

CANADA
Province of Québec
District: Montreal
File No. 500-06-001134-218

**SUPERIOR COURT
(Class Action Division)**

CHLOE ISAAC, residing and domiciled at 5655 Vallerand Street, in the City of Brossard, in the Judicial District of Longueuil, in the Province of Quebec

-and-

GABRIELLE BOISVERT, residing and domiciled at 2537 du Lac-Côté Road in the City and District of Québec, in the Province of Quebec

-and-

ERIN WILLSON, residing and domiciled at 513-801 King Street West, in the City of Toronto, in the Province of Ontario

-and-

SION ORMOND, residing and domiciled 8 Dodie Street, in the City of Aurora, in the Province of Ontario

-and-

GABRIELLA BRISSON, residing and domiciled at 502 8A Street NE, the City of Calgary, in the Province of [...] Alberta

-and-

REBECCA HARROWER, residing and domiciled at 14307 Summit Drive, in the City of Edmonton, in the Province of Alberta

-and-

NANCY VAILLANCOURT as tutor for **MEAGHAN LAPIERRE**, residing and domiciled at 932 Dresden Crescent, in the

**MODIFIED ORIGINATING
APPLICATION FOR
AUTHORIZATION TO INSTITUTE
A CLASS ACTION AND TO
OBTAIN THE STATUS OF
REPRESENTATIVE**

City of Ottawa, in the Province of Ontario

Petitioners

vs.

CANADA ARTISTIC SWIMMING / NATATION ARTISTIQUE CANADA, a company registered pursuant to the Canada Not-For-Profit corporations act, with its head office located at 700 Industrial Avenue, Suite 401, in the city of Ottawa, in the Province of Ontario.

Respondent

MODIFIED ORIGINATING APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(Articles 574 et seq. C.C.P.)

IN SUPPORT OF THE PRESENT ORIGINATING APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE, PETITIONERS RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. Petitioners are amateur athletes and former members of Canada's national artistic swimming team (formally known as synchronized swimming). The Petitioners ask for authorization to represent the members of Canada Artistic Swimming's senior, junior, and 13-15 national [...] teams (collectively, the "National Team") who were subjected to psychological abuse, neglect and harassment, including sexual and racial harassment by coaches and staff working at the request and under the control and supervision of the Respondent Canada Artistic Swimming ("**CAS**").

2. CAS is a Federally funded, not-for-profit corporation and the national governing body for the sport of artistic swimming.

3. Respondent CAS, has a long and shameful history of failing to provide its athletes with a safe and respectful training environment. Indeed, as more fully detailed below, CAS has long ignored the psychological abuse, neglect and harassment of the athletes of its [...] National Team at the hands of successive head coaches and other CAS staff members.

4. CAS operates its senior National Team training program at facilities located within the Institut national du sport du Québec ("**INS**") in Montreal and its junior and 13-15 National Team programs at facilities across Canada. CAS is responsible for the National Team and, among other things, hires and supervises its coaches and other support staff for the training program.

5. The Petitioners were [...] between [...] the ages of 15 and 24 years old when they were on the [...] National Team. Some were chosen to compete and represent Canada at international competitions such as the Pan-American Games, World Championships and Olympic Games. Other National Team members trained as alternates in the hopes of being chosen to represent Canada at international events.

6. Like all National Team members from the last decade, the Petitioners were young women when they came from across Canada to Montreal or other locations to train under the care and control of CAS. In so doing, the Petitioners made artistic swimming the focal point of their lives. They sacrificed any chance of a normal social life and instead embraced early mornings, late evenings and exhaustion resulting from the

excessive training regimen required by CAS coaching staff. The National Team's volume of training is unmatched in the amateur sports world, with a weekly routine that reached up to 50 hours over six days followed by a single day off. The athletes made these tremendous sacrifices not for financial gain (of which there is little in artistic swimming) but rather for the joy of sport and the hope of one day earning the chance to represent Canada on the world stage.

7. As the Federally funded national governing body for artistic swimming having power, control and discretion over the training and artistic swimming careers of the members of the National Team, CAS owed a duty of care to these young women, including an obligation to protect their health and wellbeing. Indeed, athletes have the right to participate in sport in an environment that is safe, welcoming, inclusive, ethical, and respectful and protects participants' dignity, rights, and health.¹

8. CAS failed utterly in its obligations to the Petitioners and the other athletes on the National Team to provide an environment free of psychological abuse, neglect and harassment, where these young women could pursue their dreams of excellence at the highest level. Instead, CAS permitted its staff members to psychologically abuse, neglect and harass its National Team athletes time and time again. CAS's failure to meet its obligations to the athletes placed (and continues to place) them in an untenable position: either endure the psychological abuse, neglect and harassment or give up their dreams of representing Canada at the international level.

¹ RED DEER DECLARATION – For the Prevention of Harassment, Abuse and Discrimination in Sport, February 2019 Available from » <https://scics.ca/en/product-produit/red-deer-declaration-for-the-prevention-of-harassment-abuse-and-discrimination-in-sport/>

9. As set out below, the impact of this psychological abuse, neglect and harassment on the National Team members has been both serious and prolonged – it includes, among other things, physical injury, anxiety, depression and disordered eating, which continues to haunt these women for years following their retirement from the National Team.

10. CAS's legacy of psychological abuse, neglect and harassment continues to this day. It is facilitated by CAS's repeated failure to implement appropriate policies, violations of its policies, its reluctance and failure to investigate complaints properly and take appropriate action in response to complaints, and its overall failure to initiate and foster cultural and institutional change to its toxic training environment and program.

11. CAS's continued disregard for the psychological and physical wellbeing of the National Team athletes recently resulted in the shut down in October 2020 of its Montreal training center to allow an independent review of the senior National Team training program following complaints from some athletes and external coaches of violations of CAS's Conduct Policy. The Canadian Broadcasting Corporation ("**CBC**") reported that one of the complaints that led to this shut down went so far as to denounce what was described as a "culture of fear and compliance" at CAS. The CBC further reported one external coach as saying, "I'm speaking now because it's enough, and because I'm exhausted and I'm heartbroken and I want better for them. And they deserve better," the whole as more fully appears from the copy of the article published on cbc.ca dated October 1, 2020, communicated herewith as **Exhibit R-1**.

12. The independent reviewer engaged by CAS published a report dated October 26, 2020, entitled “Independent Safe Sport Review Report” (the “**Safe Sport Report**”), a copy of which is communicated herewith as **Exhibit R-2**. “Safe Sport” generally refers to a movement to eliminate sexual abuse, psychological abuse, physical abuse, neglect, bullying, and harassment from amateur sport, not only through education but also through the implementation of codes of conduct and effective reporting and disciplining mechanisms. It takes its name from the American *Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017*, which was enacted following the revelations of Dr. Larry Nassar’s sexual abuse of gymnasts on the US Olympic gymnastics team. Safe Sport has since grown into an international movement covering all amateur sport, the whole as more fully appears from a copy of the principles of SafeSport International and the relevant page of the Canadian Centre for Ethics in Sport, communicated herewith *en liasse* as **Exhibit R-3**. CAS purports to endorse these principles, as evidenced by the CAS Safe Sport web page, a copy of which is communicated herewith as **Exhibit R-4**.

13. The 2020 Safe Sport Report, and CAS’s public reaction to same, is a devastating indictment of CAS. In the Safe Sport Report, the independent reviewer found that:

It became clear through the interview process that there is an overall lack of understanding of the CAS Conduct Policy (referred here as a Code of Conduct) and safe sport initiatives, including the process for filing complaints to the Independent Third Party Officer. [...] **there is found to be experiences of psychological abuse, bullying, neglect, sexual harassment, discrimination, and an overall culture of fear. Sexual harassment in the form of misogynistic comments and behaviour, comments that were sexual in nature, and offensive comments was found to be the most prevalent of the above items, along with discrimination which took the form of racial comments,**

comments based on religious beliefs, and comments based on gender identity.

[Underlining and emphasis added.]

the whole as more fully appears from page 4 of the Safe Sport Report (Exhibit R-2).

14. The Safe Sport Report demonstrates that a significant percentage of the athletes on the National Team reported that there are serious problems with the training environment provided by CAS. More particularly:

- (a) **44%** of the athletes had experienced or witnessed **psychological abuse** by coaches, staff, or other athletes, including **intimidating, humiliating, threatening comments and repeated personal criticism.**
- (b) **39%** of the athletes had experienced or witnessed **bullying** by coaches, staff, or other athletes, including **name-calling and social exclusion.**
- (c) **44%** of the athletes had experienced or witnessed **sexual or other forms of harassment** by coaches, staff, or other athletes, including **misogynistic comments and behaviour, comments that are sexual in nature, and offensive comments.**
- (d) **50%** of the athletes had experienced or witnessed **discrimination** by coaches, staff, or other athletes, including **racial comments, comments based on religious beliefs, and comments based on gender identity.**
- (e) **50%** of the athletes had experienced or witnessed **neglect** by coaches, staff, or other athletes, including **ignoring injury or pain, withholding medical attention, and withholding nutrition.**

- (f) **44%** of the athletes had experienced or witnessed **other violations of the Code of Conduct** by Coaches, Staff, or other Athletes outside by coaches, staff, or other athletes, including in particular **failures to follow up on a concern or complaint submitted by an athlete.**

- (g) **56%** of the athletes felt **that there was a culture of fear within the organization.** The independent reviewer reported that the fear stemmed mainly from **potential retaliation** and the fact that some complaints and concerns were not addressed in an appropriate manner.

the whole as more fully appears from the Safe Sport Report (Exhibit R-2).

15. In contrast, 100% of CAS's coaches and integrated support team staff ("**IST**") reported that CAS had a strong Safe Sport program and felt support by CAS executives and the Board of CAS on any Safe Sport issues. Only 10% of the coaches and IST acknowledged that they felt a culture of fear within the organization, the whole as more fully appears from pages 15-16 of the Safe Sport Report (Exhibit R-2).

16. The independent reviewer was given no mandate to investigate these allegations, the whole as more fully appears from the Safe Sport Report (Exhibit R-2). Instead, CAS gave the mandate to investigate the Safe Sport formal complaints to another party.

17. In January 2021, CAS announced, without making any portion of the investigation or the report public, that there was "not see sufficient evidence to conclude there is an unsafe training environment in the senior national team program," the whole

as more fully appears from the press release of CAS dated January 15, 2021 (the “**CAS Statement**”) communicated herewith as **Exhibit R-5**. The press release went on to add:

While the investigator found that there was insufficient evidence to conclude there is an unsafe training environment in the senior national team program, there was enough evidence in support of several allegations made against one individual to proceed to a disciplinary process.

The discipline process will determine if there was a contravention of the CAS Conduct Policy and, if so, the appropriate sanction, if any. When this process is complete, CAS will communicate any decisions or sanctions that are made at that time. However, at this time, CAS will not comment further on the ongoing process.

[Underlining and emphasis added.]

18. While CAS posted both the full Safe Sport Report (Exhibit R-2) and the CAS Statement (Exhibit R-5) for a brief period on the Safe Sport page of its website, both have since been taken down and are no longer available on CAS’s website.

19. With this information, CAS then made **no** staffing changes. Instead, CAS recklessly and improperly proceeded on the basis that an internal sensitivity training program would fix the toxic culture it had permitted to exist for over a decade. Compounding CAS’s significant failure to act appropriately in response to the Safe Sport Report, CAS also allowed the current Head Coach Gábor Szauder (“**Szauder**”) to return to coaching the National Team effective January 18, 2021. This decision was consistent with the attitude of CAS and its leadership, which is to deny that psychological abuse, harassment and neglect have no place in sport and are serious issues that cause lasting harm. Indeed, current CAS CEO Jackie Buckingham (“**Buckingham**”) was reported as stating the following in response to the revelations of the Safe Sport Report (Exhibit R-2):

Rien de flagrant n'a été signalé par les athlètes. Donc pas d'abus sexuel, pas d'abus physique, pas de bizutage de nos nouveaux athlètes qui sont arrivés au centre en septembre. Cela nous a donné une grande confiance. Le rapport a souligné qu'il y avait d'autres problèmes liés au harcèlement, à la discrimination de même que certains problèmes qui ont été identifiés comme de la négligence. Nous en avons donc discuté tout au long du processus d'examen.

[Underlining and emphasis added.]

the whole as more fully appears from the copy of the article from ici-radiocanada.ca dated November 2, 2020, communicated herewith as **Exhibit R-6**.

19.1. CAS's administration of formal complaints raised by current and former National Team members against various CAS representatives, including Szauder, through its internal discipline process was replete with serious errors of law and procedural fairness.

19.2. Among other errors, the decision of the internal discipline panel dated June 7, 2021 (the "Internal Discipline Decision") erroneously concluded that Szauder had not breached any applicable policies despite finding as a matter of fact that he made the following comments (among others) to members of the senior National Team:

- (a) "I will punish you and it will hit you so hard that you not gonna know where it came from!"
- (b) "Zip up your hoodie before you get me too excited."
- (c) "When was the last time you saw a white person bomb a plane?"

- (d) In respect of the Black Lives Matter movement, “You mean all lives matter, why do their lives matter more than mine?” and “Am I supposed to fire 3 of you so I can put 3 black girls on the team”?

the whole as more fully appears from the copy of the Internal Discipline Decision, communicated herewith as **Exhibit R-36**.

19.3. Further, on July 19, 2021, about two weeks before the opening of the Tokyo Olympic Games, a case manager appointed by CAS to consider the athletes’ appeal of the Internal Discipline Decision dismissed the appeal without even appointing an appeal panel, and without providing reasons, as required. This rushed decision was issued in response to undue influence from CAS, who on July 17 told the case manager that if the appeal was not dismissed forthwith, Szauder would not be accredited for the Olympics which would prejudice the team’s Olympic performance.

20. CAS’s denial of the seriousness of the issues raised by athletes and reflected in the Safe Sport Report and Internal Discipline Decision was predictable. On October 1, 2020, before the Safe Sport Report was issued, Buckingham was reported as saying: “Our people are not being investigated. Our issues are being investigated... We believe 100 percent in the talent and competence of our coaches and our support team,” the whole as more fully appears from the copy of the article from cbc.ca dated October 1, 2020 (Exhibit R-1).

21. Despite the damning conclusions of the Safe Sport Report and the Internal Discipline Decision, CAS permitted the very same leadership and coaching staff, including Szauder, to remain in charge and control over the very athletes who had

complained about their conduct. CAS thus failed (once again) to protect the athletes who have entrusted CAS with their training, mental and physical wellbeing and careers.

22. CAS's conduct in this instance should not be surprising. For more than a decade, CAS has failed to foster a safe, respectful environment, free of psychological abuse, neglect and harassment. CAS has allowed, as it continues to allow, its athletes to suffer harm at the hands of the very professionals to whom these young women have entrusted their training and artistic swimming careers, resulting in lasting physical and psychological harm to National Team members. Under the leadership of Head Coaches Julie Sauvé (2009-2012), Meng Chen (2012-2017), Leslie Sproule (2017-2018), and Gábor Szauder (2018-current), the unsafe training environment consistently included a combination of the following:

- (a) **psychological abuse**, including repeated personal criticisms, criticisms of a person's body (body-shaming), intimidating, humiliating, degrading, offensive, or threatening comments and deliberate denial of attention and support;
- (b) **neglect**, through failing to provide reasonable care and attention to athlete's needs and wellbeing. This includes denying adequate nutrition, withholding medical attention, inadequate supervision, ignoring an injury or athlete's report of pain, knowing about psychological abuse and harassment and failing to report; and
- (c) **harassment**, including sexual and racial comments that were insulting, humiliating, malicious, discriminatory, misogynist and offensive.

23. These problems were known, or ought to have been known, to CAS staff and members of CAS's Board of Directors (the "**Board**").

24. The Petitioners are former artistic swimmers and were members of the National Team at different times from 2010 to 2020. Like so many of their senior teammates and the members of the junior and 13-15 Canadian national artistic swimming teams, they suffered both mental and physical injuries while in Montreal training under the care and control of CAS. The consequences of the psychological abuse, neglect and harassment these young girls and women have experienced continue to adversely impact their lives and relationships for years following their retirement from the National Team.

25. The Petitioners assert that it is time for meaningful change. It is time to begin a new chapter in artistic swimming in Canada. It is time that the physical and psychological health of CAS athletes is no longer subordinated to performance.

26. The culture and conduct of CAS cannot be permitted to continue.

27. In light of CAS's continuous refusal to comply with its legal obligations and its refusal to acknowledge the harm being done through the psychological abuse, neglect and harassment inflicted by its personnel, on behalf of the following class of persons:

"All individuals who trained with the national swimming teams of Canada Artistic Swimming who were subjected to psychological abuse, neglect and harassment by coaches and staff of Canada Artistic Swimming between January 1, 2010, and March 8, 2021."

"Toutes les personnes qui se sont entraînées avec les équipes nationales de Natation artistique Canada et qui ont été victimes d'abus, de négligence et de harcèlement psychologique de la part des entraîneurs et du personnel de

Natation artistique Canada entre le 1er janvier 2010 et le 8 mars 2021.”

(the "**Class**")

the Petitioners hereby seek an order compelling and directing CAS to implement, apply and follow appropriate governance procedures for a national sport governing body so that the physical and psychological health of CAS athletes is both protected and no longer subordinated to performance and to recover damages for CAS's failure to abide by its duty of care and its violation of their rights under the *Quebec Charter of Human Rights and Freedoms*.

II. **THE PARTIES**

A. **PETITIONERS**

28. The Petitioners are former members of the CAS senior, junior, or 13-15 National [...] Teams:

- (a) **Erin Willson** ("**Willson**") was a member of the senior National Team from 2007 to 2013. She trained under three CAS head coaches, the last two of whom were Julie Sauvé ("**Sauvé**," 2009-2012) and Meng Chen ("**Chen**," from 2012-2013).
- (b) **Chloé Isaac** ("**Isaac**") was a member of the senior National Team from 2008 to 2014. She trained under three CAS head coaches, the last two of whom were Sauvé (from 2009-2012) and Chen (from 2012-2013).

(c) **Gabriella Brisson (“Brisson”)** was a member of the senior National Team from 2012 to 2018. Brisson trained under two head coaches, Chen (2012-2017) and Leslie Sproule (“**Sproule**,” from 2017 to 2018).

(c.1) **Rebecca Harrower (“Harrower”)** was a member of the senior National team from 2014 to 2021. Harrower trained under three head coaches, Chen (2012-2017), Sproule (2017-2018), and Szauder (2019-2021).

(d) **Gabrielle Boisvert (“Boisvert”)** was a member of the senior National Team from 2015 to 2018. She trained under two CAS head coaches, Chen (from 2015-2017) and Sproule (from 2017 to 2018).

(e) **Sion Ormond (“Ormond”)** was a member of the senior National Team from 2018 to 2020. She trained under two head coaches, Sproule (2018) and Szauder (2019-2020).

(f) **Meaghan Lapierre (“Lapierre”)** was a member of the 13-15 National Team in 2019. She trained under head coach Elena Podolsky.

B. THE RESPONDENT

29. CAS is a not-for-profit corporation established under the Canada Not-for-Profit Act, SC 2009, c. 23 (the “**NFP Act**”), with a head office in Ottawa, Ontario, the whole as more fully appears from the report of the Canadian federal corporate database communicated herewith as **Exhibit R-7**.

30. On August 21, 2018, CAS announced that it was rebranding itself from “Synchro Canada” to “Canada Artistic Swimming.” At the time, the CAS press release quoted

CAS CEO Buckingham as saying, “Our new Brand Essence – “Forging unity through diversity” and our key attributes: powerful, creative, dynamic, inclusive and collaborative, define us – and frame the identity of an aligned and focused organization as we move forward,” the whole as more fully appears from the Press Release of that date communicated herewith as **Exhibit R-8**.

31. Since at least January 2010, CAS has administered and continues to administer all training for the senior National Team at the INS in Montreal, Quebec, and select international sites for short-term training camps and competitions. CAS administered and administers training for the junior and 13-15 National Teams at facilities in cities across Canada.

III. THE INDIVIDUAL CLAIMS OF PETITIONERS

A. ERIN WILLSON AND CHLOÉ ISAAC

32. Willson and Isaac both swam with the senior National Team under three head coaches, including Sauvé and Chen.

33. Under Sauvé’s coaching, Willson and Isaac and their teammates were subjected to years of Sauvé’s psychological abuse, neglect and harassment, the whole with the knowledge and complicity of CAS.

34. In an elite-level sport, it is normal and expected that the coaches and staff would be concerned with the weight of the athletes as part of their overall fitness. It is furthermore normal to have weight goals that are commensurate with the athletes’ body composition and type. What was not normal but abusive was Sauvé’s obsession with

the appearance of the senior National Team athletes and the need for them to lose excessive weight to meet her warped, impractical and unhealthy ideal of the perfect artistic swimmer.

35. Sauv  regularly made negative comments about the athletes' bodies. For example, Sauv  told Isaac that she was "too muscular" and "too fat" and commented on the size of Isaac's legs, which Sauv  deemed too large. Similarly, Sauv  told Willson that her breasts were "too big" for artistic swimming and would make humiliating comments about Willson's breasts in front of the team. Sauv  inflicted similar body-shaming comments on other teammates.

36. Sauv  engendered a culture of fear around weight and its connection to athletes' continued place on the senior National Team. When they began their tenure with the senior National Team, Isaac and Willson and their teammates would be weighed with the other members of the team about once every two weeks. However, by 2010, Sauv  forced athletes on the team to be weighed (often by other CAS staff that she would use as her proxies) at least once or twice a week and twice daily (morning and night) during training camps and competitions. Sauv  instituted a "three-strike rule," which meant that if athletes weighed in over the goal weight she had set for them more than three times, CAS would remove them from the senior National Team. As an example, Willson received several letters warning her that she was over her target weight, including one that was issued to her on April 21, 2011, the day after she had agreed to lower her target competition weight in the hopes of being allowed to swim in competition with the senior National Team, communicated herewith with other correspondence *en liasse* as **Exhibit R-9**.

