

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

June 21, 2024

Nº: SDRCC 24-0720

JORDYN CRERAR
SHALLON OLSEN
TEGAN SHAVER
(CLAIMANTS)

AND

GYMNASTICS CANADA (GYMCAN)
(RESPONDENT)

Attendees at hearing:

For the Claimants:

Jared Goad (Shallon Olsen)
David Kikuchi (Tegan Shaver)
Amanda Tambakopoulos (Jordyn Crerar)

For the Respondent:

Christian Gallardo
Jenny Trew

DECISION WITH REASONS

1. On June 5, 2024, the Claimants brought an appeal before the Ordinary Tribunal of the Sport Dispute Resolution Centre of Canada (“SDRCC”) pursuant to Section 6.1 of the Canadian Sport Dispute Resolution Code (“Code”). The matter is with respect to the format of touch warm-ups for the vault competition on day two of the Canadian Gymnastic Championships (“Championships”), which was scheduled to take place on June 9, 2024. The Claimants requested that they be permitted to have three warm-ups on day two of the competition as the warm-up format for the competition on day two, in its current form, presents a safety-related issue.
2. As the competition was occurring within days of the Claimants’ appeal, this matter was convened over Zoom and heard *de novo* on June 7, 2024. I issued a short decision on the same day.
3. The Claimants’ request was denied.
4. This is my decision with reasons.

The Parties

Claimants

5. The Claimants in this matter are high performance athletes in competition at the Canadian Gymnastic Championships.

Respondent

6. The Respondent is a National Sport Organization and the national governing body of gymnastics in Canada.

Submissions

Claimants' Submissions

7. The Claimants made joint submissions in relation to this matter. The Claimants' appeal is with respect to the format for the touch warm-ups¹ on day two at the 2024 Canadian Gymnastics Championships as set out in the GymCan 2023-2024 Combined Manual ("Combined Manual"). The Claimants submitted that the Respondent changed the format for the day two touch warm-ups. Previously, athletes choosing to compete in two vaults were given three touch warm-ups. However, under the new format, all athletes, regardless of the number of vaults, are given two touch warm-ups. The Claimants requested that this warm-up format be changed back to three touch warm-ups for athletes completing two vaults on the basis that two touch warm-ups for athletes participating in two vaults presented a safety issue and resulted in unfairness.
8. The Claimants submitted that the Respondent has attempted to match the International Gymnastics Federation (FIG) regulations with the change to the warm-up format, but has made a mistake in doing so. The FIG regulations permit three warm-up vaults for athletes choosing to compete in two vaults during an all-around qualifying competition. This is distinguished from when athletes are in final competition, wherein they are given two warm-up vaults when they are competing in two vaults. The warm-up format adopted by the Respondent is similar to the FIG regulations with respect to the final competition. However, the format for day two is not a final format and the results are drawn from both day one and day two. The Claimants submitted that day two should therefore mirror the format of day one as it would be fairer and safer to the athletes involved.
9. The Claimants provided a detailed explanation of how competing in an all-around competition could lead athletes to experience significant cool-down periods between their touch warm-ups and their performances. These cool-down periods could be as long as two hours and the delay could result in injury and impact performance. The Claimants also submitted that the third warm-up is necessary for athletes competing in two vaults as they will change their entry and approach for their second vault. Removing the additional touch warm-up can throw an athlete off and result in injury.
10. The Claimants submitted that during the last Olympic cycle, FIG removed the touch warm-ups. This resulted in a backlash from athletes and coaches around the world as posing a safety risk and led to the reinstatement of touch warm-ups for the 2022-24 Olympic cycle. The Claimants provided articles from *USA Today* and *Sports Illustrated* to demonstrate the concern from athletes at the time. These articles spoke to the reaction from those in

¹ A "touch warm-up", as it relates to vault, is one in which the athlete is given the opportunity to practice on the apparatus that will be used in competition.

the international vault community and their belief that not providing touch warm-ups increased the likelihood and potential for injury.

