the Criteria, Sport Canada's AAP carding nominations are based on performance criteria established by GymCan. Section 1 reads as follows:

*Gymnastics Canada (GymCan) participates in the national "Athlete Assistance Program (AAP)" managed through Sport Canada; as a recognized Olympic discipline, Women's Artistic Gymnastics (WAG) can nominate athletes annually to Sport Canada for consideration of financial and material support based upon agreed performance criteria published in advance by GymCan. An athlete's performance in the year, and in line with the published AAP performance criteria for that year, only makes the athlete eligible for nomination consideration for AAP support in the following year. It is in no way a guarantee of AAP nomination or support for the following year.*

*[...]*

*The carding cycle for Women's Artistic Gymnastics is from January 1, 2025 to December 31, 2025. The nominations will be based on results obtained from December 1, 2023, to November 30, 2024.*

33. Nominations are the responsibility of the CWG, which must select athletes in accordance with the carding process as outlined in Section 4.1 of the Criteria:

*The identification of athletes to be nominated to Sport Canada will be the responsibility of the WAG Carding Working Group (CWG). Nominations*

*will be based on the carding process and the expert assessment of the CWG. The CWG role is to provide appropriate high-performance technical input into the discussion regarding athlete nominations for AAP carding consideration. The CWG will work by consensus.*

34. Section 11 of the Criteria sets out the carding nomination process:

*AAP carding nominations will be allocated in priority order as follows until the AAP funds are depleted. The ranking list will continue to name 4 alternates:*

***Priority 1 – 10 cards (or partial cards) to Senior aged athletes from the preceding competitive season in the following order:***

***1.1 Sport Canada Senior International Criteria (SR1)***

*[...]*

***1.2 Sport Canada Senior International Criteria (SR2)***

*[...]*

***1.3 GymCan Senior National Criteria GymCan (SR)***

*This criterion is designed to identify athletes who have the potential to achieve the Senior International criteria (above).*

- a) *The remaining Priority 1 allocation will be filled by athletes in rank order using Schedule A with a minimum best All-Around score of 50.0 from a carding points eligible competition or be top 3 in carding points on an individual apparatus.* [Our emphasis] [Translator's note: An indication of "emphasis" was mistakenly omitted from the original decision.]

35. Carding points, which determine athletes' rankings, may be accumulated at the competitions listed in section 10.2 of the Criteria:

*Points can be accumulated from domestic competitions (Elite Canada and Canadian Championships) and international competitions. The eligible international competitions are those held according to Junior or Senior FIG rules (minimum FIG I) where the athlete was 'assigned' or 'authorized' to take part by GymCan.*

### **STANDARD OF REVIEW**

36. The standard of review applicable in this case is the reasonableness standard established in *Dunsmuir*,<sup>2</sup> and subsequently confirmed and clarified by the Supreme Court of Canada in *Vavilov*.<sup>3</sup>

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<sup>2</sup> *Dunsmuir v. New Brunswick*, 2008 1 SCR 190.

<sup>3</sup> *Canada v. Vavilov*, 2019 SCC 65.

37. In accordance with the standard of reasonableness, the SDRCC, as an administrative decision maker, must show deference to the Respondent's initial decision. However, it may substitute that decision if it is found to be unreasonable, i.e., if it does not meet the requirements of intelligibility, transparency and intrinsic justification.