37. All the athletes knew that a position on the competition team was never safe and that complying with Sauvé's unhealthy weight targets, which often went beyond their already aggressive contract weights, was essential to keeping their place on the senior National Team and to earning the right to be allowed to compete at the international level.

38. As a result, to prepare for weigh-ins, Isaac, Willson, and other athletes strictly limited their food and water intake to the significant detriment of their health and training performance. For example, as there was usually a weigh-in on Mondays, Isaac and the other athletes would not eat very much on Sundays. They would also not eat breakfast or drink water before arriving for practice on Monday morning. They would then (before being allowed to eat lunch) train in the pool for hours. Not only did this undermine their performance, but it was extremely dangerous for the athletes. Training without proper hydration without food to fuel the amount of energy being expended may lead to Relative Energy Deficiency in Sports (RED-S). RED-S is a serious illness with lifelong health consequences. Some of the more common effects of RED-S are amenorrhoea and decreased bone mineral density (osteoporosis and osteopenia).

39. Sauvé would watch and continuously comment on what and how much the athletes were eating. When an athlete met Sauvé's unreasonable weight requirements, she praised both the athletes' frame, appearance and performance. Conversely, athletes like Willson and Isaac, who did not look how Sauvé believed an artistic swimmer should look and did not meet the goal weight that she set for them, were verbally harassed and shamed by Sauvé in front of their teammates.

40. Sauvé's preoccupation with the appearance of the athletes on the senior National Team included physical abuse. For example:

- (a) The athletes that did not meet Sauvé's standards for bodyweight were punished with exercise for being deemed too fat and required to run after the usual training day; and
- (b) Sauvé forced the athletes to train outside in the sun for hours without suntan lotion so that they would look tanned. Unprotected sun exposure is a well-documented cause of skin cancer. Many suffered repeated painful sunburns. Sauvé would verbally harass and berate any athlete who put on sunscreen.

41. Thus, beginning in 2010, Isaac and Willson, like many of their teammates, began to obsess over counting calories and to do everything and anything they could to lose more weight.

42. In 2011, Willson sought help from the nutritionist and sports psychologist hired by CAS to support the senior National Team. Willson explained that while she ate very little, she was not losing any more weight. Willson told them that she was feeling overwhelmed, distressed and anxious about her weight. She begged for help to get below the goal weight set for her, which she had been unable to achieve. When she could not meet those goals, CAS and Sauvé moved Willson to the "B" team (which competed only at smaller competitions) and told her that when she demonstrated better "spirit" and met her weight goals, Willson might be allowed back on the competition team. Desperate, isolated from friends and family, Willson turned to disordered eating

behaviours, including extreme dieting and food restriction, as well as excessive exercise after normal training hours.

43. Isaac also turned to disordered eating behaviours after also being unable to reach the arbitrary and unhealthy goal weight set by CAS coaches. This included bingeing, purging, and starving herself. She was terrified that all she had earned through the hard work and years she had dedicated to artistic swimming would vanish the second she put her foot on the scale. Isaac was distraught and desperate.

44. Isaac and Willson were hardly the only athletes on the senior National Team to develop problems while training with Sauv . Disordered eating, anxiety and depression were common among the athletes and an open secret with coaches and staff at CAS. Sauv  made sure the athletes on the senior National Team understood that how thin they were was at least as important to her and their place on the team as how they performed in the pool.

45. Adding to the pressure on the athletes was Sauv 's constant reminders of the money invested in the senior National Team. These reminders made the athletes feel even more pressure and shame when they failed to meet Sauv 's demands, including her weight requirements. These reminders were also an implicit threat to Willson, as the agreement signed by members of the senior National Team going to the 2012 Olympics with CAS (then known as Synchro Canada) stated:

Upon selection to the 2012 Olympic Athlete Pool, I
(the athlete) agree to the
following conditions:

a) To train with the 2012 Olympic Athlete Pool from November 1, 2011, until July 31, 2012 and, if selected to the 2012 Olympic Team, participate in the 2012 Olympic Games.

b) If not selected to the 2012 Olympic Team, I will continue to train with Synchro Canada's Centre of Excellence National Team program until after the 2013 FINA World Aquatic Championships.

c) If am in breach of this agreement, I agree to refund Synchro Canada for the financial investment they have made towards my training and competition experience from November 1, 2011, until the day the agreement is breached. I understand that Synchro Canada's financial investment towards me includes but is not limited to the following costs: facility rental, coach salaries, expert service fees, and travel. I also understand that Synchro Canada will charge me for my share of these costs pro-rated to the day I breach this agreement.

[Underlining added.]

the whole as more fully appears from the Post 2012 Olympic Athlete Agreement, revised May 20, 2011, communicated herewith as **Exhibit R-10**.

46. Thus, Willson (who knew she would be one of the alternates, not selected to the 2012 Olympic Team) was forced to undertake to stay and continue to train with the senior National Team until after the following year's World Championships or be obliged to pay CAS a significant amount as compensation. This was a serious concern to Willson, a young woman who had put her education on hold to train with the senior National Team. It left her and the other alternates even more vulnerable to abusive behaviours from the coaches and CAS.

47. In the months leading up to the 2012 London Olympics, Sauvé's behaviour grew even more verbally abusive. Sauvé screamed, criticized, and made humiliating, degrading and threatening comments regularly towards the athletes on the senior National Team. To support her daughter, Willson's mother complained to CAS's leadership, but CAS dismissed her concerns, the whole as more fully appears from the letter of Karen Willson dated February 12, 2012, communicated herewith as **Exhibit R-11**. In its response, CAS largely dismissed Ms. Willson's concerns and justified Sauvé's demands on weight loss and excessive sun tanning as necessary for "visual" aspects of the sport, the whole as more fully appear from the letter from then CAS CEO, Catherine Gosselin-Després, dated March 9, 2012, communicated herewith as **Exhibit R-12**.

48. In the weeks leading up to the 2012 Olympics, the athletes also reached out to CAS leadership for help. On a conference call with the CAS Board of Directors, the senior National Team athletes begged the CAS Board to remove or otherwise address Sauvé's behaviour. Each team member took the time to explain their concerns about Sauvé and why they found the prospect of spending six weeks alone with her at the next training camp upsetting, stressful and scary. Despite the team's specific, direct and unequivocal complaints, the CAS Board members refused to take any action other than to put another CAS staff member on deck with Sauvé purportedly to supervise her during the training camp. This measure had little impact, and Sauvé's abusive behaviour continued unabated. Parents also complained, but their cries for help continued to fall on deaf ears at CAS. In June 2012, weeks before the start of the Olympic games that were set to begin in London on July 27, 2012, Isaac and Willson's

parents, among others, reached out to CAS, including the president of CAS's Board of Directors, asking CAS to do something to protect the athletes from Sauv e's abuse:

As we discussed in the conference call in March, it was agreed that someone needed to monitor Julie's behaviour every moment during the last training came. I understood that the girls were forced to swim in the outdoor pool in the pouring rain, in 60 degree temperatures, for extended periods of time. At one point, Beadreau had to be lifted from the pool by the girls and carried to the showers because her back muscles had completely seized. There was no oversight by the coaches as the girls poured warm water on her until she could walk. **Has all of this been forgotten?? Are there no steps for corrective action?**

Is the Board of Directors aware of the girls current concerns?

[...]

[Underlining [...] and emphasis added.]

the whole as more fully appears from the email of June 1, 2012 from Karen Willson to then CAS CEO Gosselin-Despres communicated herewith as **Exhibit R-13**. Gosselin-Despres acknowledged receipt of Karen Willson's email (see Exhibit R-13), but provided no substantive response.

49. Following the 2012 London Olympics, Willson was placed on medical leave by the Chief Medical Officer for the Canadian Olympic team, who diagnosed Willson with anxiety, depression, eating disorder, sleep disorder and post-traumatic stress disorder. While the leave was supposed to be for six months, after three months, Chen (who had taken over as Head Coach) advised Willson that she needed to return to training if she wanted to go to the 2013 World Championships. Willson thus returned to train with the senior National Team in Montreal. Within days of her arrival, however, Chen told Willson that she needed to lose weight and "look like an athlete" again. Shortly after that, Willson retired from the senior National Team in 2013 at the age of 24.

50. Today, eight years after her retirement, Willson still has difficulty speaking about her time on the senior National Team. She continues to see a psychologist periodically and still suffers from post-traumatic stress disorder and disordered eating. It has taken Willson many years of therapy, as well as study (she is currently pursuing a doctorate at the University of Toronto with the Faculty of Kinesiology and Physical Education, where she focuses her research on abuse in sport), to come to understand how she was maltreated by CAS and that she was not responsible for this maltreatment. To date, Willson has spent approximately \$2,000 on various therapists and professionals and expects to continue with her treatments for an indefinite period. Willson spent approximately six years on the senior National Team suffering psychological abuse, neglect and harassment and seeks moral damages in the amount of \$75,000.

51. For Isaac, ultimately, the antidepressants that CAS medical personnel had prescribed did little to help with her depression, anxiety, and disordered eating. When Isaac announced her retirement from the senior National Team in 2014, CAS offered her the opportunity to send out her last words to the artistic swimming community in the CAS newsletter. She wrote a letter about her positive experiences, but also her disappointments in the sport. CAS CEO Buckingham effectively suppressed Isaac's effort and told Isaac that CAS would not publish her letter. Buckingham said that it was not a place for Isaac to discuss what had disappointed or discouraged her, the whole as more fully appears from the email exchange communicated herewith as **Exhibit R-14**.

52. Isaac stopped taking antidepressants when she retired from the senior National Team but continued to see a therapist and other professionals periodically in the years following her retirement. Some of this therapy was paid for by the INS, although much of

it was paid for by Isaac. It was only in May 2018 that Isaac sought regular support, in this instance from a nutritionist, to deal with her eating disorders. It is only recently that she has not demonstrated disordered eating patterns. Isaac has spent approximately \$5,000 on expenses relating to struggle with disordered eating, including various therapists and professionals with whom she expects to continue treatment for an indefinite period. Isaac spent approximately five years on the senior National Team suffering psychological abuse, neglect and harassment and seeks moral damages in the amount of \$62,500.

53. It has taken Isaac years to be able to process and understand the psychological harm that was inflicted upon her while she was training with the senior National Team. Even today, Isaac continues to have nightmares about Sauvé at least once a month.

B. GABRIELLA BRISSON, REBECCA HARROWER, GABRIELLE BOISVERT AND SION ORMOND

54. As described above, individual CAS staff and Board members were aware of the toxic environment at CAS under Sauvé. The senior National Team's courage to demand change before the 2012 Olympics was an opportunity for CAS to facilitate cultural change within the organization to ensure that its National Team would no longer be subject to psychological abuse, neglect and harassment.

55. CAS failed to respond to the serious concerns raised by the senior National Team. Not only did CAS fail to replace Sauvé immediately, but when Sauvé finally did leave the senior National Team, CAS never alluded to any maltreatment. In fact, when CAS announced the replacement of Sauvé, it extolled Sauvé and her coaching. CAS

also instructed the athletes as to what they were to say in response to media queries about Sauv 's departure, telling them that they should say that her departure was an "administrative" decision taken by CAS, the whole as more fully appears from an internal exchange of emails at CAS as well as from a press release dated October 2, 2012, communicated herewith as **Exhibit R-15**, *en liasse*.

56. CAS replaced Sauv  with Meng Chen, who had been an assistant coach under Sauv . Chen learned under Sauv  and, predictably, continued the abusive practices of her predecessor.

57. Brisson arrived in 2012 and began her training with the senior National Team just as Chen was taking on Head Coach duties. Harrower and Boisvert joined the team a few years later, in 2014 and 2015, respectively.

58. As head coach, Chen continued the psychological abuse practiced by Sauv  by subjecting Brisson, Harrower, Boisvert, and the other members of the senior National Team to repeated personal criticism and degrading comments about their bodies and abilities, commitment and performance. Chen would scream at athletes until they broke down and cried in front of her and the team. On other days, Chen would express her displeasure by refusing to speak to athletes as punishment for having displeased her. She ignored the training of Boisvert and other of the senior National Team athletes entirely when they had not been selected for a competition team.

59. Chen continued Sauv 's pattern of demanding that the athletes reach unrealistic and unhealthy weight goals. The thinnest among these women, many of whom were battling eating disorders, were often extolled by Chen in front of the entire senior

National Team as what an “elite” or “high-performance” swimmer should look like. Chen told the athletes that their weight was holding back their performance. For example, Chen told Brisson that she would be able to get further height out of the water if only she lost belly fat. As a result, many senior National Team members struggled with the weight requirements, and some escalated to disordered eating as a means of coping with the pressure.

60. Chen’s abusive conduct occasionally extended to physical abuse. For example:

- (a) When Brisson was struggling with the full extension of her ankles and knees, once Chen made Brisson sit on the ground with her legs straight out in front of her so that Chen could stand with her full weight on Brisson, with one foot placed above Brisson’s knee cap and the other foot on the top of Brisson’s foot. While Chen laughed and acted like she was riding a surfboard, Brisson was in so much pain that she thought that her ankles would break.
- (b) During one period, Chen decided the athletes on the senior National Team were insufficiently flexible. Chen forced athletes, including Boisvert, to begin their training days by doing two minutes of splits up on blocks, with insufficient time to warm up. This was both extremely painful and put the athletes at risk of serious injury.
- (c) Chen otherwise used exercise as punishment. Chen set up extra hours of intense cardio training for athletes like Brisson as part of her weight loss mandate, which she imposed on them on top of an already grueling

training schedule. In other instances, Chen stopped athletes in the middle of the training to single out one who she said was not doing a skill correctly. Chen would then stop the training and force the one swimmer to repeat the skill over and over and over, while the rest of the senior National Team was forced to watch. During these sessions, Chen offered no feedback to the athlete purportedly being corrected that would allow her to correct what had supposedly been done wrong. Chen simply ordered the senior National Team member to repeat the skill, again and again, often until the athlete was completely exhausted or in excruciating pain.

There were many moments like this when Chen pushed and exceeded the limits of the senior National Team athletes' safety.

61. Occasionally, CAS would send in external professionals purportedly to help the senior National Team in various ways. For example, while Chen was Head Coach, several external sports psychologists and a communications expert came on separate occasions to meet the athletes. During these meetings with the CAS consultants, the senior National Team shared their concerns about Chen's abusive conduct and the impact of their training. However, these consultants were rarely, if ever, invited back after their first session to meet the senior National Team. Furthermore, there was never any follow-up by CAS on any of the senior National Team's concerns.

62. Chen also neglected athletes' health and safety by forcing senior National Team athletes to train unsafely, requiring that they do complicated and dangerous routines,

patterns and movements for which they were improperly prepared. In artistic swimming, the swimmers move very quickly and swim very close to each other during their routine. Unless they are adequately prepared and practiced, it is easy for one swimmer to get kicked or hit and seriously injured. As a result of Chen's negligence, numerous team members sustained physical injuries, including serious concussions. Chen would also question athletes' injuries and illnesses, accuse them of faking and often force an athlete to train, even when Chen was told the athlete did not feel capable because of an injury or because she was ill.

63. Boisvert suffered a concussion in March 2017 when she was kicked in the head while training under Chen before the 2017 World Championships in Hungary. Boisvert's injury was followed by five other athletes who all suffered concussions in quick succession in the next few weeks. These injuries were all caused by Chen's negligence. Chen quite simply showed no concern about the athletes' health and safety in the pool. Although the rising number of concussions and other injuries should have alarmed CAS, CAS failed to respond to either the injuries or the concerns the athletes expressed about Chen's dangerous coaching style.

64. In May 2017, only seven out of the twelve athletes on the competition team of the senior National Team felt healthy enough to compete. This finally brought the members of the senior National Team to a breaking point. The members of the senior National Team requested a meeting with CAS Chief Sport Officer Julie Healy ("**Healy**"), the manager of the senior National Team, and Chen to find a way to move forward and train safely. However, the meeting quickly spiralled out of control when Chen began screaming at the athletes, attacking individual athletes and accusing them of being

responsible for the team's training going poorly. After several minutes of her screaming at the senior National Team, CAS staff finally decided to intervene and had to physically pull Chen out of the room while she screamed at the athletes and refused to cease her verbal abuse.

65. Chen's erratic and abusive conduct during the meeting caused a significant amount of stress and anxiety for the athletes, like Brisson and Boisvert, who were present. CAS's response to witnessing Chen's unhinged and abusive behaviour, however, was only to suspend training for a few days over the weekend.

66. When the senior National Team returned to the INS training facility in Montreal the following Monday, they found that CAS had left Chen in her role as Head Coach and expected the senior National Team to continue their training with her. As a result, the competition team members banded together and took the extraordinary action of refusing to train with Chen even though the World Championships were only a few weeks away. CAS was then finally forced to take some action and removed Chen from her position as Head Coach. Publicly, CAS failed or refused to acknowledge the abusive conduct of Chen, instead positioning her departure as a personal leave of absence.

67. Brisson, Harrower and Boisvert hoped that by standing up to Chen and CAS and demanding change, they would ensure that CAS would no longer allow National Team swimmers to be abused, neglected or harassed. Regrettably, the new Head Coach hired by CAS, Leslie Sproule, continued the culture of abuse and harassment.

68. When Sproule arrived as acting Head Coach in June 2017, several athletes from the senior National Team, including Boisvert, were still recovering from the concussions they had suffered training with Chen. Notwithstanding their injuries, their continued concussions symptoms and the medical advice given to the athletes, Sproule forced them to begin training again in preparation for the 2017 World Championships in Hungary in July. Sproule also continued the practice of neglecting athletes' health and safety by requiring athletes to perform complicated and dangerous routines, patterns and movements for which they were improperly trained and prepared. Often Sproule would, it seemed deliberately, give new directions with little explanations or warning. She would ignore or refuse to answer athletes' questions. As a result, the neglect of the senior National Team's safety continued.

69. In 2017, Brisson suffered a concussion the week before the senior National Team's competition team flew to Hungary for the World Championships set for July 2017. When she learned of Brisson's injury, Sproule told her if Brisson did not compete in Hungary, the entire senior National Team would stay home. Not wanting to be responsible for her team (of which she was then captain) being unable to compete, Brisson struggled to accelerate her recovery, putting her health at further risk. To Brisson, it seemed that Sproule did not understand (or believe in) the seriousness of a concussion. Sproule refused to abide by the medical advice that was provided by Brisson's doctors. Brisson struggled to satisfy Sproule's demands while adhering to a semblance of her prescribed concussion protocol. Eventually, Brisson's symptoms (including disorientation in the water) become too severe for her to compete.

70. After the first few months of training with Sproule, the senior National Team asked for an opportunity to evaluate her coaching before she was officially hired as the new CAS Head Coach to replace Chen. This was allowed by CAS, and many, including Brisson, Harrower and Boisvert, included in their evaluations serious concerns about Sproule's psychological abuse, neglect and harassment of athletes. Consistent with its repeated and systemic failure to adhere to its obligations as the national governing body for Artistic Swimming, CAS ignored the athlete's concerns and announced that Sproule had been hired to be the new Head Coach to replace Chen on November 2, 2017, the whole as more fully appears from the CAS press release of that date communicated herewith as **Exhibit R-16**.

71. Brisson never again competed with the senior National Team after the 2017 World Championships and retired in January 2018. Brisson has never fully recovered from her concussion and still experiences headaches, fatigue, eye strain and reduced concentration. These symptoms were so severe that she was forced to drop out of University. In addition, during her years on the senior National Team, Brisson suffered panic attacks, which she reported to the National Team's sport psychologist. When she first left the senior National Team, Brisson's panic attacks abated. However, they resurfaced during her retirement and continue today. Brisson also continues to struggle with her body image and anxiety. Brisson attended therapy with a counsellor for the first time in March 2020 but did not continue after the beginning of the COVID-19 pandemic. Brisson has incurred a loss of approximately \$300 to date for costs related to being forced to drop out of school, and the various therapists and professionals and Brisson expects to continue her treatments for an indefinite period. Brisson spent approximately

six years on the senior National Team suffering psychological abuse, neglect and harassment and seeks moral damages in the amount of \$75,000.

72. In January 2018, Ormond began training as a member of the senior National Team.

73. After she was officially hired as Head Coach, Sproule continued her abusive coaching style and neglect of the athletes' safety as described above. Indeed, by hiring her in the face of athletes directly raising the abuse they suffered under Sproule, the CAS validated and confirmed to Sproule that her conduct was acceptable to it as an organization.

74. Desperate, senior National Team members reached out to CAS leadership for help with a letter dated April 16, 2018:

On behalf of the Members of the Canadian National Team, we are writing to you, to express our concern for how the National team camp unfolded from March 27-31. We would like to address how the behaviours that were exhibited by Leslie during the last camp left us feeling a lack a physical and emotional security while being coached by her. Throughout the entirety of the camp, members of the team were expressing their physical and psychological discomfort. Whether it was a safety concern, or an overall lack of regard for how the team was feeling, we as a collective felt like our opinions and concerns were not being heard and respected by Leslie. We believe for Team Canada to be able to attain podium level performances, that Canadian athletes need to be training in an environment that leaves everyone feeling safe and comfortable.

[...]

On Thursday, March 29 An athlete was throwing up on the side of the pool, Leslie laughed at this and continued to correct her and the team while she was vomiting. This demonstrated a lack of regard for the wellbeing of the athlete. Directly before this, another athlete had received a kick to the head and the Athletic Therapist (Emily) diagnosed her with minor whiplash. She was instructed by

the Athletic Therapist to use her discretion when swimming, and if the pain started to increase she should reduce the range of motion, or take small breaks to allow the muscle to stop spasming. On Friday, March 29, The athlete and the Athletic Therapist went to talk to Leslie to inform her of the situation. Leslie remained silent and vague in her responses, leaving the athlete feeling unsure if Leslie understood the severity of the situation. It is extremely important for an athlete to not be afraid to address their concerns about an injury to their coach and know that they have been heard. As it is a safety concern if athletes feel like they are unable to tell the coach the full truth about serious injuries.