11. The Claimants submitted that in January 2024, the Respondent created the Combined Manual which set out the warm-up format for the Championships and other competitions. The Combined Manual was released to the coaches and athletes on or about February 14, 2024, as athletes were preparing for or travelling to Elite Canada. Elite Canada took place February 18 to 20, 2024, with the second day taking place on February 20. The Combined Manual established a touch warm-up format for the Elite Canada competition that was supposed to be the same format as that used for the Championships: two touch warm-ups on day two for athletes competing in two vaults. However, this was changed by Mr. Christian Gallardo, the National Team Head Coach & National Team Lead of Women's Artistic Gymnastics (WAG), back to three touch warm-ups. The Claimants submitted that Mr. Gallardo cited safety concerns as the reason for changing the format back to three touch warm-ups for Elite Canada. The Claimants believe that this is further evidence that switching to the two touch warm-ups presents a safety risk.
12. The Claimants submitted that based on this switch, athletes and coaches assumed that the same safety concern would still be present going forward. On May 25, 2024, Ms. Amanda Tambakopoulos (Claimant Crerar's coach) sought clarification on the amount of touch warm-ups for athletes competing on day two of the Championships. On May 29, 2024, GymCan sent an update out which stated that the Combined Manual would be followed as written which resulted in Ms. Tambakopoulos submitting a request for reconsideration. This request was denied by the Respondent.
13. The Claimants submitted that they did not appeal the Combined Manual in February when it was released for three primary reasons: (i) due to the Combined Manual's release coming out days before Elite Canada; (ii) that most of the attention of coaches and athletes was on the Olympic selection process and issues which arose as a result; and (iii) because the Combined Manual was changed by GymCan onsite at Elite Canada for safety reasons but that there was no further communication or clarity as to whether this was a one-time change.
14. The Claimants submitted that pursuant to the Combined Manual, the national team lead, Mr. Gallardo, has broad powers to make changes to the regulations without consultation and without notice. Part of this is changing the touch warm-up format, as he did during Elite Canada.
15. For these reasons, the Claimants have requested that athletes be permitted to use up to three touch warm-ups on day two of the Championships.

Respondents' Submissions

16. The Respondent submitted that the Claimants' appeal was prohibited by the GymCan Appeal Policy, which only permits appeals to the following types of GymCan decisions:
 - a) eligibility
 - b) selection decisions and AAP nominations
 - c) conflict of interest
 - d) disciplinary decisions made pursuant to Gymnastics Canada's relevant and applicable policies
 - e) membership
 - f) international judging assignment decisions made by Gymnastics Canada

17. Accordingly, this type of dispute, which the Respondent has characterized as being the upholding of an established rule, does not fall under the GymCan Appeal Policy.
18. The Respondent argued in the alternative that the touch warm-up format for the Championships should not be changed to three touch warm-ups on day two for athletes competing in two vaults as the two touch warm-ups do not create a safety-related concern.
19. The Respondent began by accepting the facts as set out by the Claimants in their submissions. The Respondent clarified that the Combined Manual does not, as the Claimants have suggested, follow FIG regulations. Instead, the purpose of the Combined Manual is to indicate where GymCan's rules deviate from the international rules.
20. The Respondent submitted that the decision to switch to two touch warm-ups, instead of three, was made after the matter was considered by GymCan's Olympic Selection Working Group and the technical experts in the Women's Program Committee. Both groups felt that the touch warm-up format in the Combined Manual was best and that it did not present a safety issue for the athletes. The Respondent submitted that the change was brought about with the goal of having athletes perform at any time. This goal arose as a result of experiences GymCan had at the World's last year. During this competition, athletes were expected to perform after significant delay. It was felt by GymCan that this resulted in a poor showing and has led the Respondent to practice performance on demand. The Respondent argued that because of the this, the decision to change the touch warm-ups meets the standard of reasonableness and that the appeal should not be allowed.
21. The Respondent submitted that the *USA Today* and *Sports Illustrated* articles submitted by the Claimants identify a safety concern. However, in the articles, the concern was as a result of athletes being given no touch warm-ups. This is distinguished from the matter at hand, where athletes are being given two touch warm-ups on day 2 of the Championships.
22. The Respondent submitted that the onus is on athletes and their coaches to know and understand the published rules, as per s. 2.4 of the Paris Olympic Games 2024 Internal Nomination Process:

The choice of a vault or of the elements in a routine for a competition rest solely with the athlete and her coaches as they are responsible for ensuring that the athlete performs elements that she masters and therefore are safe for her to perform considering the rules in place for each competition.
23. The Respondent acknowledged that the Combined Manual was released late and that it should have come out earlier. The late release was a factor in reverting the day two touch warm-ups at Elite Canada to three touch warm-ups. The Respondent submitted that the safety concern at Elite Canada arose in relation to the late release as athletes and coaches had trained and prepared with the expectation they would be given three touch warm-ups. However, the expectations are different for the Championships as athletes and coaches have been aware of the change since February 2024. This is a sufficient amount of time to incorporate the change into training and further aligns with the onus placed on athletes and their coaches to know the rules in place for each competition.
24. The Respondent submitted that a change at this late stage in Olympic qualifying could have a material impact which would unfairly disadvantage other athletes who specialize on different apparatuses.
25. For these reasons, the Respondent requested that the Claimants' appeal be denied.