## **VI. POSITION OF THE PARTIES**

### **CLAIMANT'S POSITION**

38. The Claimant argues that the Respondent erred in failing to award her the five carding points that she earned in the Gymnix Challenge finals, held from March 8 to 10, 2024. As a result of the January 22, 2025 decision, she was excluded from the list of athletes recommended to Sport Canada for carding in 2025.
39. The Claimant argues that the results of the Gymnix Challenge finals should be considered in the carding point ranking system, as the Respondent had originally planned to include them before the competition. On March 4, 2024, a few days prior to the event, the Respondent had effectively informed the gymnastics community, via its weekly newsletter, that the Gymnix Challenge scores would count towards carding. It specified: *"we are still expecting you at Gymnix and your scores will count for Rankings and Carding."*
40. The Claimant states that she based her decision to participate in the Gymnix finals on this information, despite a latent injury. Her goal was to earn carding points to maximize her chances of obtaining a card for 2025. It was a difficult decision to make, as it threatened to jeopardize her preparation for other upcoming major competitions she was due to take part in.
41. The Claimant argues that the Respondent's decision not to recommend her for carding on the basis of a ranking that excluded the points earned at the Gymnix Challenge finals was inconsistent with the information provided by the Respondent prior to the competition. She argues that the Respondent had clearly indicated that the Gymnix Challenge results would count toward card allocation, which guided her decision to take part in the finals. The retroactive exclusion of these points constitutes an unjustified reversal and is contrary to the principles of fairness and predictability.
42. The Claimant also argues that the Respondent's communications following the competition did not indicate clear intent to exclude the Gymnix Challenge finals scores from the carding points calculation. In its March 27, 2024 communication, the Respondent informed the gymnastics community as follows: *"[The] Gymnix Challenge Finals are NOT used for any ranking purposes."* However, this statement is ambiguous regarding its application to carding points, leaving room for uncertainty as to the true scope of this exclusion.
43. According to the Claimant, the newsletter instead demonstrated the Respondent's intention to count scores from the Gymnix Challenge finals towards carding, as it only specifies that these results will not be used for rankings, without explicitly mentioning they would be excluded from the carding calculation. The Respondent notes that in its March 4, 2024 communication, the Respondent made a distinction between using the

competition results for the rankings and for carding allocation. On this basis, the Claimant concludes that the Respondent had always intended to include the scores from the Gymnix Challenge finals in the carding points calculation, and that their subsequent exclusion constitutes an unjustified modification to the criteria after the competition was over.

44. The Claimant argues that the Respondent initially did intend to include the points earned at the Gymnix Challenge finals in the carding process, as reflected in the September 9, 2024 update to the carding point rankings. Furthermore, she states that the Respondent itself acknowledged its error by excluding these points in subsequent updates on November 12 and December 2, 2024. This acknowledgement was reflected in the Respondent's December 4, 2024 correction restoring these points to the ranking, thereby confirming that their previous omission had not been justified.
45. For these reasons, the Claimant seeks to have the points she obtained in the Gymnix Challenge finals restored to the carding point calculation. Consequently, she also requests that her carding nomination be recommended once again for 2025, in accordance with the criteria originally communicated by the Respondent.

#### **RESPONDENT'S POSITION**

46. The Respondent states that its decision of January 22, 2025, not to recommend the Claimant to Sport Canada for carding is reasonable and consistent with the nomination process established and approved by its Women's Program Committee ("**WPC**"). It argues that this decision is based on rigorous application of existing criteria and is part of a fair process to ensure consistency and integrity in the selection process.
47. The Respondent maintains that, although Gymnix Challenge qualifying round scores were to be taken into account in the carding point rankings, it was never the intention to consider the results of the competition finals in the nomination process. It justifies this exclusion by the level of difficulty of the Gymnix Challenge, which it considers to be lower than that of the Gymnix International competition, an FIG-sanctioned event held on the same dates. According to the Respondent, awarding carding points for the Gymnix Challenge finals would have given participants in the competition an unfair advantage over those competing in the Gymnix International finals, which are harder to get into due to the higher level of competition.
48. The Respondent says that its actions have always been consistent with that intent. The Respondent notes that it informed the gymnastics community on March 27, 2024, that the results of the Gymnix Challenge finals would not be taken into account for carding points. It also argues that these points were never included in the official athlete ranking, with the exception of an error in the December 4, 2024 update that temporarily incorporated these results before being corrected.
49. This error changed the final carding point rankings and led to the erroneous nomination of certain athletes. The Respondent submits that correcting this error was necessary to ensure the integrity of the appointment process and to make recommendations that meet the pre-established criteria. It asserts that this correction ensured compliance with established rules, including the exclusion of the Gymnix Challenge finals results, and prevented an administrative error from compromising the fairness of the carding selection process.