[...]

Our concern as athletes is that this type of behaviour demonstrated by our current Head Coach, more so on the day that she was not supervised by Synchro Canada staff members, has been seen in the past, and is creating anxiety amongst the team going forward into the May camp. **We have expressed these concerns before in our camp evaluations with Synchro Canada. Yet we are seeing similar patterns of mistreatment and abuse towards the athletes camp after camp.** We as a team do not feel comfortable with the behaviour that is being exhibited and for the safety of the athletes will not continue to deal with it going forward. There has to be a change in her behaviour and she needs to be under supervision.

[Underlining and emphasis added.]

the whole as more fully appears from a copy of the letter that was signed by [...] Harrower, Ormond and Boisvert, among others, communicated herewith as **Exhibit R-17**. The athletes concluded their letter asking CAS to ensure that Sproule changed her behaviour and was put under supervision for the next training camp in Calgary scheduled for May 2018.

75. Following this letter, CAS set up a meeting for the senior National Team with Judi Enns Bradette (“**Enns Bradette**”, President and Chair of the Board of CAS) and Sproule. Harrower, Boisvert and Ormond left the meeting feeling like CAS believed that it was the fault of the athletes that the training program was not working well and that CAS was not going to make any significant changes.

76. CAS again demonstrated that it was unwilling to change and took no corrective action. More serious injuries resulted. At the May training camp referred to by the senior National Team members in their letter of April 16, 2018 (Exhibit R-17), Boisvert was kicked in the head so forcefully that her goggles split in two and cut her eye. Boisvert immediately began showing symptoms of a severe concussion. However, Sproule insisted that Boisvert spend the rest of the day at the side of the pool and repeatedly asked if Boisvert was “fine” yet and ready to train.

77. When Boisvert was unable to resume training because her symptoms (including migraines and vomiting) were too severe, Sproule told Boisvert that she would be removed from the competition team unless she recovered fully in five days. Boisvert could not recover that quickly and thus made the heartbreaking decision to return home. Shortly after leaving the training camp, Boisvert wrote CAS CSO Healy and the IST Manager Jennifer Langlois explaining what had happened and how Sproule had neglected her concussion, the whole as more fully appears from the email of May 17, 2018, communicated herewith as **Exhibit R-18**. In her message, after giving a detailed description of what happened, Boisvert said:

When I look back to the past week, I felt that it was hard for me to recover because I was **emotionally exhausted** by all of this. I **felt rush to get better and unrespected** when I was on the side of the pool. I think that the protocol exist for a reason and in this case, there was a lack of understanding. It was really frustrating for me to know that **the coaches didn't believe in the protocol and/or in the AT**. It was hard to explained myself everytime that I wasn't able to complete a stage or that I was send home because I had symptoms. Looking back, I feel it's harder because **we were in the same situation last year before World championship and that it's exactly the same this year.**

[Underlining and emphasis added. Syntax errors in original.]

78. Healy responded only to say that Sproule denied what Boisvert reported. CAS took no action, again disregarding the abuse and injuries suffered by its athletes, the whole as more fully appears from the chain of correspondence (Exhibit R-18).

79. Boisvert spent months at home working on recovering from what proved to be a severe concussion. In early 2019, Boisvert decided that her health would not allow her to continue on the senior National Team and she retired. Boisvert resent the same message again to Healy. However, this time she also copied CAS CEO Buckingham and Enns Bradette, the whole as more fully appears from the email of February 22, 2019 communicated as part of the chain in Exhibit R-18 and the letter of the same date in which Boisvert wrote:

[...]

Finally, I think that the relationship between the coaches and the athletes need to improve. During my 4 years on the national team, my main concern was the fear that was instilled on the side of the pool by the coach and as mentioned earlier, the coach made me feel like I was nothing. Because of this, I was scared to talk and to express myself especially because the coaches were making sure that we know that our spot isn't guaranteed at all and that they are in a position of authority. I felt like I wasn't a human being anymore and just an object. I've been through a lot of coaches in my artistic swimming career, but the ones that I've had on the national team weren't bad technically speaking but were heartless. [...]

[Underlining and emphasis added. Syntax errors in original.]

the whole as more fully appears from page 2 of the letter communicated herewith with the cover email exchange *en liasse* as **Exhibit R-19**.

80. Following her letter, Boisvert received a brief email reply from CAS CEO Buckingham stating, "We are a few people and there is much work to do and

sometimes it probably looks like we treat athletes “as a group” and not as individuals with individual needs and concerns as we work very hard to get everything done. I am truly sorry for this – it is not intentional. [...]”, the whole as more fully appears from the email of February 22, 2019, communicated as part of Exhibit R-19. Enns Bradette (President and Chair of the Board of CAS) wrote Boisvert back a few days later, asking for a telephone call with Boisvert, the whole as more fully appears from the email of March 1, 2020 (Exhibit R-19). This call took place shortly thereafter, and Boisvert felt pleased about how it went. She felt that Enns Bradette had listened. Boisvert was hopeful that her speaking out would make a difference and improve the training conditions for future National Team athletes.

81. Over the ensuing years, Boisvert has seen doctors, as well as other professionals, including a neuropsychologist and a psychologist. Without any assistance from CAS, she had to identify all these medical professionals on her own. Boisvert continues to suffer from regular migraines, nausea and reduced concentration and for which she receives accommodations (extra time for exams) in school. She struggles with anxiety and body image and only recently managed to gain enough weight to be considered “healthy” by her doctor. Since December 2019, Boisvert has been seeing a psychologist regularly to help deal with these issues. Boisvert has spent approximately \$2,000 on various therapists and professionals and expects to continue her treatments for an indefinite period. Boisvert spent approximately four years on the senior National Team suffering psychological abuse, neglect and harassment and seeks moral damages in the amount of \$50,000.

82. In late 2018, CAS finally replaced Sproule with a new Head Coach, Gábor Szauder, the whole as more fully appears from the press release dated November 13, 2018, communicated herewith as **Exhibit R-20**.

83. Harrower and Ormond continued [...] their training with the senior National Team following Sproule's departure.

84. Soon after Szauder took his place as Head Coach on the pool deck at INS in Montreal, it became clear that CAS would yet again allow the senior National Team to be subjected to various forms of psychological abuse, neglect and harassment, now at the hands of Szauder. In fact, it is not clear what, if any, due diligence CAS performed on Szauder before he was hired as Head Coach. A news report published in Slovakia indicates that he had previously been subject to serious complaints of psychological abuse and sexual harassment, the whole as more fully appears from the news article dated November 5, 2020, from a Slovakian newspaper and the Google translation of same communicated herewith *en liasse* as **Exhibit R-21**.

85. As Head Coach of the senior National Team, Szauder has harassed athletes, including through the use of racial and gender-discriminatory language. This created a disrespectful and unhealthy training environment for Harrower, Ormond and other senior National Team members. For example, Szauder said words to the effect that one of the senior National Team athletes of Indian [...] descent was expendable because there are "billions of people in India," and she could be replaced.

86. Similarly, Szauder engaged in a repeated pattern of misogyny and sexual harassment, creating an unsafe training environment for the senior National Team

members. Examples of Szauder's misogynistic and harassing behaviour include but are not limited to sexually charged comments to Harrower, Ormond and others on the senior National Team. For example, in front of Harrower, Ormond or others on the senior National Team, Szauder said the following:

- (a) that when he was a young coach, he would stay in the dorms at competitions and walk around the hallway in a towel. He further stated that his room was next door to Brazilian and Ukrainian girls and that he would "choose a different side every day."
- (b) words to the effect of "Grab her harder for the highlights. She's 24. Don't you think she's been grabbed before? Maybe not in the same way, but trust me, she's been grabbed before";
- (c) words to the effect of "You should zip up your sweater before you get me all excited"; and
- (d) words to the effect of "You are such a pretty girl when you smile, so why don't you smile."

87. At various times, Szauder also made misogynist and discriminatory comments to the entire senior National Team. For example, he told he told them women are supposed to cook for men; 10,000 years ago, it was men who brought back food so a woman could survive and, If wasn't for men, they wouldn't be there now. As another example, Szauder said words to the effect that women aren't going to keep their looks when they're older and needed to learn how to cook properly in order to keep a husband.

88. When Harrower, Ormond and others complained to CAS staff about Szauder's comments, they were told that Szauder was "European," as if this somehow justified his misconduct. This ridiculous excuse is reflected in the Safe Sport Report (Exhibit R-2, see comments to questions 4, 6, 7, 8 posed to athletes), in which the reviewer notes that some of Szauder's conduct was attributed to "cultural differences." The reviewer concludes that it is "important that everyone involved conduct themselves under Canadian cultural norms and any violations of the Code of Conduct cannot be dismissed due to cultural differences," the whole as more fully appears from section 10 of the Safe Sport Report (Exhibit R-2).

89. Under Szauder as Head Coach, CAS continued a pattern of demonstrating manifest neglect for the wellbeing of the senior National Team athletes. This is evidenced, *inter alia*, by the information set out in the Safe Sport Report, in which athletes reported that their injuries and pain were ignored by CAS coaching staff and IST, who also withheld medical attention and nutrition.

90. Szauder accuses team members who complain about injuries of "faking" or lying about their suffering. He forced athletes to train even when training risked exacerbating existing injuries. While they were training in Hawaii in January 2020, Szauder told Harrower, Ormond and the other senior National Team members that they were not allowed to see any support staff for any injury or health concern unless it was first approved by him. Szauder told Harrower, Ormond and [...] their teammates that from now they could not be depressed or injured. Only Szauder could say when they were depressed or injured. Harrower and Ormond spent the training camp afraid that [...] they would be injured and denied medical assistance.

91. The behaviour of Szauder and the rest of CAS staff in either facilitating or ignoring his behaviour created an environment in which Harrower, Ormond and other senior National Team members were scared to report or rest from injuries because they feared it would lead to psychological abuse or losing their spot on the senior National Team.

92. Szauder also continued CAS's tradition of accepting and encouraging psychologically abusive coaching styles. Without limiting the generality of the foregoing, Szauder regularly singled out individual athletes, including but not limited to Harrower and Ormond, for humiliation in front of the team during training, mocking them for their body weights, efforts, training and performance with disparaging comments and sarcasm. Szauder yelled and screamed at athletes, provoking significant distress in athletes during training sessions.

93. Szauder went so far as to threaten Harrower, Ormond and others that, unless they performed better, he would punish them and it "would hit them so hard they wouldn't know what happened." Both Harrower and Ormond understood this statement as a frightening physical threat. Later, CAS staff tried to justify Szauder's comments to Harrower and Ormond as purportedly only intending to refer to a "hit" with a demanding training session. Multiple CAS staff witnessed Szauder's inappropriate behaviour or otherwise became aware of his misconduct and failed to act. CAS, its coaches and staff chose to ignore the inappropriate comments, failed or refused to escalate athletes' complaints and made excuses for Szauder's misconduct. [...]

93.1. On or around March 4, 2020, Harrower was experiencing severe back pain from a recurring injury and had been working with the National Team physiotherapist for almost a month to help manage the pain. Harrower visited Szauder at his office and attempted to explain to him that her back was extremely sore. Szauder cut her off and said, "Seriously Rebecca, go and get in [the pool]." Harrower obliged but her back pain increased during training. Supported by her teammates, she garnered up the courage to speak to Szauder again and told him she thought it would be better if she restricted her range of motion in the pool to avoid aggravating her injury. Szauder responded by aggressively and repeatedly yelling at Harrower that she needed to compose herself and continue swimming.

93.2. Szuader's outburst and verbal abuse brought Harrower to tears and caused her to suffer an anxiety attack. She exited the pool and attempted to calm down with her teammates, but Szauder continued to berate her and told most of the other senior National Team members to go home. Harrower was still having a panic attack on the pool deck and her teammate called the team psychologist, who came to Harrower's assistance.

93.3. Following this incident on March 4, 2020, Harrower sought medical attention and was referred to a psychiatrist. She was prescribed antidepressants and took them regularly for the next several months. However, her feelings of fear and intense anxiety when in the presence of Szauder did not subside.

93.4. Ormond ultimately left the senior National Team in September 2020.

94. During her exit interview with CAS CSO Healy, Ormond repeated her complaints concerning the misconduct of Szauder that she had witnessed and experienced. Without limiting the generality of the foregoing, Ormond told Healy about how she was afraid when Szauder said he would hit her and other athletes, how he singled out athletes for abuse and humiliation, how he made inappropriate sexual, misogynist and racist comments. When Ormond advised that she was considering filing a Safe Sport complaint about these issues, Healy told Ormond that if she filed a complaint, it would require Ormond to give permission for her “confidential records from various providers” to be released, and she needed “to prepare to be prepared for that to be part of the investigation.” Ormond felt confused (as she believed she had nothing to hide) and at the same time threatened by Healy’s statements.

95. While she was on the senior National Team, Ormond saw a psychologist to deal with feelings of depression and anxiety. While the psychologist recommended that she speak to a doctor to discuss a prescription for antidepressants, Ormond (who was 19 years old at the time) refused to do so. Having recently left the team, Ormond is still processing the impacts of her experiences. Since October 2020, Ormond has been seeing a psychologist intermittently, but to date the expenses for these sessions have been covered by INS. Ormond expects to continue with counselling for an indefinite period. Ormond spent approximately two years on the senior National Team suffering psychological abuse, neglect and harassment and seeks moral damages in the amount of \$25,000.

96. Shortly after Ormond’s departure, on or around October 2, 2020, CAS suspended training at the INS (as described above). Around that time, allegations of

Szaunder's psychological abuse and harassment were made public by current and former senior National Team athletes, the whole as more fully appears from some of the press coverage communicated herewith *en liasse* as **Exhibit R-22**. However, as described in paragraphs 19 to 21 above, while a Safe Sport review was requested, CAS CEO Buckingham publicly stated that it was never intended to be an investigation of CAS coaches or IST. Further, after reading the Safe Sport Report, which found that nearly half the team admitted that they had been subjected to psychological abuse, neglect and various forms of harassment, Buckingham told journalists: "*Rien de flagrant n'a été signalé par les athlètes*" (see Exhibit R-6).

97. Buckingham has been the CEO of CAS since March 2014, the whole as more fully appears from the CAS press release dated March 5, 2014, communicated herewith as **Exhibit R-23**. Buckingham was thus CAS CEO while both Chen and Sproule were coaches, and she was very aware of the history of concerns raised, usually in desperation, by its National Team. Buckingham's comments in Fall 2020 are entirely consistent with CAS's demonstrated failure to protect its athletes over the last ten years from psychological abuse, harassment, neglect and discrimination. As several news stories over the decade demonstrate, this behaviour was openly discussed, tolerated and even encouraged by CAS, the whole as more fully appears from the selection of those articles communicated herewith *en liasse* as **Exhibit R-24**. Finally, Buckingham's comments are also entirely consistent with CAS's failure to recognize the severe and lasting adverse impact that the conduct of its coaches and staff has had on the physical and mental health of its National Team athletes.

98. It is thus unsurprising that notwithstanding the complaints from swimmers and external coaches, the departures of athletes and the findings of the Safe Sport Report (discussed in paragraph 13 and 14 above) concerning the culture of fear, misogyny, abuse, bullying, and harassment within the CAS National Team, CAS made no staffing changes, authorized Szauder to return to his duties as Head Coach effective January 18, 2021, and ordered the senior National Team back to training where they continue to be subjected to an environment that does not respect their legal and human rights.

98.1. As will be demonstrated below, in the face of this conduct by Szuder, once again, National Team athletes stood up to ask that CAS take action to protect them from the psychological abuse, neglect and harassment of CAS' coaching staff. However, once again, CAS failed or refused (and continues today to fail and refuse) to take the action necessary to fulfill its duty of care to its athletes and to protect their health and well-being.

98.2. Using a new "safe sport" complaints and dispute resolution process that had been adopted by CAS, Harrower and certain other senior National Team members filed formal complaints raising more than thirty allegations against Szauder, Healy, and other CAS staff members (the "**Complaints**"). These complaints were deemed by CAS's Safe Sport Officer, Lise Maclean ("**Maclean**"), to "disclose potential maltreatment or misconduct" and were subsequently investigated by an external lawyer, Erin Durant ("**Durant**").

98.3. Durant's mandate was to determine "whether the factual allegations in the [C]omplaint[s] have been established on a balance of probabilities." Durant concluded in

a confidential report released to Harrower in heavily redacted form in January 2021 that only four of the allegations set out in the Complaints would be the subject of discipline proceedings under CAS's internal policies. It is entirely unclear on what basis Durant filtered out certain allegations, how she was permitted to do so under the applicable policy, or why she proceeded in this manner.

98.4. Harrower and the other complainants subsequently informed CAS that they were submitting a formal challenge to the fact that only four allegations being submitted to the Panel and requested information concerning the process for this challenge, given that CAS's policy did not provide for filtering out complaints in this manner, let alone an appeal from such a decision. Harrower and the other complainants also pointed out that they had not received a full copy of Durant's report (despite having made multiple requests), making it impossible to present a full challenge of CAS's decision not to allow their complaints to proceed. A copy of this letter dated January 15, 2021, to the CAS Board of Directors is communicated herewith as **Exhibit R-26**.

98.5. On January 21, 2021, CAS sent a letter stating that Harrower and the other complainants had failed to appeal Durant's recommendation pursuant to the prescribed timelines and formal requirements of the CAS Appeal Policy, one of which required the communication of "detailed reasons for the appeal". A copy of the CAS Board's letter is communicated herewith as **Exhibit R-27**. The decision taken by CAS, which was as unreasonable as it was unjust, was used by CAS to effectively dismiss 36 of 40 complaints by Harrower and the other complainants without providing any justification or any opportunity for these complaints to be properly adjudicated.

98.6. Harrower and the other complainants responded to CAS on January 22, 2021. They stated that CAS acted in bad faith by withholding its response until after the 14-day appeal period under the Appeal Policy had expired. They further stated that even if it were the case that an appeal was available from Durant's filtering out, they were unable to provide "detailed reasons for the appeal" since they were not provided with an unredacted copy of Durant's report, which would presumably set out the reasons for which thirty-six allegations were filtered out of the discipline process before there was even a disciplinary hearing. As such, CAS unfairly and improperly blocked Harrower and the other complainants from complying with the requirements of the Appeal Policy. A copy of this letter is communicated herewith as **Exhibit R-28**.

98.7. In late-January 2021, CAS appointed a three-person discipline panel (the "Panel") to adjudicate the four allegations that had not been summarily dismissed by Durant.

98.8. Shortly after the Panel was appointed, Harrower and the other complainants raised two preliminary issues requesting:

- (a) that all of their complaints made about Szauder proceed before the Panel, not just the four allegations retained by Durant, who by purporting to filter out more than thirty allegations acted outside of her authority under the applicable rules.
- (b) that the Panel provide them with a full copy of Durant's report.

98.9. The Panel dismissed these preliminary requests by way of emails dated January 29 and February 1, 2021. CAS, acting through the Panel, had no authority or jurisdiction to summarily dismiss more than thirty complaints that had already been accepted by the Safe Sport Officer pursuant to the applicable policies without those complaints ever being heard. In summarily dismissing these complaints, CAS failed to follow the applicable policies and procedures and breached Harrower and the other complainants' fundamental right to procedural fairness in respect of the hearing of the Complaints.

98.10. On June 7, 2021, after a multi-day hearing, the Panel issued the Internal Discipline Decision dismissing the Complaints in their entirety (Exhibit R-36). The Panel determined that Szauder did not breach any applicable CAS policy, despite finding on a balance of probabilities that:

- (c) on the pool deck during a major competition in China in May 2019, Szauder raised his voice and said to Harrower, Ormond and the rest of the senior National Team: "I will punish you and it will hit you so hard that you not gonna know where it came from."
- (d) During a team dinner in October 2019 Szauder said to Ormond: "Zip up your hoodie before you get me too excited."
- (e) During a training session at INS Montreal in September 2020, Szauder told Harrower and other senior National Team members:

- (i) In respect of the topic of Chinese prisons, “When was the last time you saw a white person bomb a plane?”
- (ii) In respect of the Black Lives Matter movement, “You mean all lives matter, why do their lives matter more than mine?” and “Am I supposed to fire 3 of you so I can put 3 black girls on the team”?

98.11. On June 20, 2021, Harrower and the other complainants appealed the Internal Discipline Decision pursuant to CAS’s Appeal Policy. They alleged that CAS and the bodies to which it delegated its authority failed repeatedly to follow and apply the applicable internal policies, resulting in a breach of the right to procedural fairness of Harrower and the other complainants. They also alleged that the Internal Discipline Decision suffered from multiple reversible errors of law and palpable and overriding errors of fact which warranted intervention on appeal.

98.12. CAS appointed lawyer Craig Stehr, as case manager to screen the appeal pursuant to the Appeal Policy. On July 17, 2021, CAS (through its counsel) wrote to Stehr requesting that he issue a decision by July 19, 2021, even if reasons were to follow. CAS gave the following justification for this request:

The request for a decision as soon as possible arises out of CAS’s concern to ensure fairness to its Olympic team members. CAS has been advised by the Canadian Olympic Committee that Mr. Szauder’s nomination as coach is conditional upon the conclusion of this pending appeal process. CAS is seriously concerned that continued uncertainty around who will serve as the team’s coach for the Olympics, or having to substitute a new coach for the team at the 11th hour, will have a negative impact on the team and is not fair to them. The team is set to leave for Tokyo on or about July 25th.

We look forward to receiving your decision as soon as possible, together with your direction on next steps as to how any grounds of appeal proceeding to a hearing can be determined by July 25th.

the whole as more fully appears from the email exchange communicated herewith as

Exhibit R-29.