Factual Background

26. The facts before this matter are not in dispute. The facts were set out by the Claimants in their submissions and have been accepted by the Respondent. The timeline has been agreed to by the Parties:
27. In January 2024, the Combined Manual was created. The Combined Manual was sent via email to stakeholders on February 14 with the rules set to take effect immediately.
28. On February 18 to 20, Elite Canada was held in Ottawa, Ontario. Day one took place on February 19 and day two occurred on February 20. On February 20, citing safety reasons, Mr. Gallardo reverted the touch warm-up format from the Combined Manual's stated two touch warm-ups to three touch warm-ups, which was the previous format. All participants were notified on site.
29. On May 25, Ms. Tambakopoulos sought clarification on the number of touch warm-ups to be used at the upcoming Championships. Ms. Tambakopoulos received an email response from Ms. Jenny Trew on May 27 advising her that she would receive an update later that week.
30. On May 29, the Respondent sent out an update to stakeholders advising that the Combined Manual would be followed at the Championships. On the same day, Ms. Tambakopoulos submitted her request for reconsideration to the Respondent.
31. On June 3, Ms. Trew responded to the request for reconsideration and advised Ms. Tambakopoulos that her request was denied.

Issues

32. The issues before this matter are thus:
 - i. Does the SDRCC have jurisdiction to consider this matter?
 - ii. Should I order that athletes be given three touch warm-ups on day two of the Championships?

Decision

Issue 1: Does the SDRCC have jurisdiction to consider this matter?

33. Yes, I find that the SDRCC has jurisdiction to consider this matter.
34. In its submissions, the Respondent has made the claim that the Claimants' appeal cannot be considered by the SDRCC. According to the Respondent, the Claimants are prohibited from bringing their appeal by virtue of the Respondent's Appeal Policy. The Respondent has argued that the Claimants' appeal amounts to a dispute over a rule and its execution, which is not identified in the list of types of decisions which may be appealed.
35. The Ordinary Tribunal of the SDRCC convened pursuant to Article 6 of the Code is not constrained to hear only those types of decisions sport organizations set in their own internal appeal policies. To do so would be to allow sport organizations to unilaterally contract out of the SDRCC and would create a perverse incentive which would run counter to the purpose of the SDRCC. The SDRCC was given life under the *Physical Activity and Sport Act* (SC 2003, c. 2) and was given the mission to provide the sport community with a national alternative dispute resolution ("ADR") service as well as

expertise in this area. Since coming into force, this has meant offering access to independent ADR to those engaged in sport in Canada at a low-cost, strengthening accountability and transparency of the national sport system and sport organizations and ensuring that ADR processes are equitable for all. As a result, I do not accept that the Respondent's Appeal Policy limits the types of decisions that can be brought before the Ordinary Tribunal.

36. In a recent SDRCC decision², I have identified the relevant considerations and the test for assessing the Ordinary Tribunal's jurisdiction. The relevant test I identified is as follows:

- 1) One of the parties to the claim is a "Sport Organization";
- 2) That the dispute is a "Sports-Related Dispute"; and,
- 3) That the SDRCC has jurisdiction pursuant to Subsection 2.1(b) of the Code.

37. The definition of a "sport organization" is identified at Subsection 1.1(xx)(i) of the Code and establishes that a "sport organization" includes, "the governing body for a specific sport or discipline at the national level or in any provincial, territorial or regional jurisdiction in Canada, as recognized from time to time by the SDRCC." As GymCan is the national governing body of gymnastics in Canada I am satisfied that the Respondent is a "Sport Organization."