50. The Respondent argues that its decision represents the fairest outcome for the gymnastics community as a whole, ensuring consistent and rigorous application of the established selection criteria.
51. Incidentally, the Respondent acknowledges the miscommunication that led to these difficulties. It noted that there has been an abnormal turnover of staff over the past year, which has caused it challenges in administering its various programs, and which could have explained the marking and communication errors noted in the various documents.
52. Accordingly, the Respondent seeks dismissal of the opposing party's claim on the grounds that the correction to the carding point rankings was justified and consistent with the nomination process's principles of transparency and fairness.

#### **POSITION OF AFFECTED PARTY**

53. The Affected Party submits that the Claimant had had several opportunities to challenge the changes to the selection criteria, including the exclusion of the Gymnix Challenge finals points. Indeed, as early as March 27, 2024, the Respondent communicated this information to the gymnastics community in its weekly newsletter, stating that the results of the Gymnix Challenge finals would not be used for rankings. The Claimant, having received this communication, could have raised any objection at that time if she felt that this decision was contrary to the existing criteria or likely to cause her harm.
54. In addition, the Claimant also received several updates to the carding point rankings, including those of November 12 and December 2, 2024, in which her points from the Gymnix Challenge finals were not included. On each of those occasions, she could have pointed out the omission and asked for clarification on the application of the criteria. The Affected Party therefore considers that the Claimant has had ample time to present her concerns. Her lack of prior opposition weakens her argument that the exclusion of these points constitutes an unexpected or unjustified decision on the part of the Respondent.

#### **VII. ANALYSIS**

55. In this case, it is for me to determine whether the Respondent met its onus of proof by demonstrating that the carding criteria were appropriately established and applied and that the disputed decision was made in accordance with such criteria, in accordance with Section 6.10 of the Code.
56. Based on the written and oral submissions of the parties and the exhibits submitted in support, I find that the Respondent did not discharge its onus of proof as required under Section 6.10 of the Code.
57. First, the Criteria would have benefitted from greater clarity. The final version, dated August 23, 2024, states in section 10.2 that carding points may be accumulated in national competitions, including Elite Canada and the Canadian Championships, as well as in international competitions. However, there is no additional indication to determine precisely which national and international competitions are eligible or excluded from this process. This lack of clarity creates ambiguity that can hinder the

consistent and predictable application of the selection criteria to the detriment of the Respondent and the broader sport community.

58. In the absence of additional clarifications in the Criteria, the Respondent's communications are of substantial importance in clarifying how carding points will be counted. The information provided to the gymnastics community, particularly through the weekly newsletter, plays a key role in clarifying eligible competitions. These communications must therefore be consistent, accessible and unambiguous in order to ensure a fair and predictable application of the selection rules.
59. In announcing on March 4, 2024, that the Gymnix Challenge results would be taken into account in calculating carding points, the Respondent completed the Criteria, which were not fully and clearly established in their official August 23, 2024 version. This communication helped clarify the interpretation of the Criteria by filling in the gaps in the official document and created a legitimate expectation among athletes that these results would be included in the carding selection process.
60. In this communication, no distinction was made between the qualifications and the finals of the Gymnix Challenge. The indications provided by the Respondent suggested that all of the results of this competition, from the qualifying and final rounds alike, would be taken into consideration in the carding point rankings. The absence of any distinction reinforces the interpretation that the Respondent originally intended to include all Gymnix Challenge results in the carding selection process.
61. Following this communication, it was legitimate for the gymnastics community to believe that the Gymnix Challenge results would be taken into account in awarding carding points, and to adapt their competition decisions and strategies accordingly. The Claimant relied on this information to structure participation, choosing to compete in the Gymnix Challenge finals despite physical pain, with the goal of accumulating carding points for her nomination.
62. The Respondent cannot draw on their March 27, 2024 communication to discharge the onus of proof that the carding criteria were properly established and that it was reasonable to exclude the results of the Gymnix Challenge finals from the carding point calculation. First, this communication indicated that the finals would not be used for any rankings, without mentioning carding. However, the March 4 communication specifically mentioned rankings and carding. It was reasonable for an informed reader to conclude, based on the omission of carding in the March 27 communication, that this exclusion did not apply to it.
63. National sport organizations have a monopoly on the governance of their sport, and receive significant funding from the Government. One of their main tasks is to ensure an absolute consistency and predictability in the adoption and application of selection criteria for the composition of national and Olympic teams and for carding recommendations. An athlete who is dissatisfied with the governance of his or her organization cannot turn to a competing organization. This monopoly position creates a legal expectation that the corridor of error tolerated by arbitration proceedings will always remain very narrow, and will be limited to purely technical and obvious errors.
64. As such, carding criteria must be clear and explicit and leave no room for uncertainty as to their application. Sport organizations have an obligation to be transparent and