98.13. CAS's email of July 17 seriously prejudiced the fair assessment of Harrower and the other complainants' appeal. Without the complainants' consent CAS raised an external issue (the COC's conditional nomination of Szauder and the alleged harm that will flow to the Olympic Team if the appeal was not urgently screened out) outside the scope of Stehr's mandate that had influence in favour of the CAS' position that the appeal should be screened out. The email was a further breach of process by the CAS, consistent with the entirety of the internally administered discipline process.

98.14. Stehr acceded to CAS's request and issued a decision, with reasons to follow, screening out the appeal. A copy of Stehr's decision letter dated July 19, 2021 is communicated herewith as **Exhibit R-30.**

98.15. CAS, acting through delegated authority to Stehr, committed further breaches of procedural fairness by rushing a decision influenced by external factors that should never have been raised by CAS, and by failing to provide reasons for the decision in violation of the Appeal Policy.

98.16. On July 19 and August 3, 2021, the complainants (through their counsel) asked CAS (through their counsel) whether the provision in the Appeal Policy precluding a further appeal of the case manager's decision was operable. CAS refused to answer this question.

98.17. On October 6, 2021, CAS (through its counsel) wrote to Stehr asking when the reasons for his decision would be released. A copy of this email is communicated herewith as **Exhibit R-31**.

98.18. On October 12, 2021, Stehr released his reasons for screening out the appeal. These reasons were only delivered on the insistence of CAS and after CAS had notice that the Petitioners intended to amend this application to include the failure to provide reasons for screening out the appeal as another basis for CAS's liability in this proceeding. A copy of Stehr's reasons for decision dated October 12, 2021 is communicated herewith as **Exhibit R-32**.

98.19. Harrower retired from the senior National Team on May 18, 2021, in the midst of the internal disciplinary process. In her retirement letter to Buckingham, Healy, and others, Harrower stated (among other things):

Sport should be a safe place for EVERYONE to thrive. The toxic environment that exists in this organization is going to be the downfall of our sport in this country. Despite preaching about inclusivity, the full-time training program is a place where I felt so excluded, and so looked down upon, simply for the way that I am. I am not alone in these thoughts. Staff and management's words/actions do not reconcile when you create a dialogue amongst the staff and athletes that pits us against one another. If we come from certain clubs, we automatically do not have what it takes to be an elite athlete. If we struggle with mental our mental health, we are constantly reminded that we are not enough. If we stand up for ourselves, we are gaslighted and told that what we felt was wrong.

[...]

I am robust. I am resilient. As a resilient person, I moved forward when our team did not qualify for Rio. As a person with integrity, I raised my voice despite fearing the cost of doing so when it became necessary; the cost of losing my dream. As a resilient person, I will move forward, having paid the price for doing so.

the whole as more fully appears from the letter communicated herewith with the cover email exchange *en liasse* as **Exhibit R-33**.

98.20. The experience of Harrower and the other complainants demonstrates that despite the existence of discipline policies and procedures, CAS has not changed and continued (and continues) to fail or to refuse to fulfill its duty to take the steps necessary to protect its athletes from psychological abuse, neglect and harassment.

98.21. Harrower spent approximately seven years on the senior National Team suffering psychological abuse, neglect and harassment and seeks moral damages in the amount of \$87,500.

C. MEAGHAN LAPIERRE

98.22. CAS's pattern of neglect has also impacted the National Team's youngest athletes, with nearly fatal consequences in the case of Lapierre.

98.23. In the summer of 2019, Lapierre was a member of the 13-15 National Team, where she trained under Head Coach Elena Podolsky ("**Podolsky**"). Unlike the senior National Team, which trains and competes all year round, the 13-15 National Team only convenes in the summer months.

98.24. The summer of 2019 followed the tenure of Sauv , Chen and Sproule as Head Coaches of the Senior National Team. Consequently, by the time that Lapierre arrived in Montreal in June 2019 at the age 15 for the 13-15 National Team Trials, where she sought to try to earn her place on Canada' youngest national artistic swimming team, CAS had been presented with ample evidence of years of

psychological abuse, neglect and harassment of its athletes by CAS coaching and support staff. CAS had already had many opportunities to take action to change its training environment and culture that failed to protect not only the physical health and security of its athletes, but also their psychological health. However, as the experience of Lapierre will show, CAS continued to fail to protect the health and wellbeing of the National Team athletes, even its youngest and most vulnerable members. In the case of Lapierre, CAS's failure to fulfill the duty of care it owes its athletes very nearly had deadly consequences.

98.25. During CAS's 13-15 National Team Selection Camp held in Montreal in June 2019, Lapierre and approximately 23 other athletes were required to complete a series of "fitness tests". These tests were part of an intense training programme that involved six to seven hours of pool and land training every day. Lapierre and other athletes were being assessed by CAS representatives to see which athletes would be selected to represent Canada in junior international competitions that summer.

98.26. On June 9, 2019, Lapierre and the athletes were subjected to a "push-up test" which required each swimmer to perform the maximum number of push-ups possible with proper technique. Athletes were given no time limit or a maximum number of push-ups to reach and were not given any warnings as to adverse effects that might result from this form of maximal exertion.

98.27. Lapierre and the other athletes did what was asked of them throughout the training camp, namely exercise to exhaustion in an attempt to prove themselves worthy to CAS. Lapierre performed the push-up test in front of CAS physiotherapist Jennifer

Langlois (“Langlois”), who kept count. Langlois waited until Lapierre had completed 90 push-ups before telling her to stop. No other members of CAS’s coaching and support staff told Lapierre to stop or otherwise intervene to ensure that she was not hurting herself.

98.28. After this brutal fitness test, Lapierre’s arms immediately began to cramp. Langlois’ response was merely to give Lapierre a brief massage by herself and from another on-site physiotherapist, Fayez Abdulrahman (“Abdulrahman”). Lapierre then completed another four hours of physical training in the pool, before Abdulrahman called her aside for a check-up. Abdulrahman remarked that Lapierre’s arms continued to be tight, and told her that he wanted to see her again in two days time.

98.29. The following day, on June 10, 2019, Lapierre woke up and found that she could not bend her arms past 90 degrees. Notwithstanding her condition, Lapierre proceeded to participate in a land drill session that morning. Lapierre’s arms soon turned bright red and the veins in her arms and hands began to protrude. At least eight coaches were present on the pool deck watching Lapierre as she struggled through the session and neglected to intervene. When one coach asked Lapierre whether her arms were hurting, Lapierre admitted that she was in pain and having a hard time. The coach simply told her to keep going and that the drill was almost done. In response to Lapierre’s obvious struggles and pain, both Podolsky and Healy repeatedly told Lapierre to just ice her arms and that she would be fine. However, Lapierre’s condition worsened throughout the day and when she arrived back at her residence that night, she could not use her arms to perform basic tasks. She even needed help from a teammate to undress.

98.30. By the next morning, June 11, 2019, Lapierre could bend her arms even less than the day before. She struggled to hold her plate and put a fork to her mouth at breakfast. Notwithstanding her obvious severe distress, Podolsky told Lapierre that she could not take Lapierre out of the pool if Lapierre wanted to be on the 13-15 National Team, as the routine training taking place that day was the most important session the coaches would evaluate for the team's selection. Thus, notwithstanding the fact that Lapierre was obviously struggling and had complained about her pain, at the direction and with the supervision of CAS' coaches and staff, Lapierre completed all of the scheduled water training that morning.

98.31. Then, during lunch, Lapierre attended her previously scheduled appointment with Abdulrahman. He started performing a deep massage, expressing astonishment at how tight Lapierre's arms still were 48 hours after the fitness test. During the session, Lapierre cried and was shaking on the massage table because of the intensity of her pain. Abdulrahman expressed concern and recommended that Lapierre see the INS physiotherapist, Jean Sébastien Rondeau ("**Rondeau**"). When Abdulrahman and Lapierre attended Healy's office to book the appointment, Podolsky also entered the room. Noticing Lapierre's tears, Podolsky put her arm around her, laughing as she told Abdulrahman, "You know why she's crying? It's because she has no one to blame but herself."

98.32. Following this meeting and notwithstanding Lapierre's obvious distress and Abdulrahman's expression of concern, Podolsky made Lapierre get into the water for training. By this time, Lapierre was in too much pain to put on her own goggles or nose clip. Rather than showing concern and care for 15-year old Lapierre's well-being,

an apprentice coach for CAS and national judge, Nancy Bélanger (“Bélanger”) simply helped Lapierre put on her goggles and noseclip and get in the pool. Neither Bélanger, nor anyone else from CAS, questioned why Lapierre was getting back in the pool. As the other athletes practiced their figures, Lapierre struggled to train for the rest of the afternoon, trying to do any drills that she could think of that did not require her to use her arms.

98.33. That afternoon, Abdulrahman called Lapierre’s mother to describe the condition of Lapierre’s arms. When Lapierre’s mother expressed concern over her daughter’s condition, CAS representatives responded that Lapierre needed to learn how to be more “resilient”.

98.34. By the time the athletes gathered for dinner that night, Lapierre was unable to bring a fork to her mouth. She relied on a friend to feed her, and otherwise attempted to eat from her plate without using her arms or hands. Lapierre was deeply embarrassed by the experience, but the other athletes laughed and made a joke trying to imitate her. These events occurred no more than three metres from coaching staff who sat at a nearby table. When Lapierre returned to her room that night, she struggled to get ready for bed, and for the first time noticed that her urine had turned brown in colour.

98.35. On June 12, 2019, after Lapierre completed her morning training she proceeded to her appointment with Rondeau. Rondeau expressed shock upon seeing the swelling of Lapierre’s arms. At the end of the appointment, he was concerned that Lapierre might have a severe case of delayed onset muscle soreness (“DOMS”). Healy

entered the room at the end of Lapierre's appointment and asked if Lapierre was able to get into the pool again that afternoon. Rondeau firmly told Healy to keep Lapierre out of the pool for the rest of the day, as she could not complete basic tasks with her arms.

98.36. That night, Lapierre became curious as to why Rondeau thought that she might have a severe case of DOMS and began to research her symptoms. She came across a website describing the signs of rhabdomyolysis – a potentially life-threatening condition in which damaged muscle fibres enter the bloodstream – which include fever, dark urine, muscle swelling, and pain. Seriously concerned that she was exhibiting these symptoms, and had been for more than 48 hours, Lapierre texted Podolsky shortly after midnight. When she received no response, Lapierre went to knock on Podolsky's door.

98.37. When Podolsky answered, Lapierre explained her symptoms (including that her urine was brown and that she suspected she had fever). Lapierre also expressed concern that if she had rhabdomyolysis, the condition could be dangerous to her kidneys. Podolsky replied that even if Lapierre was going to lose her kidneys, "it's not 12 hours that's going to change anything or kill you." Lapierre told Podolsky that she wanted to be brought to the hospital immediately. Podolsky said that she refused to take Lapierre to the hospital in the middle of the night and told Lapierre that she would assess the situation in the morning. Podolsky also told Lapierre that she did not want her to stay up on her cell phone and confiscated the device, leaving Lapierre with no means of communication during the night in the event a health-related issue or emergency arose.

98.38. The following morning, on June 13, 2019, Lapierre’s mother spoke to Healy on the phone and demanded that her daughter be taken immediately to Montreal Children’s Hospital. Healy agreed to take her but insisted that Lapierre first eat breakfast with the other athletes and travel approximately 30 minutes by metro with the team to bring her bags to the pool deck, as Healy assumed she would return to training after the hospital. During the metro ride, Podolsky pulled Lapierre aside and reproached her for making two “mistakes” – first, by doing too many push ups; and second, by not telling CAS earlier that her urine was darker.

98.39. When Lapierre arrived at Montreal Children’s Hospital, she was diagnosed with rhabdomyolysis and hospitalized for the next six days. While at the hospital:

- (a) Lapierre’s creatine kinase levels reached as high as 44,940, compared to normal levels in the 53-310 range;
- (b) Lapierre faced acute kidney failure, for which dialysis was considered; and
- (c) Lapierre had high blood pressure in the 160/100 range, throughout her hospital stay.

98.40. After she was released from the hospital, Lapierre was sent to a nephrologist and neurologist to further diagnose the cause of her rhabdomyolysis episode. As part of their testing, Lapierre’s doctors ordered blood tests, which revealed that her troponin-I levels were high enough to indicate that Lapierre may have had a heart attack. After undergoing an echocardiogram, ultrasound, MRI, and stress test,

doctors ruled out the possibility that Lapierre had suffered a heart attack, but concluded that the push-up test had created a build up of dead cells in Lapierre's pectoral muscles, which showed up as troponin I cells in blood tests. The testing Lapierre underwent to assess her heart added additional stress to an already traumatic health scare.

98.41. After the extensive testing performed on Lapierre, Dr. Hugh McMillan, a pediatric neurologist at the Children's Hospital of Eastern Ontario in Ottawa, eventually concluded that Lapierre's episode of rhabdomyolysis was most likely attributable to any or all of the following: intense over-exertion, lack of time for adequate rest and recovery, and dehydration.

98.42. After her immediate health issues were resolved, Lapierre was named to the 13-15 National Team. In or about July 2019, she was medically cleared to train for and compete at the 2019 Youth World Championships in Slovakia. Lapierre's parents only allowed it after Healy agreed that Lapierre would be brought on with "injured athlete" status and would limit Lapierre's training. However, this never happened. Instead, the CAS coaches and staff made the same demands of Lapierre as they did of the other young athletes.

98.43. There was never any discussion or debrief during the CAS training camp about Lapierre's experience with any CAS coaches or other representatives and Lapierre or her family.

98.44. Lapierre's experience was part of a broader pattern of neglect by CAS in the lead up to the 2019 Youth World Championships in Slovakia. Once the 13-15 National Team was chosen, training moved to Waterloo, Ontario where the team was

forced to train in an unclean pool with insufficient depth. Lapierre and one other team member suffered a total of three concussions in the lead up to competition, and multiple team members flew to Slovakia with ear infections from their unsanitary training conditions.

98.45. After Lapierre's summer on the 13-15 National Team, she eventually received a call from Maclean, who had heard of Lapierre's experience. Maclean told Lapierre that her story was one of the worst she had encountered in her 22-year career and that the issue should be addressed by CAS. Maclean advised Lapierre that Lapierre had three options: an informal complaint, a formal complaint, or legal action. Given that Lapierre still dreamed of going to the Olympics and because she feared reprisals from CAS that would adversely impact her artistic swimming career, Lapierre decided not to take formal action and instead chose to file an informal complaint.

98.46. In October 2019, at Maclean's suggestion, Lapierre told her story to Buckingham. On November 29, 2019, a phone call eventually followed between Lapierre, Podolsky, Buckingham, Maclean, and Lapierre's support person, Geneviève Beauregard. As Lapierre described her experience at the 2019 13-15 Team Trials on the call, Podolsky was largely silent but stated that the only thing she was "guilty" of was not bringing Lapierre to the hospital when she asked.

98.47. Shortly after the call ended, Buckingham circulated an email to the participants, attaching a draft list of recommendations arising out of CAS's mishandling of Lapierre's case. A copy of the recommendations is communicated herewith as **Exhibit R-34**, and provides among other things that CAS would thereafter:

- (a) change the push-up test from a maximum number test to focus on controlled movements on a cadence to a maximum of 20 push ups; and
- (b) take steps to improve coach communication protocols regarding athlete injury/sickness and provide coaches with more information regarding athlete injuries.

98.48. Podolsky responded to Buckingham's email by simply stating, "I'm really disappointed [with] the way [Lapierre]relived her experience. Sorry. Tha[t] is my opinion. I know what I'm guilty of". A copy of this email is communicated herewith as **Exhibit R-35.**

98.49. To Lapierre's knowledge, neither Podolsky, nor any other member of CAS' coaching or support staff were ever disciplined for their neglect of Lapierre's health and well-being, or the psychological abuse that she suffered. In light of the years of athlete injuries, complaints and demands that CAS take action and fulfill its obligation to protect athlete health and well-being, CAS' conduct was all the more inexcusable and the limited steps taken to purportedly remediate the situation were, once again, deplorably deficient.

98.50. In March 2020, Lapierre stopped artistic swimming, in large part because of what happened with CAS during the summer of 2019. The experience took a significant mental toll as she came to realize that the numerous CAS coaches and staff who had been entrusted with her care at CAS were willing to disregard her concerns, neglect her health and well-being. While Lapierre's experience had particularly severe

consequences, other athletes on the CAS 13-15 and junior National Teams experienced various degrees of neglect and abuse at the hands of CAS representatives.

98.51. Until she left the sport, Lapierre continued to have flashbacks from her time on the National Team. Lapierre has also suffered long term adverse physical consequences because of the psychological abuse and neglect that she suffered while on the 13-15 National Team. Lapierre remains on blood pressure medication due to her episode of rhabdomyolysis, and doctors are not sure if or when she will ever be able to stop taking this medication.

98.52. During the three months Lapierre spent on the 13-15 National Team, she suffered serious psychological abuse, neglect, and harassment and seeks moral damages in the amount of \$6,000. In addition, Lapierre was required to pay her own way to be on the 13-15 National Team and spent approximately \$20,000.

IV. THE RESPONDENT'S LIABILITY

A. CAS BREACHED ITS DUTY OF CARE TO THE MEMBERS OF THE NATIONAL TEAM

99. At all material times, CAS and its employees, agents and representatives owed a duty of care to the Petitioners to create and maintain a safe sport environment that, among other things, fostered compliance with CAS's Conduct Policy, first adopted in 2007. A copy of the current CAS's Conduct Policy is communicated herewith as **Exhibit R-25**.

100. CAS and its employees, agents, and representatives had regular interactions with the Petitioners and the other National Team members. CAS had a close and direct

supervisory relationship with its employees, agents and representatives. CAS was solely responsible for providing or causing the provision of all facilities, policies, standards and programs appropriate to ensure that the Petitioners and other National Team members were offered an environment that allowed them to train safely and free from psychological abuse and harassment.

101. The reasonable standard of care required CAS and its employees, agents and representatives to comply with the standards of behaviour and obligations set out in CAS's Conduct Policy, including, among other things:

- (a) Fostering an environment in which athletes can report misconduct, participate in investigations, and exercise their legal rights without retaliation;
- (b) Taking action to intervene on behalf of athletes whenever an individual becomes aware of misconduct;
- (c) Providing a sports environment that fosters equity, diversity and inclusion in all activities, including setting policies and developing, updating or delivering programs;
- (d) Supporting a sports environment that fosters respect and promotes everyone's dignity and self-esteem;
- (e) Creating and maintaining a sports environment that is free from discrimination, harassment, sexual harassment, bullying and violence, and in which all persons are treated fairly and with respect;

- (f) Encouraging the reporting of all incidents of discrimination, harassment, sexual harassment, bullying and violence, regardless of who the offender may be;
- (g) Requiring directors, officers and committee members to “promote a culture that values complaints and their effective resolution”;
- (h) Requiring coaches to “ensure their athletes understand that discrimination, harassment, bullying and violence will not be tolerated, and create a culture of disclosure and reporting at the athlete level”; and
- (i) Requiring persons in leadership and club managers to “maintain an environment where everyone feels comfortable asking questions and raising concerns,” “assist people in making a complaint if needed,” “ensure that any possible or actual misconduct is investigated promptly and thoroughly,” and “impose appropriate disciplinary or corrective measures when misconduct has been substantiated.”

the whole as more fully appears from CAS’s Conduct Policy (Exhibit R-24).

102. CAS and its employees, agents and servants breached the duty of care owed to the Petitioners. These breaches include, but are not limited to:

- (a) Directly engaging in psychological abuse, discrimination, harassment, neglect, and bullying behaviour;
- (b) Failing to act or intervene upon becoming aware of such misconduct;

- (c) Discouraging athletes from pursuing complaints or otherwise stymying their effective resolution;
- (d) Failing to implement the institutional and cultural changes required to provide a sports environment that is free from discrimination, harassment, sexual harassment, bullying and violence, and promotes dignity and self-esteem; and
- (e) Failing to ensure all individuals complied with CAS's Conduct Policy, which was in CAS's sole discretion to do.

103. CAS and its employees, agents, and servants knew or ought to have known that the above conduct was of a kind reasonably capable of causing the damages particularized above. CAS is, moreover, vicariously liable for the acts and omissions and its employees, agents and representatives.

104. By virtue of the relationship between the Petitioners and CAS, being one of trust, reliance and dependency, CAS owed a duty to ensure that the Petitioners were treated respectfully, fairly and safely in their training environment, to act in the best interests of the Petitioners, and to protect them from the harm described in this action.

105. CAS was solely responsible for, among other things, the standards set out above.

106. The Petitioners had a reasonable expectation that CAS would comply with its obligations, given the assumption of responsibility for the care of the Petitioners, by virtue of:

- (a) CAS's power and authority over the Petitioners, while they were National Team members;
- (b) CAS's unilateral assumption of care for the Petitioners in their training environment; and
- (c) the Petitioners' dependence on CAS.

107. Given the circumstances of the relationship between CAS and the Petitioners, including but not limited to its authority and control over the Petitioners and their athletic careers, CAS undertook to act in the Petitioners' best interests and in accordance with the duty of care imposed on CAS. As a result of the power imbalance between CAS and National Team members, the Petitioners were particularly vulnerable to and at the mercy of CAS's discretion and control.

108. CAS's ability to exercise its power and discretion impacted the Petitioners' legal interests, including but not limited to their career advancement as athletes and participation in international competitions, including the Olympic Games, along with the benefits related to such advancement and participation. CAS's discretion also directly exposed the Petitioners unfairly and improperly to psychological abuse, neglect and harassment. It was solely within the scope of CAS's discretion to ensure that appropriate policies and procedures were in place and followed to prevent misconduct of this nature.

109. CAS breached its duty to the Petitioners, the particulars of which include the failures set out above.

110. CAS knew or ought to have known that the Petitioners would suffer the damages described above as a consequence of its actions.