38. The second prong of this test is to determine whether the matter before this Tribunal is a "Sports-Related Dispute." Pursuant to Subsection 1.1(yy)(iii) of the Code, a sports-related dispute includes, "a decision of an SO [Sport Organization] board of directors, a committee or an individual delegated to make a decision on behalf of an SO or its board of directors, which affects any Member of the SO." Based on the submissions of the Claimants and the Respondent, the decision to change the format of the touch warm-ups was made by GymCan's Olympic Selection Working Group and the technical experts in the Women's Program Committee. Furthermore, pursuant to the Combined Manual, Mr. Gallardo reserves broad powers to make changes to the touch warm-up format. As a result, I am satisfied that the matter before me is a sports-related dispute.

39. Finally, I must determine that the SDRCC has jurisdiction to consider the appeal, pursuant to Subsection 2.1(b) of the Code. Pursuant to Section 10 of the Respondent's Appeal Policy:

Notwithstanding any other provision in this Appeal Policy, by agreement between all of the Parties, the internal appeal process in relation to decisions made by Gymnastics Canada, a Case Manager, Appeal Manager or a discipline panel appointed by Gymnastics Canada may be bypassed, and the appeal may be heard directly before the SDRCC.

40. Despite the Respondent's claim that the matter cannot be appealed, the Parties to this dispute agreed to bypass the internal appeal process and to have the matter heard directly by the SDRCC. Further to this, Sections 14 and 30 of the Appeal Policy identify the SDRCC as the proper venue for hearing appeals of Appeal Manager decisions.

41. Based on my findings above, I am satisfied of the following:

- 1) That the Respondent, GymCan, is a sport organization;
- 2) That the dispute before me is a "Sports-Related Dispute" as defined by Subsection 1.1(yy)(iii) of the Code; and,

² See my decision in *Athlete and Director of Sanctions and Outcomes (DSO) and Office of the Sport Integrity Commission (OSIC)*, SDRCC 23-0682 at pages 10-14.

- 3) That the SDRCC has jurisdiction pursuant to Subsection 2.1(b) of the Code.
42. I therefore find that the SDRCC has jurisdiction to consider this matter.

Issue 2: Should I order that athletes be given three touch warm-ups on day two of the Championships?

43. No. The Respondent acted reasonably in changing the touch warm-up format for athletes participating in two vaults on day two of the Championships.
44. Pursuant to Section 6.11 of the Code, a panel appointed under the Ordinary Tribunal has the full power to review the facts and apply the law as well as to substitute its decision for the decision that gave rise to the dispute.
45. Based on the submissions of the Parties, I am satisfied that the decision to change the format of the touch warm-ups from three to two on day two of the Championships was made reasonably, involved the participations of two committees and was communicated with enough time for athletes and their coaches to consider in their training.
46. I acknowledge that there was some confusion after the Respondent changed the format for Canada Elite. As a result of this confusion, I have not rigidly adhered to the timing requirements identified in the Code or in the Respondent's Appeal Policy. I am satisfied that the reasons for the change at Canada Elite was for good reason. I am also satisfied that the safety concerns which were cited at Canada Elite are distinguished from any safety-related issues which may have been present at the Championships. The difference is that at Canada Elite, the touch warm-up format changes were provided to athletes and their coaches mere days ahead of the competition and it would have been unreasonable to expect athletes and their coaches to adapt to these changes in the time they were given. The safety-related issues here would have been attributable to the actions of the Respondent. However, the changes to the touch warm-up format were provided months ahead of the Championships with sufficient time for athletes and their coaches to include in their training.
47. I accept that the Respondent could have communicated with coaches and athletes that it would be moving ahead with the two touch warm-ups on day two of the Championships, as per the Combined Manual. However, it is also the case that the Claimants could have sought this clarification earlier.
48. As a result, I see no reason to exercise my discretion set out at Section 6.11 of the Code.
49. I have denied the Claimants' request.

Conclusion

50. I have come to the following conclusions:
- 1) That the SDRCC has jurisdiction to hear this matter; and,
 - 2) That the Claimants' request to change the touch warm-up format is denied.
51. Given the tight timeline between when the Claimants submitted their request and the impending Championships, this matter needed to be heard quickly. I would like to note the challenges the Parties faced in bringing this matter before me, however, they did so with a level of professionalism and an air of collegiality that exemplifies what it means to participate at the national high performance level. I wish to thank them and wish them the best of luck in preparation for Paris 2024.

Signed in Ottawa, this 21th of June, 2024.

A handwritten signature in black ink, appearing to read 'D. Bennett', with a horizontal line extending from the end of the signature.

David Bennett, Arbitrator