clear with their members to ensure an unequivocal understanding of the rules that apply to them. This requirement is all the more important because these rules have a direct impact on athletes' athletic careers, influencing their strategic choices and their involvement in competitions. In this case, the lack of clarity regarding the exclusion of Gymnix Challenge finals results from carding point calculations created uncertainty that cannot be invoked to justify changes to the selection criteria *a posteriori*. Opening this door would allow for situations of abuse and even decision-making bias, although there is no evidence to support this theory.

65. To be properly established, the carding criteria must also be defined and communicated prior to the competitions in question to ensure transparency and fairness in the selection process. Even if we were to accept that the March 27, 2024 communication could reasonably be interpreted as a change to the carding criteria, a modification of this nature after the competition could only be justified in exceptional circumstances, which is not the case here. For greater clarity, an exceptional and acceptable circumstance could, for example, be the cancellation of a competition or the denial of visas to half of the competing athletes. A simple finding, after the event, that *the calibre was not high enough* is not sufficient, unless the criteria allow the selection committee to exercise this discretion, but this discretion must be reasonable and reasonably applied. The selection criteria did not contemplate this possibility.
66. By virtue of the principles of fairness and predictability, the Respondent cannot retroactively and unilaterally change the carding criteria without compromising the integrity of the process and without causing undue prejudice to the athletes, who made their decisions based on the criteria initially communicated. Nor can the Respondent justify these changes on the basis of clerical, manifest or obvious errors, as this is a substantial change in the selection rules, not a mere technical correction.
67. Allowing changes to the selection criteria after the competitions are held sets a precedent for arbitrariness, which goes against the fundamental principles of fairness and predictability that athletes must enjoy. Such a practice calls into question the very legitimacy of the selection criteria, which must be based on objective and transparent foundations in order to ensure that sport is fair and equitable.
68. Athletes must be fully informed of the rules that apply to them before taking part in a competition, allowing them to adopt an informed strategy that complies with the established requirements. Changing these rules *a posteriori* not only harms the athletes involved, but also compromises the credibility of the selection process as a whole. Rigorous procedural fairness is essential to maintaining the integrity of the system and the confidence of athletes in sport.
69. Therefore, the Respondent did not discharge its onus of proof by demonstrating that the disputed decision was made in accordance with the established criteria. The criteria an athlete could reasonably rely on were those released on March 4, 2024, according to which the results of the Gymnix Challenge would count towards carding allocation.
70. By retroactively changing the carding point rankings and withdrawing the Claimant's 5 points on January 22, 2025, the Respondent acted in contradiction with its own criteria. Such a decision, made after the fact and without valid justification, cannot be considered reasonable. It introduces legal insecurity for athletes and compromises the

predictability of the selection process, making the Respondent's decision manifestly unreasonable.

**VIII. DECISION**

71. The Claimant's appeal is allowed. I order the Respondent to revise its objective point system ranking list to include carding points from the 2024 Challenge Gymnix finals and to present Sport Canada with the new athlete carding nominations resulting from this review.

Montreal, March 18, 2025.

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Patrice Brunet, Arbitrator