B. UNLAWFUL INTERFERENCE WITH RIGHTS UNDER THE QUEBEC CHARTER

111. The *Quebec Charter of Human Rights and Freedoms* (the “**Quebec Charter**”) provides that every individual has the right to full and equal recognition and exercise of their human rights and freedoms, without distinction, exclusion or preference based on, among other things, race, colour, sex, gender identity or expression, as well as the right not to be harassed on these grounds (ss. 10 and 10.1 of the *Quebec Charter*). Moreover, every person has the right to the safeguard of their dignity (s. 4 of the *Quebec Charter*).

112. In failing to provide an environment free from psychological abuse, neglect and harassment, when it knew or ought to have known that such psychological abuse, neglect and harassment was ongoing, the Respondent has unlawfully and intentionally interfered with the rights of the Petitioners that are protected by the *Quebec Charter*.

V. THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT

113. The Petitioners wish to exercise their rights on behalf of the members of the Class.

114. The personal claims of each of the members of the Class against the Respondent are based on the following facts:

- (a) each Class member was subjected to psychological abuse, neglect and harassment by employees, agents or representatives of CAS by virtue of being members of the National Team at some point since January 1, 2010;
- (b) each Class member necessarily and automatically suffered severe injury as a result of being subjected to psychological abuse, neglect and harassment by employees, agents or representatives of CAS;
- (c) among the common injuries suffered by the Class and other high-performance female athletes subjected to psychological abuse, neglect and harassment, including decreased self-confidence, increased nervousness and fear, anxiety, depression, eating disorders, difficulty forming new healthy relationships, nightmares, suicidal thoughts and the need for professional psychological care;
- (d) whereas for some Class members, the incidences of psychological abuse, neglect and harassment took place more than three years ago, it is common for athletes to normalize their experiences based upon the observation that psychologically abusive coaching practices were deployed against everyone on the National Team, it is only years later that athletes eventually recognized that they were subject to harassment and psychological abuse in their training environment; were able to recognize and understand the wrongful conduct of CAS its employees, agents and representatives; and the adverse impact that the

psychological abuse, neglect and harassment had on them, not only when they were training with the National Team, but for years following their retirement from the team;

- (e) each Class member was the victim of unlawful intentional interference with her Quebec Charter rights, thus giving rise to punitive damages in virtue of the *Québec Charter of Human Rights and Freedoms*.

115. In addition, the identical, similar or related questions of law or fact raised by the members of the Class, which the Petitioners wish to have decided by this class action, are:

- (a) Did CAS and its employees, agents and representatives owe a duty of care to the members of the Class?
- (b) What was the applicable standard of care required of CAS and its employees, agents and representatives?
- (c) Did CAS or its employees, agents and representatives breach the applicable standard of care, and if so, how?
- (d) Is CAS vicariously liable towards the Class members for the damages caused to them by its staff members?
- (e) What kinds of injury or damages are commonly suffered by athletes due to being psychologically abused, neglected and harassed (including

racial and sexual harassment) by staff members of their federation, including their coaches?

- (f) May the Court determine a minimum quantum of damage that the Class members suffered in common and/or set parameters for the damages suffered by the Class members, based on the gravity of the abuses and the consequences thereof?
- (g) Did CAS unlawfully and intentionally interfere with the rights of the Class members that were protected by *Quebec's Charter of Human Rights and Freedoms*?
- (h) If so, what is the appropriate amount of punitive damages to which the Respondent should be condemned to sanction and deter the conduct in question?
- (i) Is it appropriate for punitive damages to be recovered collectively?

VI. THE COMPOSITION OF THE CLASS MAKES IT DIFFICULT OR IMPRACTICABLE TO APPLY THE RULES FOR MANDATES TO TAKE PART IN JUDICIAL PROCEEDINGS ON BEHALF OF OTHERS OR FOR CONSOLIDATION OF PROCEEDINGS

116. At any one time, there were between 16 and 24 women on the senior National Team. Some stayed for years, others only a few months. In addition, there were athletes on the junior and 13 to 15-year-old [...] National Teams who would train under CAS at INS and other locations for shorter periods. The names of all these athletes from 2010 are not publicly available.

117. While all the senior National Team athletes trained at the INS facility in Montreal [...], and it was there that they were subjected to the wrongful conduct complained of herein, they came from and returned to locations all over the rest of Canada.

118. The psychological abuse, neglect and harassment suffered by the National Team perpetrated by CAS employees, agents and representatives took place over at least the last eleven years. During that period, the composition of the National Team was consistently changing. Consequently, many victims do not know one another and have not kept in touch with one another.

119. Victims of psychological abuse, neglect and harassment in sport fear coming forward for various reasons. They are concerned that they will be labelled as weak and unable to tolerate the challenges of training for sport at an elite level. They fear tarnishing the reputation of the sport they loved and their teammates who continue to participate. They may themselves also have ambitions to continue in the sport and other roles (such as coaching), which they fear will be closed to them if they complain about their national association.

120. Some of the Class members are currently on the National Team and coming forward to claim redress as a petitioner will subject them to the risk of reprisals and the end of their artistic swimming careers, or at the very least their dreams of representing their country at the international level.

121. Under the circumstances, it would be impossible, and undoubtedly difficult or impracticable, for the Petitioners to locate all members of the Class to obtain a mandate to institute proceedings for their benefit.

122. The class action is the only procedural vehicle that will enable all victims of psychological abuse, neglect and harassment while on the National Team to access justice.

123. It would be impossible, as well as disproportionate, to require each member of the Class to institute an individual action. In contrast, a class action allows an economy of resources by having one judge hear all of the evidence and render a decision binding upon the Respondent and all the Class members.

VII. THE PETITIONERS ARE IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS

124. At least one of the Petitioners was on the senior National Team over the proposed class period spanning the last ten years. All of the Petitioners were on the 13-15 National Team or the junior National Team at some point during the proposed class period. Each Petitioner was subjected to psychological abuse, neglect and harassment while on the National Team.

125. The Petitioners have opted for the institution of legal proceedings through a class action in the hopes of obtaining justice for themselves and the many other victims who were their teammates on the National Team (or who remain on the National Team).

126. The Petitioners further seek to change the leadership of CAS to force a change of culture that is so desperately needed. The Petitioners wish for a world where young Canadian women can pursue their dreams of representing their country at the international level, without having to suffer the lifelong consequences of years of psychological abuse, neglect and harassment by CAS, its coaches, staff, agents and

representatives, whose role is supposed to be to provide an environment where they can train and excel

127. The Petitioners have provided the undersigned attorneys with all information necessary to institute the present class action.

128. The Petitioners have the time, energy, will and determination to assume all responsibilities incumbent on them to carry out the class action diligently.

129. The Petitioners are acting in good faith and have as their sole goal to obtain justice for themselves and their teammates and a change in culture to improve future Canadian artistic swimmers' experiences at all levels.

130. The Petitioners have participated in drafting the present proceedings and have spent many hours preparing for same.

131. The Petitioners have no conflict with the members of the Class.

132. The Petitioners are represented by two experienced law firms with extensive experience in class actions.

VIII. THE SUPERIOR COURT FOR THE DISTRICT OF MONTRÉAL IS THE APPROPRIATE FORUM FOR THE CLASS ACTION

133. Petitioners suggest that the class action be brought before the Superior Court for the District of Montreal. This is the judicial district in which all Class members resided when they trained with CAS on the senior National Team and which some of the Class members resided when they trained with CAS on the junior and 13-15 National Teams.

It is the judicial district where CAS's coaches, staff and other representatives committed

the majority of their wrongful conduct. Moreover, the judicial District of Montréal is where the Class members suffered [...] the majority of their injuries.

134. The present application to introduce an instance is well-founded in fact and law.

WHEREFORE, MAY IT PLEASE THIS COURT TO:

[1] GRANT the present Modified Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;

[2] AUTHORIZE the institution of the Class Action;

[3] GRANT the status of representatives for the purpose of instituting the said Class Action for the benefit of the following group of persons, namely:

“All individuals who trained with the national swimming teams of Canada Artistic Swimming who were subjected to psychological abuse, neglect and harassment by coaches and staff of Canada Artistic Swimming between January 1, 2010, and March 8, 2021.”

“Toutes les personnes qui se sont entraînées avec les équipes nationales de Natation artistique Canada et qui ont été victimes d'abus, de négligence et de harcèlement psychologique de la part des entraîneurs et du personnel de Natation artistique Canada entre le 1er janvier 2010 et le 8 mars 2021.”

(the "**Class**");

[4] IDENTIFY the principal questions of law and fact to be dealt with collectively as follows:

- (a) What was the applicable standard of care required of CAS and its employees, agents and representatives?
- (b) Did CAS or its employees, agents and representatives breach the applicable standard of care, and if so, how?
- (c) Is CAS vicariously liable towards the Class members for the damages caused to them by its staff members?
- (d) What kinds of injury or damages are commonly suffered by athletes due to being psychologically abused, neglected and harassed (including racial and sexual harassment) by staff members of their federation, including their coaches?

- (e) May the Court determine a minimum quantum of damage that the Class members suffered in common and/or set parameters for the damages suffered by the Class members, based on the gravity of the abuses and the consequences thereof?
- (f) Did CAS unlawfully and intentionally interfere with the rights of the Class members that were protected by the *Quebec Charter of Human Rights and Freedoms*?
- (g) If so, what is the appropriate amount of punitive damages to which the Respondent should be condemned to sanction and deter the conduct in question?
- (h) Is it appropriate for punitive damages to be recovered collectively?

[5] IDENTIFY the conclusions sought by the class action to be instituted as being the following:

MAINTAIN the Class Action;

ORDER the Respondent to implement, apply and follow appropriate governance procedures for a national sport governing body so that the physical and psychological health of CAS athletes is both protected and no longer subordinated to performance;

CONDEMN the Respondent to pay to the Petitioner **Erin Willson** the amount of \$2,000, *sauf à parfaire*, in pecuniary damages, plus interest at the legal rate as of the date of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative, as well as the additional indemnity provided for by law in virtue of Article 1619 CCQ;

CONDEMN the Respondent to pay to Petitioner **Erin Willson** the amount of \$75,000 in moral damages, plus interest at the legal rate as of the date of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative, as well as the additional indemnity provided for by law in virtue of Article 1619 CCQ;

CONDEMN the Respondent to pay to the Petitioner **Chloé Isaac** the amount of \$5,000, *sauf à parfaire*, in pecuniary damages, plus interest at the legal rate as of the date of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative, as well as the additional indemnity provided for by law in virtue of Article 1619 CCQ;

CONDEMN the Respondent to pay to Petitioner **Chloé Isaac** the amount of \$62,000 in moral damages, plus interest at the legal rate as of the date of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative, as well as the additional indemnity provided for by law in virtue of Article 1619 CCQ;

CONDEMN the Respondent to pay to the Petitioner **Gabriella Brisson** the amount of \$300, *sauf à parfaire*, in pecuniary damages, plus interest at the legal rate as of the date of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative, as well as the additional indemnity provided for by law in virtue of Article 1619 CCQ;

CONDEMN the Respondent to pay to Petitioner **Gabriella Brisson** the amount of \$75,000 in moral damages, plus interest at the legal rate as of the date of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative, as well as the additional indemnity provided for by law in virtue of Article 1619 CCQ;

CONDEMN the Respondent to pay to the Petitioner **Rebecca Harrower** the amount of \$1, *sauf à parfaire*, in pecuniary damages, plus interest at the legal rate as of the date of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative, as well as the additional indemnity provided for by law in virtue of Article 1619 CCQ;

CONDEMN the Respondent to pay to Petitioner **Rebecca Harrower** the amount of \$87,500 in moral damages, plus interest at the legal rate as of the date of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative, as well as the additional indemnity provided for by law in virtue of Article 1619 CCQ;

CONDEMN the Respondent to pay to the Petitioner **Gabrielle Boisvert** the amount of \$2,000, *sauf à parfaire*, in pecuniary damages, plus interest at the legal rate as of the date of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative, as well as the additional indemnity provided for by law in virtue of Article 1619 CCQ;

CONDEMN the Respondent to pay to Petitioner **Gabrielle Boisvert** the amount of \$50,000 in moral damages, plus interest at the legal rate as of the date of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative, as well as the additional indemnity provided for by law in virtue of Article 1619 CCQ;

CONDEMN the Respondent to pay to the Petitioner **Sion Ormond** the amount of \$1, *sauf à parfaire*, in pecuniary damages, plus interest at the legal rate as of the date of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative, as well as the additional indemnity provided for by law in virtue of Article 1619 CCQ;

CONDEMN the Respondent to pay to Petitioner **Sion Ormond** the amount of \$25,000 in moral damages, plus interest at the legal rate as of the date of the Application for Authorization to Institute a Class Action and

to Obtain the Status of Representative, as well as the additional indemnity provided for by law in virtue of Article 1619 CCQ;

CONDEMN the Respondent to pay to the Petitioner **Meaghan Lapierre** the amount of \$20,000, *sauf à parfaire*, in pecuniary damages, plus interest at the legal rate as of the date of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative, as well as the additional indemnity provided for by law in virtue of Article 1619 CCQ;

CONDEMN the Respondent to pay to Petitioner **Meaghan Lapierre** the amount of \$6,000 in moral damages, plus interest at the legal rate as of the date of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative, as well as the additional indemnity provided for by law in virtue of Article 1619 CCQ;

CONDEMN the Respondent to pay to each member of the Class an amount for moral and pecuniary damages to be determined according to parameters taking into account the nature of the damages and sequels suffered, plus interest at the legal rate as of the date of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative, as well as the additional indemnity provided for by law in virtue of Article 1619 CCQ;

CONDEMN the Respondents to pay punitive damages of \$250,000, plus interest at the legal rate as of the date of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative, as well as the additional indemnity provided for by law in virtue of Article 1619 CCQ;

DECLARE :

a) That all Class members are entitled to be compensated for all of their pecuniary damages resulting from the faults of the Respondent, including, but without limitation, their disbursements pertaining to their therapy treatments;

b) That all Class members are entitled to be compensated for their non-pecuniary damages resulting from the faults of the Respondent, in accordance with parameters to be set by the Court during the trial pertaining to the collective questions;

ORDER collective recovery of the punitive damages claimed herein, and the liquidation of the Class members claims pursuant to Articles 595 to 598 CCP;

CONDEMN the Respondent to any further relief as may be just and proper;

THE WHOLE with legal costs, including the cost of all exhibits, reports, expertise and publication of notices.

[6] **DECLARE** that any member of the Class who has not requested his/her exclusion from the Class be bound by any judgment to be rendered on the Class action, in accordance with law;

[7] **FIX** the delay for exclusion from the Class at sixty (60) days from the date of notice to the members, and at the expiry of such delay, the members of the Class who have not requested exclusion be bound by any such judgment;

[8] **ORDER** the publication of a notice to the members of the Class drafted according to the terms and in the media to be determined by the Court in a further management conference, at the expense of the Respondent;

[9] **ORDER** that the class action be tried in the judicial district of Montreal;

[10] **PERMIT** the use of pseudonyms for the identification of Class members (other than the Petitioners who have chosen to disclose their name) in the proceedings, exhibits, and/or all other documents filed into the court record, to protect their identities;

[11] **THE WHOLE** with legal costs, including the cost of all publications of notices.

Montréal, November 12, 2021

Davies Ward Phillips & Vineberg LLP

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Montréal, November 12, 2021

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csayao@tyrllp.com

CANADA
Province of Québec
District: Montreal
File No. 500-06-001134-218

SUPERIOR COURT
(Class Action Division)

CHLOE ISAAC, residing and domiciled at 5655 Vallerand Street, in the City of Brossard, in the Judicial District of Longueuil, in the Province of Quebec

-and-

GABRIELLE BOISVERT, residing and domiciled at 2537 du Lac-Côté Road in the City and District of Québec, in the Province of Quebec

-and-

ERIN WILLSON, residing and domiciled at 513-801 King Street West, in the City of Toronto, in the Province of Ontario

-and-

SION ORMOND, residing and domiciled 8 Dodie Street, in the City of Aurora, in the Province of Ontario

-and-

GABRIELLA BRISSON, residing and domiciled at 502 8A Street NE, the City of Calgary, in the Province of , T2E 4J5;

-and-

REBECCA HARROWER, residing and domiciled at 14307 Summit Drive, in the City of Edmonton, in the Province of Alberta

-and-

NANCY VAILLANCOURT as tutor for **MEAGHAN LAPIERRE**, residing and domiciled at 932 Dresden Crescent, in the

MODIFIED LIST OF EXHIBITS
SUPPORTING THE
APPLICATION FOR
AUTHORIZATION TO INSTITUTE
A CLASS ACTION AND TO
OBTAIN THE STATUS OF
REPRESENTATIVE

City of Ottawa, in the Province of Ontario

Petitioners

vs.

CANADA ARTISTIC SWIMMING / NATATION ARTISTIQUE CANADA, a company registered pursuant to the Canada Not-For-Profit corporations act, with its head office located at 700 Industrial Avenue, Suite 401, in the city of Ottawa, in the Province of Ontario.

Respondent

MODIFIED LIST OF EXHIBITS SUPPORTING THE APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE

- | | |
|--------------------|---|
| EXHIBIT R-1 | CBC's article published on cbc.ca dated October 1, 2020 and entitled Canada Artistic Swimming closes Montreal training centre amid investigation into allegations of harassment |
| EXHIBIT R-2 | Independent Safe Sport Review Report dated October 26, 2020 |
| EXHIBIT R-3 | Copy of the principles of SafeSport International and the relevant page of the Canadian Centre for Ethics in Sport, <i>en liasse</i> |
| EXHIBIT R-4 | CAS Safe Sport web page |
| EXHIBIT R-5 | Press release of CAS dated January 15, 2021 |
| EXHIBIT R-6 | Radio Canada article published on radio-canada.ca dated November 2, 2020 and entitled L'examen sur Natation Artistique Canada expliqué par sa chef de direction |
| EXHIBIT R-7 | Report of the Canadian federal corporate database |

- EXHIBIT R-8** Press release of CAS dated August 21, 2018
- EXHIBIT R-9** Letters to Erin Willson, *en liasse*
- EXHIBIT R-10** Post 2012 Olympic Athlete Agreement
- EXHIBIT R-11** Letter from Karen Willson dated February 26, 2012
- EXHIBIT R-12** CAS letter to Karen Willson dated March 9, 2012
- EXHIBIT R-13** Email from Karen Willson dated June 1, 2012 and reply from CAS
- EXHIBIT R-14** Emails between Isaac and Buckingham regarding her retirement letter
- EXHIBIT R-15** Internal exchange of emails at CAS and press release dated October 2, 2012
- EXHIBIT R-16** Press release of CAS dated November 2, 2017
- EXHIBIT R-17** Letter from the Athletes to CAS dated April 16, 2018
- EXHIBIT R-18** Boisvert email to CAS CSO Healy and the IST Manager dated May 17, 2018
- EXHIBIT R-19** Boisvert retirement letter and related emails, *en liasse*
- EXHIBIT R-20** Press release of CAS dated November 13, 2018
- EXHIBIT R-21** Article from a Slovakian newspaper and the Google translation of same, *en liasse*
- EXHIBIT R-22** Press articles regarding Szauder's psychological abuse and harassment, *en liasse*
- EXHIBIT R-23** Press release of CAS dated March 5, 2014
- EXHIBIT R-24** Collection of news articles concerning CAS and the Canadian National artistic swimming team, *en liasse*.
- EXHIBIT R-25** CAS's Conduct Policy dated May 2020

- EXHIBIT R-26** Letter to the CAS Board of Directors dated January 15, 2021
- EXHIBIT R-27** Letter from the CAS Board of Directors dated January 21, 2021
- EXHIBIT R-28** Letter to the CAS Board of Directors dated January 22, 2021
- EXHIBIT R-29** Email exchange with Craig Stehr dated July 17, 2021
- EXHIBIT R-30** Copy of Mr. Stehr's decision letter dated July 19, 2021
- EXHIBIT R-31** Email exchange with Craig Stehr dated October 6, 2021
- EXHIBIT R-32** Copy of Mr. Stehr's reasons for decision dated October 12, 2021
- EXHIBIT R-33** Retirement letter to Buckingham, Healy, and other from Harrower and email exchanges *en liasse*
- EXHIBIT R-34** Email from Buckingham attaching a draft list of recommendations
- EXHIBIT R-35** Reply email from Podosky to Buckingham's email
- EXHIBIT R-36** Internal Discipline Decision dated June 7, 2021

Montréal, November 12, 2021

Davies Ward Phillips & Vineberg LLP

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Montréal, November 12, 2021

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No. 500-06-001134-218
SUPERIOR COURT
(Class Action Division)
District of Montréal

CHLOE ISAAC, residing and domiciled at
5655 Vallerand Street, in the City of Brossard, in
the Judicial District of Longueuil, in the Province of
Québec **et als.**

Petitioners

vs.

**CANADA ARTISTIC SWIMMING / NATATION
ARTISTIQUE CANADA**, a company registered
pursuant to the Canada Not-For-Profit corporations
act, with its head office located at 700 Industrial
Avenue, Suite 401, in the city of Ottawa, in the
Province of Ontario

Respondent

**Modified Originating Application for
Authorization to institute a class action and to
obtain the status of representative and
Modified List of Exhibits
(Articles 574 t seq. C.C.P.)**

ORIGINAL

DAVIES

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January 15, 2021

BY EMAIL

Board of Directors of Canada Artistic Swimming:

Judi Enns Bradette, President
Florence Klein, Vice President
Olivia Zawadiuk, Athlete Council Chair
Lindsay Duncan
Sara Hart
Jason Herbert
Deana Shaw
Elise Trustott

700 Industrial Ave, Suite 401
Ottawa, ON K1G 0Y9

c/o Judi Enns Bradette, President
judiennsbradette@arlingtonpartnersinc.com

Dear Ms Bradette and members of the Board of Directors:

Complaints Concerning Canada Artistic Swimming

We are litigation counsel for Rebecca Harrower, Cassandra Winkelaar, Sion Ormond, Jaiden Regnier, Halle Pratt and Emily Armstrong. As you must be well aware, our clients have commenced a Safe Sport Complaint (the "**Complaint**") against National Team Coach, Gabor Szauder, and multiple representatives of Canada Artistic Swimming ("**CAS**").

We understand that CAS has not retained counsel in connection with the Complaint. We are providing notice to the Board that our clients will take such actions as necessary, both within and outside of the Complaint process, to remedy the wrongs inflicted upon them by Mr. Szauder and CAS.

We have recently learned that management has authorized Mr. Szauder's return to coaching the National Team on January 18, 2021. Please be advised that our clients disagree strongly with this decision.

The third-party investigation conducted by Erin Durant as part of the Complaint process concluded that multiple allegations against Mr. Szauder had been established on a balance of probabilities. While our clients have not had an opportunity to assess the Durant Report (having not received a full copy of the Report despite multiple requests to the Case Manager), we note that Ms Durant accepted that Mr. Szauder made the following statements to certain athletes: “All muslims are extremists”, “black lives matter? You mean all lives matter, why do their lives matter more than mine?”, “You should cook for your man”, “You are such a pretty girl when you smile, so why don’t you smile”, “You need to fix your nails, you aren’t pretty when your nail polish looks like that” and “You need to go and hunt down men at the bar”.

In our view, Mr. Szauder has committed repeated and serious violations of the Conduct Policy. A Disciplinary Panel will be constituted to determine whether such violations have occurred, and if so, the appropriate sanction to be imposed.

The misconduct by Mr. Szauder described in the Durant Report is entirely consistent with the Independent Safe Sport Review Report (“**ISSRR**”) released on October 26, 2020 following a review of CAS’ high performance program. The ISSRR found, among other things, that athletes had experienced “psychological abuse, bullying, neglect, sexual harassment, discrimination” and the CAS had engendered an “overall culture of fear”. Specifically, in reference to sexual harassment, the ISSRR concluded that Athletes had been harassed “in the form of misogynistic comments and behaviour, comments that were sexual in nature, and offensive comments”. These findings were made in addition to a finding that athletes had been subjected to “discrimination which took the form of racial comments, comments based on religious beliefs, and comments based on gender identity.”

In the face of the above evidence, it is deeply concerning and unconscionable that CAS would permit Mr. Szauder to return to his role as coach before the Complaint has been fully adjudicated. Even if it were accurate that there is not a risk of direct physical abuse to CAS’s athletes, in our view, the culture of fear perpetuated by Mr. Szauder has harmed the mental health of our clients and other athletes. Indeed, mental health has been held by the Supreme Court of Canada and the World Health Organization to be an essential and interrelated component of overall physical health.¹ CAS’s decision to reinstate Mr. Szauder ignores and disregards the essential role that mental health plays in overall physical health, and results in a serious a risk of immediate physical harm to athletes.

¹ See e.g., *Saadati v. Moorhead*, 2017 SCC 28; *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27; World Health Organization. *International Statistical Classification of Diseases and Related Health Problems*.

The fact that CAS is willing to permit Mr. Szauder to return to coaching before the resolution of the allegations that have been advanced raises serious concerns. With management having shown itself incapable of acting to ensure the health, safety, and well-being of its athletes, the obligation to do so rests with members of the Board of Directors having stewardship over the organization and ultimately its athletes.

Indeed, instead of supporting and encouraging respect, diversity and mental health, the CAS's decision places certain of our clients and other members of the National Team in the position of being asked to endure an environment of psychological abuse, harassment, and discrimination in order to continue to pursue their Olympic dreams. Respectfully, there is no legitimate basis on which CAS can justify the continued tenure of Mr. Szauder as a member of the CAS. CEOs of public companies have been (and are) immediately terminated for less egregious conduct, or at a minimum suspended from their duties until such allegations have been fully adjudicated. Surely some members of the Board hold appropriate corporate experience to understand the consequences of failing to act in such circumstances. As a federally funded organization, CAS cannot reasonably turn a blind eye to Mr. Szauder's conduct.

We reiterate the inappropriate nature of permitting Mr. Szauder to return to his role and engage directly with athletes, particularly prior to our clients' Complaint being fully and finally adjudicated. In our view, if CAS permits Mr. Szauder's return to coaching, CAS will be in further breach of its obligations to its athletes, including in contract and negligence. Indeed, one of our clients (Cassandra Winkelaar) has already communicated that she does not feel safe returning to the pool in the current circumstances. We remind the Board of its obligations to act where management is unwilling and put the Board on notice that our clients will seek appropriate redress if CAS proceeds with Mr. Szauder's reinstatement.

To add to our client's concerns, it has come to our attention that Mr. Szauder faced allegations of bullying and harassment during his former role with the Slovakian artistic swimming federation. The fact that CAS recruited and hired Mr. Szauder as National Team Coach in the face of these allegations raises further questions as to CAS's ability to fulfil its obligations to its athletes. Please produce all documents and correspondence within CAS regarding the decision to employ Mr. Szauder in November 2018, including any information regarding any reference or background checks conducted by or for CAS.

Finally, our clients reserve fully their rights in connection with their Complaint, including as it relates to all respondents other than Mr. Szauder. This includes, without limitation, the right to seek recourse against Ms Durant's recommendation that certain complaints and allegations not proceed before the Disciplinary Panel. This letter constitutes formal notice of our challenge to such recommendations and we would be pleased to hear from you as to what CAS asserts is the procedural route to address our clients' challenge in this regard.

Regrettably, it is well known that the Canadian artistic swimming system has a long history of failing to provide its athletes with a safe and respectful environment. It is high time that the Board take action to stamp out the toxic and unhealthy culture that persists.

Yours very truly,

A handwritten signature in blue ink, appearing to be "James Bunting", written over a horizontal line.

James Bunting

cc: Carlos Sayao, Julia Miller and Sadhana Holla, *Tyr LLP*

No. 500-06-001134-218
SUPERIOR COURT
(Class Action Division)
District of Montréal

CHLOE ISAAC, residing and domiciled at
5655 Vallerand Street, in the City of Brossard, in
the Judicial District of Longueuil, in the Province of
Québec **et als.**

Petitioners

vs.

**CANADA ARTISTIC SWIMMING / NATATION
ARTISTIQUE CANADA**, a company registered
pursuant to the Canada Not-For-Profit corporations
act, with its head office located at 700 Industrial
Avenue, Suite 401, in the city of Ottawa, in the
Province of Ontario

Respondent

EXHIBIT R-26

ORIGINAL

DAVIES

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January 21, 2021

James D. Bunting
160 John Street - Suite 500
Toronto, Ontario M5V 2E5
CANADA

jbunting@tyrllp.com

Dear Mr. Bunting,

We write in response to your letter dated January 15, 2021, as well as your discussion with CAS legal counsel Adam Klevinas on January 19, 2021, and specifically in relation to your notice to challenge Ms. Durant's recommendation that certain complaints not proceed before the Discipline Panel. We will also address your request for disclosure of the full version of Ms. Durant's Investigation Report.

With respect to your notice to challenge Ms. Durant's recommendation that certain complaints not proceed before the Discipline Panel, CAS considers that, since an appeal was not filed in accordance with Sections 6 and 7 of the CAS Appeal Policy within the prescribed timeline and that the formal requirements listed in Sections 7 (b)-(j) were not complied with, this matter is concluded, as no appeal has been properly advanced.

Indeed, your clients were notified in writing by Lise Maclean on January 5, 2021 that the complaints and allegations against all of the respondents except for Mr. Szauder would not be proceeding before a Discipline Panel. As such, your clients had until January 20, 2021 to file an appeal pursuant to Section 6 of the CAS Appeal Policy. Further, your notice to challenge Ms. Durant's recommendation that certain complaints not proceed before the Discipline Panel in your January 15, 2021 letter does not fulfil the formal requirements listed in Section 7 of the CAS Appeal Policy.

Since an appeal has not been properly filed pursuant to the CAS Appeal Policy, your request to obtain a copy of the complete and unredacted Investigation Report will need to be addressed by the Discipline Panel that has been constituted to hear the complaints and allegations against Mr. Szauder.

On the basis of the above, CAS considers that any potential appeal of Ms. Durant's recommendations and the issues that may be put before the Discipline Panel to be concluded.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Bunting".



J. Enns Bradette
CAS President



No. 500-06-001134-218
SUPERIOR COURT
(Class Action Division)
District of Montréal

CHLOE ISAAC, residing and domiciled at
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Respondent

EXHIBIT R-27

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January 22, 2021

DELIVERED VIA EMAIL

Alex Klevinas
Sportlex
Email: adam@sportlex.ca

Dear Mr. Klevinas:

Re: Complaints Concerning Canadian Artistic Swimming

The position of CAS set out in Ms Enns Bradette's letter of January 21, 2021 is inappropriate and flawed on multiple grounds. The fact that CAS would advance this position simply exacerbates our concerns about improper management and governance within CAS.

First, it does not appear to us that Ms Durant's investigation report (the "**Report**") has been or is being used appropriately within the applicable rules. In particular, Ms Durant does not have the authority to "filter out" complaints as she attempts to do in her Report. We will raise with the Disciplinary Panel what value or use that Report has in light of these failings.

Second, CAS was on notice before the now asserted expiry of an appeal deadline that our clients (i) were challenging Ms Durant's purported filtering out certain complaints from proceeding before the Disciplinary Panel; and (ii) specifically inquired as to what if any route of appeal was available. We again raised this with you on our call on January 19, 2021 (the day before the now asserted expiry of the appeal). The CAS's position, communicated for the first time in Ms. Enns Bradette's letter, that there existed a right of appeal, that the proper procedure was not followed and that the right has now elapsed is asserted in bad faith and amounts to a breach by the CAS of its contractual obligations to our clients. It is regrettable to find ourselves in a game of "gotcha" with the very federation that is tasked with protecting the rights of our clients. This conduct speaks volumes to CAS's *bona fides* and intentions.

Third, CAS's position is clearly wrong for the following reasons:

- a) Rule 39 of the Discipline and Complaints Policy states that Ms Durant is (or at least should have been) a “third-party Investigator”. As such, her Report does not constitute a decision of CAS or its delegates to which section 4 of the Appeals Policy applies.
- b) In the alternative to point (a), to the extent that CAS maintains that the Appeals Policy applies to recommendations in Ms Durant’s Report (such that she is not an independent third party but rather a delegate of CAS), our clients have not yet received a full copy of the Report and, as such, the “decision” to which you now claim the Appeals Policy applies has not yet been communicated to our clients. Consequently the 14-day period has not yet begun to run. Indeed, CAS takes the position that our clients failed to file an appeal that complied with the formal requirements of section 7 of the Appeals Policy. Those requirements include submitting “Detailed reasons for the Appeal” and “All evidence supporting the appeal.” It is impossible to fulfill these requirements without having the fully reasoned decision that is under appeal (which the CAS is refusing to produce by withholding the complete version of Ms Durant’s Report).
- c) In the further alternative, should the CAS continue to incorrectly and improperly assert that the appeal period has expired we will (after receiving and reviewing the full version of Ms Durant’s Report) ask that the appeal be accepted under the exceptional circumstances as provided pursuant to section 6 of the Appeals Policy.

Finally, in light of CAS’ conduct to date we regret that we now have serious concerns that CAS is influencing (in breach of its rules and policies) the Safe Sport Officer and the Case Manager, and possibly even Ms Durant. Could you please preserve (as we will be seeking production of) all communications relating to this matter between any CAS representative(s) (including its legal counsel) and (i) the Safe Sport Officer; (ii) the Case Manager; (iii) Ms Durant (or anyone from her office at BLG); or (iv) Gabor Szauder (or his counsel). To the extent CAS asserts some form of privilege over any such communications we would be pleased if you could advise us of the basis for the asserted claim of privilege now.

Yours very truly,



James Bunting

No. 500-06-001134-218
SUPERIOR COURT
(Class Action Division)
District of Montréal

CHLOE ISAAC, residing and domiciled at
5655 Vallerand Street, in the City of Brossard, in
the Judicial District of Longueuil, in the Province of
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vs.

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Respondent

EXHIBIT R-28

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RE: [EXT]: RE: Harrower et al/CAS appeal

Justin Safayeni <JustinS@stockwoods.ca>

Sat 2021-07-17 2:23 PM

To: 'Stehr, Craig' <Craig.Stehr@gowlingwlg.com>

Cc: Luisa Ritacca <LuisaR@stockwoods.ca>; Julia Miller <Jmiller@tyrllp.com>; Carlos Sayao <csayao@tyrllp.com>; Sebastian Pyzik <spyzik@woods.qc.ca>; Spadaccini, Adeline <Adeline.Spadaccini@gowlingwlg.com>; Antoine Godin-Landry <aglandry@woods.qc.ca>; James Bunting <jbunting@tyrllp.com>

Mr. Stehr,

Apologies for intruding on your weekend, but I write on behalf of CAS to respectfully request that we receive your decision in this matter by the close of business on Monday July 19th, even if reasons are to follow.

This request for a decision as soon as possible arises out of CAS's concern to ensure fairness to its Olympic team members. CAS has been advised by the Canadian Olympic Committee that Mr. Szauder's nomination as coach is conditional upon the conclusion of this pending appeal process. CAS is seriously concerned that continued uncertainty around who will serve as the team's coach for the Olympics, or having to substitute a new coach for the team at the 11th hour, will have a negative impact on the team and is not fair to them. The team is set to leave for Tokyo on or about July 25th.

We look forward to receiving your decision as soon as possible, together with your direction on next steps as to how any grounds of appeal proceeding to a hearing can be determined by July 25th.

Kind regards,
Justin

Justin Safayeni

Direct: (416) 593-3494

Mobile: (647) 963-5486

From: Stehr, Craig [mailto:Craig.Stehr@gowlingwlg.com]

Sent: Tuesday, July 13, 2021 1:42 PM

To: Justin Safayeni

Cc: Luisa Ritacca; Julia Miller; Carlos Sayao; Sebastian Pyzik; Spadaccini, Adeline; Antoine Godin-Landry; James Bunting

Subject: RE: [EXT]: RE: Harrower et al/CAS appeal

Good afternoon,

We anticipate being able to provide our decision and reasons as early as the end of this week.

Craig J. Stehr
Partner

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craig.stehr@gowlingwlg.com

My Assistant: Adeline Spadaccini
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adeline.spadaccini@gowlingwlg.com

 <http://www.gowlings.com/images/signature/wlglogo.png>

From: Justin Safayeni
Sent: July-13-21 9:39 AM
To: Stehr, Craig
Cc: Luisa Ritacca ; Julia Miller ; Carlos Sayao ; Sebastian Pyzik ; Spadaccini, Adeline ; Antoine Godin-Landry ; James Bunting
Subject: RE: [EXT]: RE: Harrower et al/CAS appeal

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Good morning, Mr. Stehr.

I hope you are well. I am just writing to inquire as to when we might expect a decision from you in this matter. Any information you are able to provide in that regard would be appreciated.

Kind regards,
Justin

Justin Safayeni

Direct: (416) 593-3494
Mobile: (647) 963-5486

From: Stehr, Craig [<mailto:Craig.Stehr@gowlingwlg.com>]
Sent: Tuesday, June 29, 2021 5:35 PM
To: James Bunting
Cc: Luisa Ritacca; Julia Miller; Carlos Sayao; Sebastian Pyzik; Justin Safayeni; Spadaccini, Adeline; Antoine Godin-Landry
Subject: RE: [EXT]: RE: Harrower et al/CAS appeal

Good Afternoon Counsel:

I am writing further to your recent correspondence in my capacity as Case Manager.

Counsel for CAS and for Gabor Szauder have written to me to ask that the screening be conducted promptly, and also express their view that there are not grounds for an appeal. Counsel for the Appellants then wrote to ask if there would be an opportunity to make further submissions. My view is that the Appeal Policy only speaks to the requirement for the Appellants to make their case through the Notice of Appeal (ss. 6 – 16 of the Policy), and I confirm the following: 1) other than the Notice of Appeal, there is no further opportunity under the Policy to make submissions, and 2) that **no other material** (aside from the applicable policies, the Decision and the Notice of Appeal) will be referenced or considered in the screening decision.

Craig J. Stehr

Partner

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No. 500-06-001134-218
SUPERIOR COURT
(Class Action Division)
District of Montréal

CHLOE ISAAC, residing and domiciled at
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Québec **et als.**

Petitioners

vs.

**CANADA ARTISTIC SWIMMING / NATATION
ARTISTIQUE CANADA**, a company registered
pursuant to the Canada Not-For-Profit corporations
act, with its head office located at 700 Industrial
Avenue, Suite 401, in the city of Ottawa, in the
Province of Ontario

Respondent

EXHIBIT R-29

ORIGINAL

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July 19, 2021

Private & Confidential

**Via E-Mail (jbunting@tyrllp.com; csayao@tyrllp.com
and jmiller@tyrllp.com)**

Craig J. Stehr
Direct +1 613 786 0277
Direct Fax +1 613 783 8994
craig.stehr@gowlingwlg.com
File no. 03415710

Mr. James Bunting / Mr. Carlos Sayao
Ms. Julia Miller
Tyr LLP
160 John Street, Unit 500
Toronto, ON M5V 2E5

Dear Counsel:

Re: Harrower et al. and Canada Artistic Swimming

We are writing in the capacity as Case Manager with respect to the abovementioned matter, to communicate our Decision in this matter, which is as follows:

FURTHER TO the Notice of Appeal dated June 20, 2021 (the "Notice of Appeal") filed by Rebecca Harrower, Emily Armstrong, Halle Pratt and Cassandra Winkelaar (the "Appellants");

AND FURTHER TO Canada Artistic Swimming ("CAS") appointing Gowling WLG (Canada) LLP as Case Manager pursuant to section 13 of the CAS's Appeal Policy in respect of the Notice of Appeal;

AND FURTHER TO section 14 of the Appeal Policy which provides that the Case Manager's responsibilities include determining whether the notice of appeal was submitted in a timely manner, whether the appeals falls under the scope of the Appeal Policy, whether the appeal is frivolous or vexatious, and whether there are sufficient grounds for the appeal in accordance with section 9 of the Appeal Policy;

AND WHEREAS the Case Manager has carefully reviewed and considered the Notice of Appeal, the decision of the CAS's Discipline Panel, dated June 7, 2021, under appeal, and all applicable CAS policies;

THE CASE MANAGER DECIDES THAT the Appellants' request for an appeal is denied on the basis that the requirements set out in section 14 of the Appeal Policy are not met. Written reasons for the Case Manager's decision herein shall follow as soon as practicable.

Please contact us should you have any questions.

Sincerely,

Gowling WLG (Canada) LLP



Craig J. Stehr

CS/kf

cc.

Justin Safayeni (for CAS)

Luisa Ritacca (for CAS)

Antoine Godin-Landry (for Mr. Szauder)

Sebastian Pyzik (for Mr. Szauder)

No. 500-06-001134-218
SUPERIOR COURT
(Class Action Division)
District of Montréal

CHLOE ISAAC, residing and domiciled at
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vs.

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ARTISTIQUE CANADA**, a company registered
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Avenue, Suite 401, in the city of Ottawa, in the
Province of Ontario

Respondent

EXHIBIT R-30

ORIGINAL

DAVIES

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De: Justin Safayeni <JustinS@stockwoods.ca>
Envoyé: October 6, 2021 9:27 AM
À: Stehr, Craig
Cc: Justin Safayeni; Luisa Ritacca; aglandry@woods.qc.ca; spyzik@woods.qc.ca; Fisher, Karen; jbunting@tyrllp.com; csayao@tyrllp.com; jmiller@tyrllp.com
Objet: [EXT]: RE: Harrower and Canadian Artistic Swimming [IMAN-ACTIVE_CA.FID16330458]

CAUTION: This e-mail originated from outside of the firm. Do not click links or open attachments unless you recognize the sender and know that the content is safe.

Good morning, Mr. Stehr.

I hope you are well. Your July 19th letter advises that written reasons for your decision will “follow as soon as practicable”. Can you kindly advise as to when you expect to release those reasons?

Kind regards,
Justin

Justin Safayeni



Direct: 416-593-3494
Mobile: 647-963-5486

Justin Safayeni

Partner



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From: Fisher, Karen <Karen.Fisher@gowlingwlg.com>
Sent: Monday, July 19, 2021 2:15 PM
To: jbunting@tyrllp.com; csayao@tyrllp.com; jmiller@tyrllp.com
Cc: Justin Safayeni <JustinS@stockwoods.ca>; Luisa Ritacca <LuisaR@stockwoods.ca>; aglandry@woods.qc.ca;

spyzik@woods.qc.ca; Stehr, Craig <Craig.Stehr@gowlingwlg.com>

Subject: Harrower and Canadian Artistic Swimming [IMAN-ACTIVE_CA.FID16330458]

Good afternoon,

Please see attached correspondence from Craig Stehr regarding the above-referenced matter.

Regards,

Karen Fisher

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Avenue, Suite 401, in the city of Ottawa, in the
Province of Ontario

Respondent

EXHIBIT R-31

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*IN THE MATTER OF AN APPEAL UNDER THE CANADA ARTISTIC SWIMMING APPEAL
POLICY*

BETWEEN:

REBECCA HARROWER, EMILY ARMSTRONG,
HALLE PRATT, CASSANDRA WINKELLAR

Appellants

and

CANADA ARTISTIC SWIMMING

Respondent

**REASONS FOR CASE MANAGER DECISION
REGARDING NOTICE OF APPEAL**

Introduction

1. On July 5, 2021, Canada Artistic Swimming (“CAS”) appointed Gowling WLG (Canada) LLP as Case Manager pursuant to section 13 of CAS’s Appeal Policy in respect of a Notice of Appeal dated June 20, 2021 (the “Notice of Appeal”), filed by Rebecca Harrower, Emily Armstrong, Halle Pratt and Cassandra Winkellar (the “Appellants”) in the fall of 2020 against CAS and Gabor Szauder, CAS’s Head Coach.
2. The Notice of Appeal related to a decision of CAS’s Discipline Panel dated June 7, 2021 (the “Discipline Panel Decision”) that dismissed the Appellants’ respective complaints.
3. Under CAS’s Appeal Policy, the Case Manager’s role is to undertake an independent and unbiased initial screening of the Notice of Appeal to ascertain if it meets the necessary requirements under the policy to appoint an Appeal Panel to hear and determine the appeal. The Case Manager’s responsibilities are defined in section 14 of the Appeal Policy as follows:
 14. The Case Manager has the following responsibilities:
 - a. To determine whether the notice of appeal was submitted in a timely manner;
 - b. To determine whether the appeal falls under the scope of this Policy.
 - c. To determine whether the appeal is frivolous or vexatious; and
 - d. To decide whether there are sufficient grounds of the appeal.
4. Following careful review and consideration of the Notice of Appeal, the Discipline Panel Decision, and all applicable CAS policies, on July 19, 2021, the Case Manager issued its decision (the “Case Manager Decision”) denying the Appellant’s request for an appeal on the basis that the requirements set out in section 14 of the Appeal Policy were not met. The following are the reasons for the Case Manager Decision.

Summary of Main Issues under Appeal

5. The Notice of Appeal raises several issues for appeal. Broadly, the Appellants allege that:
 - a. CAS and the bodies to which it delegated its power under the Discipline and Complaints Policy (which includes, but is not limited to, the Discipline Panel) committed serious errors by applying the Discipline and Complaints Policy improperly, in bad faith, and in a manner that favoured the interests of CAS and Mr. Szauder by “filtering out” various allegations raised in the Appellant’s complaints, all of which constituted a substantial breach of procedural fairness, in part by failing to assess the complaints in a holistic, proper and fair manner;
 - b. Making multiple reversible errors of law; and,
 - c. Making multiple palpable and overriding factual errors.
6. Each of these allegations are addressed below with a view to determining whether the criteria set out in section 14 (and elsewhere) of the Appeal Policy has been met.

Section 14(b) & (c) of Appeal Policy

7. It should be noted that the Notice of Appeal raises issues that fall under the scope of the Appeal Policy and that are not frivolous or vexatious. Accordingly, neither sections 14(b) nor (c) of the Appeal Policy are relevant to this decision. It is clear that the Appellants are individuals, who have been affected by a decision of the Discipline Panel, which itself is a body with delegated authority by CAS to make decisions on its behalf. Section 4 of the Appeal Policy provides that such individuals have the right to appeal such decisions

provided there are sufficient grounds for the appeal in accordance with the Appeal Policy. Similarly, the Notice of Appeal raises serious legal issues and there is no indication that the Appellants initiated the appeal in bad faith.

Allegation Regarding “Filtering Out” Complaints

8. Under the Appeal Policy, an appeal cannot proceed to an Appeal Panel unless it discloses “sufficient grounds”.
9. The permissible grounds of appeal are set in section 9 of the Appeal Policy, which provides:
 9. A decision cannot be appealed on its merits alone. An appeal may be heard only if there are sufficient grounds for appeal. Sufficient grounds include the Respondent:
 - a. Not having authority or jurisdiction;
 - b. Failing to follow procedures as set out in the Organization’s By-laws or policies;
 - c. Showing bias; or
 - d. Imposing sanctions that are excessive or inappropriate.
10. It is important to note that the term “Respondent” is defined in section 1 of the Appeal Policy as “[t]he Party whose decision is being appealed”. Accordingly, the “Respondent” for the purposes of the Notice of Appeal is the Discipline Panel, not CAS or any other body or individual (such as the Safe Sport Case Manager).
11. As noted above, the Appellants allege that CAS and the bodies to which it delegated its power acted improperly by “filtering out” certain allegations raised in the Appellant’s complaints. Many of these allegations relate to decisions made by CAS or the Safe Sport Case Manager. For example, the Appellants allege that:

- a. The Safe Sport Case Manager improperly narrowed the issues referred to the Discipline Panel rather than referring all of the allegations raised in the complaints as she was allegedly required to do under the Discipline and Complaints Policy;
 - b. CAS acted improperly by failing to provide an unredacted copy of the investigation report; and
 - c. CAS acted in bad faith by withholding its response to the Appellant's January 15, 2021 correspondence until after the time period under the Appeal Policy expired and then taking the position that the Appellants could no longer challenge the narrowing of issue to the Discipline Panel.
12. As these allegations all relate to decisions made by bodies or individuals other than the Discipline Panel and therefore do not relate to the Decision under appeal, such allegations are out of scope.
13. However, the Appellants also allege that the Discipline Panel adopted the Safe Sport Case Manager's error in narrowing the issues that were referred to it and that by doing so the Discipline Panel breached the Appellants' rights to procedural fairness by limiting its inquiry rather than providing a full hearing of all the complaints (including those determined to be unfounded by the investigator).
14. The Appellants first raised this issue directly with the Discipline Panel by email correspondence on January 26, 2021 wherein they requested that all of their complaints regarding Mr. Szauder proceed before the Discipline Panel, not just the four issues referred by the Safe Sport Case Manager, on the basis that the Safe Sport Case Manager had exceeded her authority under the Discipline and Complaints Policy. The

Appellants made further submissions in this regard by email correspondence on January 29, 2021. The Discipline Panel dismissed the Appellants' arguments and affirmed that its role was only to adjudicate the four allegations referred to it.

15. By way of background, following receipt of the complaints in the fall of 2020, CAS's Safe Sport Case Manager, in accordance with section 39 of CAS's Discipline and Complaints Policy, appointed a third-party investigator to investigate the complaints. As required by section 40 of the Discipline and Complaints Policy, the investigator conducted an investigation and issued her report, which included determinations as to whether the complainants had established the factual allegations in the complaints on a balance of probabilities. Finally, based on the investigator's report and pursuant to section 41 of the Discipline and Complaints Policy, CAS's Safe Sport Case Manager referred four allegations against Mr. Szauder to the Discipline Panel for adjudication.

16. It is important to note that, following receipt of an investigator's report, the Discipline and Complaints Policy provides in section 41 that the Safe Sport Case Manager *may* appoint a Discipline Panel to review the relevant evidence and determine whether a policy violation occurred, and, if so, the appropriate sanction(s). The Safe Sport Case Manager's decision in appointing a Discipline Panel is discretionary and may be informed based on the investigator's findings. Accordingly, under the Discipline and Complaints Policy, the Safe Sport Case Manager is under no obligation to refer to the Discipline Panel every allegation. Moreover, the Discipline Panel itself has no jurisdiction or authority to determine the scope of its review by expanding or narrowing the issues referred to it.

17. In the circumstances, the Discipline Panel adhered to the Discipline and Complaints Policy, rather than failing to follow the procedures set out therein. Accordingly, the allegation that the Discipline Panel breached the Appellant's rights to procedural fairness by failing to expand the complaints that it considered is not a sufficient ground for appeal under the Appeal Policy.

18. Notably, this allegation was also not raised by the Appellants in a timely manner as required by the Appeal Policy. Section 6 of the Appeal Policy states that, "barring exceptional circumstances, Individuals shall have fourteen (14) days from the date on which they received notice of the decision to submit in writing notice of their intention to appeal to the CEO, Executive Director, or in the case of an Affiliated Organization, President, as appropriate". The Discipline Panel issued its final decision to not consider the complaints that had not been referred to it by the Safe Sport Case Manager on February 1, 2021. However, the Notice of Appeal was only filed on June 20, 2021 – well over 14 days after the February 1, 2021 decision, and the evidence demonstrates that the Appellants were well aware of the 14-day filing requirement at the time of the February 1, 2021 decision.

Allegations Regarding Errors of Law and Fact

19. The Notice of Appeal also raises various allegations of errors of law and fact by the Discipline Panel. For example, the Appellants allege that the Discipline Panel:
 - a. Failed to consider or apply relevant provisions in the CAS Conduct Policy;
 - b. Erred by placing significant emphasis on Mr. Szauder's stated intentions and failed to take into account the impact of the behaviour on the Appellants;

- c. Incorrectly held that comments made by Mr. Szauber required some form of personal targeting against the Appellants;
 - d. Incorrectly considered whether the Appellants were in fact at risk of harm and placed undue weight on what it considered to be the Appellant's misinterpretation of Mr. Szauber's words; and
 - e. Erred in respect of the application of the Universal Code of Conduct to Prevent and Address Maltreatment in Sport in its refusal to apply the UCCMS to all complaints retrospectively.
20. Without commenting on the legal merits of these arguments, none of these allegations discloses "sufficient grounds" as defined in section 9 of the Appeal Policy in order to permit an appeal to be heard in the circumstances. The reasonableness of the Decision or lack thereof is not a "sufficient ground" for appeal under the Appeal Policy, nor is disagreeing with the Discipline Panel's interpretation of CAS's policies.

Conclusion

21. Based on the foregoing, the Case Manager has determined that the Notice of Appeal does not raise "sufficient grounds" for the appeal as required by sections 9 and 14 of the Appeal Policy. The requirements for an appeal under the Appeal Policy have not been met. Additionally, the allegation regarding "filtering out" of complaints has also not been submitted in a timely manner as required by sections 6 and 14 of the Appeal Policy.

Accordingly, the request for an appeal is denied and the Notice of Appeal is dismissed.

Date: October 12, 2021

No. 500-06-001134-218
SUPERIOR COURT
(Class Action Division)
District of Montréal

CHLOE ISAAC, residing and domiciled at
5655 Vallerand Street, in the City of Brossard, in
the Judicial District of Longueuil, in the Province of
Québec **et als.**

Petitioners

vs.

**CANADA ARTISTIC SWIMMING / NATATION
ARTISTIQUE CANADA**, a company registered
pursuant to the Canada Not-For-Profit corporations
act, with its head office located at 700 Industrial
Avenue, Suite 401, in the city of Ottawa, in the
Province of Ontario

Respondent

EXHIBIT R-32

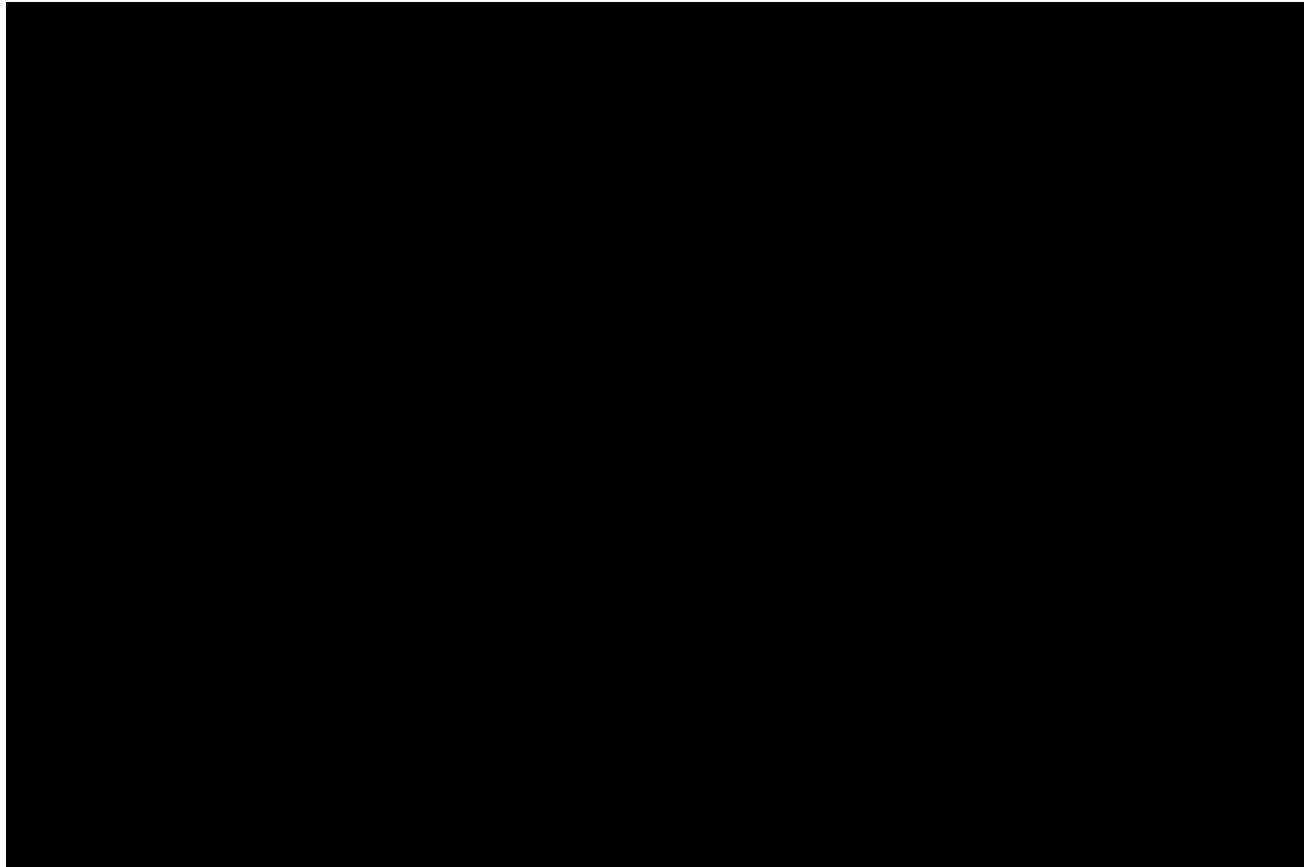
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From: rebecca harrower <rebeccaharrowerr@gmail.com>
Date: May 18, 2021 at 17:55:01 EDT
To: Jackie Buckingham <jackie@artisticswimming.ca>, president@artisticswimming.ca
Cc: Ryan Gushulak <ryan@artisticswimming.ca>, Olivia Zawadiuk <oliviazawadiuk@gmail.com>, Julie Healy <julie@artisticswimming.ca>
Subject: Retirement Letter

Hello,

I have attached my official retirement letter. I please ask that it be forwarded to all members of the board and the coaching staff.

Rebecca Harrower

Dear Members of Canada Artistic swimming,

I would like to officially announce my retirement as of May 18, 2021. In sitting down to write this letter, I have reflected on how my words could make a difference. I wondered how I might spur the organization to make significant change by bringing to light the wrongdoings I have witnessed and/or experienced either by my teammates, or at the hands of CAS staff and management.

You have labelled me throughout the years as an anxiety ridden athlete who struggles to perform under pressure, who is unable to perform simple daily tasks that are required of her. I have heard time and time again that I am not mentally resilient enough. To this, I would have to say you are wrong. I of course would never deny that I have an anxiety disorder, or that my ADHD has impacted my life. However, as much as you have seen this as a negative quality that impedes my ability to perform, I have always understood that these things are some of my greatest strengths. Do not get me wrong, I have struggled because of my anxiety, and it has had negative impacts on my life, but through these struggles I have learned and grown into the person that I am today. How demeaning all of this has been. And yet, I am one of the lucky ones, and am grateful to have other things in my life to counterbalance the negativity that emanates from the national team program. I am proud to have never given up my education, despite being encouraged to do so by this organization.

I am a strong, resilient woman. I have worked my entire career to prove this to others, and to prove this to you. I had to show the world that I was capable of greatness, that I could achieve anything. I was constantly proving coaches wrong; showing them I was able to make provincial teams when they told me I was too small, that I was able to make national teams when I was told I was not experienced enough. I swam in competitions all over the world and not only represented Canada at the Pan American games, but was also a member of the team that brought home a gold medal and secured an Olympic berth spot. I was so proud of myself every time I showed someone I was capable of something they did not think I would be able to do. Yet, when looking back at all these accomplishments, all these times I felt I needed to prove to you that I was in fact what you would qualify as a "robust athlete", I am most proud of myself for standing up for what I believe in and realizing that I have nothing to prove to you. Realizing that I am worth so much more than what you have provided to me as an athlete.

Sport should be a safe place for EVERYONE to thrive. The toxic environment that exists in this organization is going to be the downfall of our sport in this country. Despite preaching about inclusivity, the full-time training program is a place where I felt so excluded, and so looked down upon, simply for the way that I am. I am not alone in these thoughts. Staff and management's words/actions do not reconcile when you create a dialogue amongst the staff and athletes that pits us against one another. If we come from certain clubs, we automatically do not have what it takes to be an elite

athlete. If we struggle with mental our mental health, we are constantly reminded that we are not enough. If we stand up for ourselves, we are gaslighted and told that what we felt was wrong.

Canada is losing too many great athletes because the athletes know they are worth more. Present and future talents for 2024 have chosen to go elsewhere knowing they are worthy of an environment that allows them to thrive, where they can arrive each day excited to train, where they will be supported, and where help is available when needed. Athletes like Sion Ormond, Jaiden Reigner, Claudia Janvier, Paige Hopper, Catherine Barrette, Gwendolyn Mcguirre, Gabe Brisson, Gabrielle Boisvert, Sam Nealon, Mikaelle Gauthier, and Jamie Czarkowski have all left for brighter futures. For my national team experience, this was never the case; I was not supported by staff. I was told multiple times that I should not seek support elsewhere, I was told that I needed to cut off ties with the people who cared about me because those people were toxic to my training. You tried to get me to cut myself off from the people who supported me the most throughout my career. They are the ones that reminded me about the joy that is possible in this sport. They constantly reminded me that I was an amazing athlete, but more importantly, that I was a strong and capable person. I would not be who I am today without my club team coaches, nor without my parents. They supported me, while people such as Julie Healy told me that I had been raised wrong; that those who raised me did not instill in me the proper life skills to be a “robust athlete”.

I am robust. I am resilient. As a resilient person, I moved forward when our team did not qualify for Rio. As a person with integrity, I raised my voice despite fearing the cost of doing so when it became necessary; the cost of losing my dream. As a resilient person, I will move forward, having paid the price for doing so.

And yes, as sad as the state of affairs are at Canadian Artistic Swimming, I will be cheering for my teammates when they compete in Tokyo this summer. Go Canada.

Rebecca Harrower

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Avenue, Suite 401, in the city of Ottawa, in the
Province of Ontario

Respondent

EXHIBIT R-33

ORIGINAL

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Dear all,

Thank you so much for participating in the call today – I know it is difficult to re-live tough situations but its how we learn and improve.

I greatly appreciate your time and input.

Attached for your records is our list of recommendations coming out of this experience as it is currently drafted. As I mentioned, if you have any additional suggestions, please don't hesitate to send them to me.

Best Regards,

Jackie





Recommendations and Follow Up Suggested in the Rhabdomyolysis Case June 2019

- Dr. Suzanne Leclerc will use this injury (with no athlete name) to develop a case study to share with the medical team at INS and educate them about this type of injury
- CAS will do an “intake questionnaire” of athletes coming to a selection camp to have a better understanding of their personality and tendencies to help coaches and staff have a better understanding of athletes participating in the camp/event
- CAS will continue the messaging started at this camp about “assessments” being a tool to help athletes see where they are at and track their progress over time and that selection is not a mathematical equation tied to results in the physical testing.
- CAS will continue to ensure that athletes and coaches are educated at the start of every camp about the difference between pushing themselves to the point of being “uncomfortable” and pushing themselves to the point where there is a risk of injury.
- CAS has specifically changed the push-up test to not be a maximum number test but instead will be controlled movements on a cadence to a maximum of 20 push ups. Test will be stopped as soon as quality of execution does not meet the standards.
- CAS will ensure medical staff assigned to camps and events are aware that this injury occurred and what to be aware of to watch for future cases
- CAS will develop communication protocols related to athlete injury/sickness and provide messaging to the parents and coaches of athletes at camp on the communication processes/protocols related to athlete injury & sickness, if an athlete communicates with a parent or coach who is not at camp
- Coaches at camp will continue to talk to athletes on a daily basis about injuries, sickness and hydration
- Athletes will not be asked to go to the max in any testing environment – testing will instead look for technique and timed endurance
- More information about how to deal with injuries and injured athletes will be included at CAS technical conferences and in resource materials available for coaches – and a checklist will be developed to use when an athlete presents with severe physical issues
- CAS will use best efforts to ensure there is always trained medical personnel available at National Team Camps and International competitions to work with athletes when they have injuries or illnesses

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Respondent

EXHIBIT R-34

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4:13

LTE

< Sent

Meaghan Lapierre



VIEW ENTIRE MESSAGE

Recommend
for Athlete In...

W Doc



Elena Podo... Nov 29, 2019



to jackie@artisticswimmin... ▾

I'm really disappointed the way Meaghan relived her experience. Sorry. Than is my opinion . I know what I'm guilty of.

Sent from Yahoo Mail on Android

On Fri., 29 Nov. 2019 at 3:38 p.m.,

Jackie Buckingham

<jackie@artisticswimming.ca> wrote:

...

No worries!

I agree!

Not at all!



No. 500-06-001134-218
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District of Montréal

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Respondent

EXHIBIT R-35

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Harrower, Winkelaar, Pratt, Armstrong v. Szauder

DECISION

delivered by the

DISCIPLINE PANEL

on June 7, 2021

Chair: Daniel Ratushny, Toronto, Canada

Members: Marianne Saroli, Montréal, Canada

Michael Smith, Ottawa, Canada

in the disciplinary procedure between

Rebecca Harrower, Cassandra Winkelaar, Halle Pratt, Emily Armstrong
(collectively, the "**Complainants**")

Represented by James Bunting, Carlos Sayao and Julia Miller
Tyr LLP
Toronto, Canada

and

Gabor Szauder
(the "**Respondent**")

Represented by Sebastian L. Pyzik and Antoine Godin-Landry
Woods LLP
Montréal, Canada

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I. INTRODUCTION

1. This disciplinary proceeding is initiated pursuant to the *Discipline and Complaints Policy* (the "Complaints Policy") of Canada Artistic Swimming ("CAS") as the result of multiple complaints made by current and former members of Canada's senior national artistic swimming team (the "Team"), originally against eleven respondents.
2. Subsequent to the production of a written investigation report in respect of the complaints pursuant to Sections 39(e) and 40 of the Complaints Policy, the following four allegations of misconduct (the "Allegations") against the Respondent (as defined below) are referred to the Discipline Panel (the "Panel") for adjudication pursuant to Section 41 *et seq.* of the Complaints Policy:
 - (i) On or about May 5, 2019 after the warm-up for the highlight routine at the China Open competition in Beijing, the Respondent lost his temper, yelled at certain Team members and threatened to physically hit them (the "First Allegation");
 - (ii) On or about October 22, 2019 in Prince George, British Columbia, the Respondent told Ms. Ormond to "*zip up your sweater/hoodie before you get me excited*" (the "Second Allegation");
 - (iii) On September 24, 2020, the Respondent made potentially racist or discriminatory statements during the Team's training session at the Institut National du Sport (the "INS") in Montreal (the "Third Allegation"); and
 - (iv) In early 2019, the Respondent made sexist comments to Team members about cooking for men (the "Fourth Allegation").
3. The Panel must first determine in respect of each of the Allegations whether the alleged misconduct is established to the applicable standard of proof. For any positive findings, the Panel must then determine whether any applicable codes of conduct have been breached and if so, the appropriate sanction to be applied, if any.

II. PARTIES

4. Rebecca Harrower ("Ms. Harrower"), Cassandra Winkelaar ("Ms. Winkelaar"), Halle Pratt ("Ms. Pratt") and Emily Armstrong ("Ms. Armstrong") (collectively, the "Complainants") are members of the Team.
5. Gábor Szauder ("Mr. Szauder" or the "Respondent") is the Head Coach of the Team. He is a Hungarian national who has previously coached the Greek, Hungarian and Slovakian national artistic swimming (formerly known as "synchronised swimming") teams.

III. PROCEDURAL HISTORY

Pre- Hearing:

6. On September 27, 2020, Jaiden Duncan (formerly Jaiden Regnier) ("Ms. Duncan") submitted her complaint to CAS' National Independent Safe Sport Officer Lise Maclean ("Ms. Maclean").
7. On September 28, 2020, Ms. Harrower submitted her complaint to Ms. Maclean.
8. On September 29, 2020, Sion Ormond ("Ms. Ormond") submitted her complaint to Ms. Maclean.
9. On October 2, 2020, Ms. Armstrong and Ms. Pratt submitted their joint complaint to Ms. Maclean.
10. On October 14, 2020, Mr. Szauder was informed that safe sport complaints had been made against him and that Erin Durant ("Ms. Durant") had been appointed as lead third-party investigator in respect of such complaints pursuant to Section 39 of the Complaints Policy.
11. On October 20, 2020, Ms. Winkelaar submitted her complaint to Ms. Maclean.
12. On November 4, 2020, Mr. Szauder submitted a formal complaint to Ms. Maclean alleging serious breaches of confidentiality under section 62 of the Complaints Policy by Ms. Armstrong, Ms. Pratt, Ms. Harrower, Ms. Duncan and Ms. Ormond.
13. On December 23, 2020, Ms. Durant submitted to the Case Manager a written investigation report (the "Durant Report") which included determinations in respect of the complaints in accordance with Section 40 of the Complaints Policy.
14. On January 5, 2021, Ms. Maclean informed the Parties that pursuant to the Durant Report, four allegations against the Respondent were recommended to proceed before a disciplinary committee. The Parties were provided with a redacted copy of the summary of the Durant Report and of the preliminary section of such report and were reminded of their strict obligations of confidentiality pursuant to sections 61 and 62 of the Complaints Policy.
15. Also on January 5, 2021, the Safe Sport Officer appointed Michaël Bardagi (the "Case Manager") pursuant to Section 25 of the Complaints Policy to administer the process in respect of the complaints.
16. On January 12 and 14, 2021, the Complainants requested a full and unredacted copy of the Durant Report.
17. On January 21, 2021, the Case Manager appointed the Panel members to hear the Allegations pursuant to Section 41 of the Complaints Policy.

18. On January 26, 2021, the Parties raised and made written submissions in respect of several preliminary issues to be considered by the Panel.
19. On January 29, 2021, after considering the written submissions by the Parties, the Panel made the rulings and request as set out in Appendix A attached hereto.
20. Also on January 29, 2021, the Parties made additional written submissions in relation to the Durant Report, the Complaints Policy and the scope of the Panel's mandate in this matter.
21. On February 1, 2021, after considering written submissions by the Parties, the Panel made the rulings set out in Appendix B attached hereto.
22. On February 8, 2021, the Complainants advised the Panel, the Case Manager and the Respondent that each of Ms. Duncan and Ms. Ormond, both of whom are no longer members of the Team, had withdrawn as complainants in this procedure.
23. On February 10, 2021, the Parties jointly submitted to the Panel a proposed procedural timeline in respect of this matter.
24. On February 12, 2021, the Respondent requested a full copy of the Durant Report regarding all complaints initially submitted against the Respondent, with appropriate redactions.
25. On February 19, 2021, the Panel accepted the Parties' proposed procedural timeline and confirmed that the portions of the Durant Report provided to the Parties was in accordance with the Panel's communications to the Parties on January 29, 2021.
26. On March 19, 2021, the Complainants delivered their witnesses' will-say statements and a copy of the Expert Report of Dr. Gretchen Kerr dated March 19, 2021 (the "Kerr Report") to the Respondent.
27. On March 22, 2021, Mr. Szauder was placed on special personal leave from the Team's daily training environment in Montreal until the conclusion of the present disciplinary proceeding in respect of the Allegations.
28. On April 2, 2021, the Respondent submitted to the Panel his witnesses' will-say statements and a letter requesting a preliminary hearing on a number of procedural and evidentiary issues.
29. On April 6, 2021, the Complainants submitted their witnesses' will-say statements and the Kerr Report to the Panel.
30. On April 12, 2021, the Complainants submitted a letter to the Panel setting out their written response to the five disputed preliminary issues (the "Preliminary Issues") raised by the Respondent on April 2, 2021.

31. On April 21, 2021, the Respondent submitted his reply to the Complainants' submissions of April 12, 2021 in respect of the Preliminary Issues.
32. On April 25, 2021, after considering the Parties' written submissions in respect of the Preliminary Issues, the Panel made the rulings set out in Appendix C attached hereto.
33. On April 27, 2021, the Parties submitted a proposed detailed schedule for the hearing which had been agreed by the Parties.
34. On April 30, 2021, the Parties delivered to each other and to the Panel certain documents in respect of the hearing.
35. On May 3, 2021, the Complainants delivered to the Respondent and to the Panel their amended exhibit book.

The Hearing:

36. The evidentiary portion of the hearing was held by videoconference on May 4, 5, 6, 11 and 14, 2021. In addition to the Panel, the following persons attended the hearing, or portions thereof:

(i) For the Complainants:

- Ms. Harrower
- Ms. Winkelaar
- Ms. Pratt
- Ms. Armstrong
- Ms. Ormond (Witness)
- Ms. Duncan (Witness)
- James Bunting (Counsel)
- Carlos Sayao (Counsel)
- Julia Miller (Counsel)

(ii) For the Respondents:

- Mr. Szauder
- Sebastian Pyzik (Counsel)

- Antoine Godin-Landry (Counsel)

37. During the hearing, the following witnesses gave oral testimony:

(i) For the Complainants:

Ms. Harrower, Ms. Ormond, Ms. Armstrong, Ms. Duncan, Ms. Pratt, Ms. Winkelaar and Dr. Gretchen Kerr ("Dr. Kerr").

(ii) For the Respondents:

Claudia Holzner ("Ms. Holzner"), Mr. Szauder, Julie Healy ("Ms. Healy"), Isabelle Lecompte ("Ms. Lecompte"), Andrée-Anne Côté ("Ms. Côté"), Camille Fiola-Dion ("Ms. Fiola-Dion") and Jacqueline Simoneau ("Ms. Simoneau").

38. On May 7, 8, and 9, 2021, the Parties made written submissions in respect of issues related to the hearing (the "Hearing Issues").
39. On May 10, 2021, after considering the Parties' written submissions in respect of the Hearing Issues, the Panel made the rulings set out in Appendix D attached hereto.
40. On May 18, 2021, the Parties submitted their final written arguments.
41. On May 21, 2021, the Parties submitted their final oral arguments and minor revisions to their final written arguments.

IV. SUBMISSIONS OF THE PARTIES

42. While the Panel has considered the entirety of the Parties' submissions in this proceeding – including all of the facts, allegations, arguments, documentary and testimonial evidence presented by them both in writing and orally – it refers in its Decision only to the submissions and evidence it considers necessary to explain its reasoning.
43. This section summarizes the substance of the Parties' main allegations and arguments as set out in their written and oral submissions, pleadings and evidence. Additional elements of the Parties' submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows.

A. The Complainants' Submissions

44. In their written closing submissions, the Complainants submit that "*Mr. Szauder should receive a suspension from artistic swimming in Canada for a period of not less than four years*".
45. The Complainants' submissions, in essence, may be summarized as follows:

1 – Overview

46. The Respondent is an abusive coach who committed insidious and repeated verbal abuse and harassment against the Complainants.
47. The evidence adduced at the hearing establishes that each of the Allegations occurred as alleged by the Complainants and that the Respondent's conduct constitutes "*multiple forms of maltreatment and harassment in violation of the policies applicable to him as CAS Head Coach*". Such policies require the Panel to objectively assess the Respondent's conduct based on the expected standards of behaviour.
48. Non-physical abuse in the form of psychological abuse and harassment is an insidious type of maltreatment that can lead to significant and lasting mental harm on an athlete. Based on the Respondent's misconduct and all of the circumstances and factors, a period of suspension of not less than four years is both necessary and appropriate in this case. Furthermore, such suspension must not be reduced based on assertions that the Respondent has already been provisionally suspended since "*the evidence simply does not bear this out*".

2 – Background and Context

49. The incidents underlying the Allegations occurred between late January 2019 and September 24, 2020 while the Respondent was Head Coach of the Team. The complaints at issue in this proceeding were filed in late September 2020 around the same time that CAS suspended training at INS pending the completion of an independent review (the "ITP Safe Sport Review") of the Team training environment.
50. The conclusions of the ITP Safe Sport Review Report dated October 26, 2020 included that 56% of athletes felt there was a culture of fear within CAS. This is consistent with the Complainants' evidence that they delayed reporting concerns about the Respondent's behaviour because they feared that doing so would adversely affect their position on the Team.

3 – The Allegations are Established on the Evidence

(i) The Standard of Proof is a Balance of Probabilities

51. As stated by the Supreme Court of Canada in *F.H. v. McDougall*, the standard of proof to be applied in all civil matters such as this disciplinary proceeding is the ordinary civil standard of proof on a balance of probabilities. "*The trier of fact's job is to 'determine whether it is more likely than not that an alleged event occurred.'*" Furthermore, the Supreme Court in *McDougall* "*expressly rejected various alternative standards said to apply in situations where 'morally blameworthy conduct is alleged', including the suggestion that the evidence should be scrutinized with greater care if the allegations against an individual are 'serious'*".

52. When assessing whether a policy breach was committed in this case, only the *actus rea* (i.e., whether the alleged acts were committed) must be considered. "*The Panel must merely be satisfied that the act itself was not an accident [...] it does not matter and this Panel need not assess what Mr. Szauder subjectively intended at the time he engaged in the behaviour in question.*"

(ii) Credibility of the Witnesses

53. The Complainants, Ms. Ormond and Ms. Duncan "*were all honest and forthright in their testimonies before the Panel*". Any discrepancies in their testimonies were minor and are to be expected given the passage of time and the inherent imperfections of human recollection. If anything, such inconsistencies demonstrate the sincere nature of their testimonies and undermine the Respondent's assertion that their evidence was coordinated or tailored. Furthermore, the Supreme Court of Canada held in McDougall that "*a trier of fact must not consider a witness' evidence in isolation, 'but must look at the totality of the evidence to assess the impact of the inconsistencies in that evidence on questions of credibility and reliability pertaining to the core issues in the case'*".

54. Significant weight should be given by the Panel to the athletes' contemporaneous documentary evidence setting out details of the incidents underlying the Allegations, and in particular:

- Ms. Armstrong's Google Doc;
- Ms. Duncan's retirement email;
- Ms. Harrower's journal entry and her text messages to her former coach Laura Swift ("Ms. Swift") in respect of the September 24 Incident; and
- Ms. Armstrong's email to Olivia Zawadiuk in respect of the Third Allegation.

55. The Allegations were confirmed by the collective testimony of the Respondent and many of the witnesses testifying in his defence, which further strengthens the credibility of the Complainants, Ms. Ormond and Ms. Duncan.

56. The Respondent's evidence "*is replete with material inconsistencies [...] is contradicted by multiple witnesses, including witnesses he called in his defence in respect of three of the Four Incidents*" and the Panel should be "*highly skeptical*" of most of the Respondent's evidence. Moreover, the veracity of the Respondent's evidence as a whole should be seriously questioned by the Panel considering "*his staunch denial of all of the allegations (even when on his own evidence many are true)*" and his unsupported suggestions and theories, including that the complaints made against him constituted retaliation by the Complainants for adding seven new athletes to the Team in August 2020.

57. The evidence of Ms. Simoneau should be disregarded entirely by the Panel. She was argumentative, evasive, speculated repeatedly in support of the Respondent and her "*bias and vested interest in the outcome of this proceeding came through loud and clear when*

she pleaded that 'I need my coach back' and admitted that her Olympic preparation would be hindered if Mr. Szauder did not return to the pool deck to coach her''.

(iii) The First Allegation is Established on the Evidence

58. It is undisputed that on May 5, 2019 at the China Open competition in Beijing, the Respondent became frustrated and angry during the official warm-up for the highlight routine, assembled the team on the pool deck and addressed the athletes using a raised voice. It is further undisputed that the Respondent said he would "*punish*" the athletes, which caused various athletes to become upset, and that Ms. Duncan decided to retire from artistic swimming a few days after this incident occurred.
59. The Complainants, Ms. Ormond and Ms. Duncan testified that the Respondent told the athletes "*I will punish you and I will hit you so hard' that you won't know what happened*". By contrast, the Respondent, CAS Team Manager Ms. Lecompte and Team members Ms. Holzner, Ms. Cote and Ms. Fiola-Dion testified that the Respondent told the athletes "*I will punish you and it will hit you so hard' you won't know what happened*".
60. The Panel should find based on the totality of the evidence and on a balance of probabilities that "*Mr. Szauder aggressively yelled at his athletes that he would punish them, and he would hit them so hard they wouldn't know what happened*", which conclusion is supported in particular by Ms. Armstrong's contemporaneous entry in her Google Doc, Ms. Duncan's retirement email which was written less than a week after the incident and the Respondent's inconsistent and evasive testimony and evidence as to the language he used.
61. However, if the Panel finds that the Respondent said "*it will hit them so hard*" in reference to punishment with training, the preponderance of the evidence establishes that the Respondent aggressively yelled at and threatened his athletes with punishment. "*Mr. Szauder admitted that his intended punishment for the athletes was additional hard training to 'build concentration stamina*".

(iv) The Second Allegation is Established on the Evidence

62. Ms. Ormond, Ms. Harrower, Ms. Pratt and Ms. Holzner confirmed as eyewitnesses that the Respondent said to Ms. Ormond during a team dinner in Prince George in the fall of 2019: "*Zip up your hoodie before you get me excited*." Ms. Fiola-Dion recalled the Respondent telling Ms. Ormond to "*zip up her sweater*" but did not recall the exact words used by him. Ms. Armstrong, who was not present during this incident but spoke by phone with Ms. Ormond shortly after, provided strong corroborative evidence about the alleged statement by the Respondent.
63. The Respondent confirmed that he did not deny saying the alleged words and only that he had no recollection of saying them. Furthermore, the Respondent's attempt to "*explain away this incident based on an alleged language barrier cannot factor into the Panel's consideration*" in respect of whether it is more likely than not that the Respondent told Ms. Ormond to "*zip up her hoodie before he got too excited*".

(v) The Third Allegation is Established on the Evidence

64. It is undisputed that during a training session on September 24, 2020, Team member Catherine Barrett ("Ms. Barrett") made comments about concentration camps in China and the Respondent subsequently engaged in a conversation with her, Ms. Cote and other members of the Team. It is also undisputed that the Respondent became angry, raised his voice and made the following comments which brought Ms. Barrett, who subsequently reported the incident to Ms. Healy, to tears:
- Chinese prisons existed under "their rules" and therefore could not be questioned.
 - *"You mean all lives matter, why do their lives matter more than mine?"* (in relation to a discussion of the Black Lives Matter movement).
 - *"Am I supposed to fire 3 of you so I can put 3 black girls on the team?"*
 - *"It is a free country, I can say what I want."*
65. Three of the Complainants gave evidence that the Respondent said that *"all Muslims are extremists"* and *"have you ever seen a white person bomb/crash/take down an airplane?"* while the Respondent instead claims he said something like *"hijackers are Jihadists, who are alt-right Muslims"* and also admits to stating that Chinese prisons *"were a prevention measure to prevent airplanes from being hijacked"*. The Respondent's evidence in respect of this incident is not only inconsistent with many other witnesses, but it is also highly questionable because of his unbelievable testimony claiming to know nothing about the Black Lives Matter movement in North America and also, the fact that he refused to confirm on cross-examination that the words he quoted in his response to Ms. Durant were the words he used during the incident underlying the Third Allegation.
66. The contemporaneous documentary evidence of Ms. Harrower, Ms. Armstrong and Ms. Pratt in respect of the Third Allegation confirms their testimonies, which should be preferred over that of the Respondent in this regard. The Panel should conclude that it is more likely than not that the Respondent made the following comments during the September 24, 2020 training session:
- *"All Muslims are extremists."*
 - *"When was the last time you saw a white person bomb a plane?"*
 - *"You mean all lives matter, why do their lives matter more than mine?"*
 - *"Am I supposed to fire 3 of you so I can put 3 black girls on the team?"*

(vi) The Fourth Allegation is Established on the Evidence

67. Each of the Complainants, Ms. Duncan and even Ms. Holzner testified that the Respondent told them that women should cook for men:

- According to Ms. Harrower, the Respondent in early 2019 presented the team with a magazine with recipes for waffles and said that they needed to cook for their men.
 - Ms. Armstrong wrote in her Google Doc and confirmed in her oral testimony that on February 1, 2019, the Respondent said on the pool deck "*10,000 years ago it was the man who brought the food back so the women could survive, if it wasn't for men we wouldn't be here right now' and 'if you want to keep a guy you have to learn how to cook' and he presented a pamphlet on how to cook*".
 - According to Ms. Pratt, the Respondent on February 1, 2019 showed the Team a magazine recipe for pancakes or waffles and "*said that 10,000 years ago women cooked for their men and that the athletes needed to learn how to cook for their men if they wanted to keep them*".
 - Each of Ms. Winkelaar and Ms. Duncan testified that in January or February 2019, the Respondent told the Team they had to cook or learn to cook for men in order to get or keep a man.
 - Ms. Holzner testified that she witnessed the Respondent on more than one occasion make comments that women should cook for men.
68. The Respondent's denial of stating or implying to Team members that they should cook for men is contradicted by seven athletes and is simply not credible. Furthermore, the Respondent's "*unsolicited sexist comments during his examination in chief*" reveal his antiquated mindset as to traditional gender roles.

4 – Evidence Tendered in Support of Mr. Szauder

69. The character-bolstering evidence provided by the witnesses who testified in Mr. Szauder's defence is entirely irrelevant to the Panel's task. The opinion that Mr. Szauder was "*a breath of fresh air*" must be understood relative to the existing environment. According to Ms. Holzner, the two former Senior National Team Head Coaches, Leslie Sproule (2017-2018) and Mong Chen (2012-2017) were "*abusive coaches*" and as such the bar was set very low.
70. Mr. Szauder's conduct must be measured against the standards of behaviour required of him rather than the actions of his predecessors.
71. The Respondent failed to recognize how his position of trust and authority created a power imbalance between himself and the athletes. The Respondent's repeated misconduct demonstrates a wilful and persistent disregard for the intimate relationship they shared and the ethical principles that governed his conduct and obligations. Mr. Szauder "*admitted to being a role model for the team and being responsible for the team's protection*" but he failed to recognize that he has a high degree of authority and control over the Team, its training program and its environment.

72. *"The Panel should disregard the evidence adduced by Mr. Szauder about Ms. Barrett's mental health and her apparent reluctance to file complaints against him".* This evidence is hearsay evidence and is not relevant to the proceeding. The Panel should also not draw an adverse inference against the Complainants for not calling Ms. Barrett as a witness.

5 – The Four Incidents Constitute Policy Violations

73. The evidence establishes on a balance of probabilities that the four incidents in this case, individually and collectively, amount to violations by the Respondent of the applicable policies.

CAS Conduct Policy and UCCMS

74. Mr. Szauder's conduct must be considered against the CAS Conduct Policy and the *Universal Code of Conduct to Prevent and Address Maltreatment in Sport* (the "UCCMS"). The Respondent's employment agreement requires him to follow *"all policies, procedures, rules and regulations of CAS"*.
75. There are very minor differences between the CAS Conduct Policy approved on 3 December 2018 (the "2018 Conduct Policy") and the CAS Conduct Policy (current version approved on May 5, 2020) (the "2020 Conduct Policy") in respect of the definitions of harassment, sexual harassment and violence. Such differences are not relevant to this proceeding.

2020 Conduct Policy

- Section 47 establishes that harassment refers to *"conduct, comment or display"* that is unwelcome and may be linked to prohibited grounds such as race, religion, or gender.
- Section 50 states that behaviour constituting harassment *"is not necessarily linked to the prohibited grounds of discrimination"*.
- Section 51 provides examples of harassment, including inappropriate teasing, written or verbal abuse and threats or outbursts.
- Section 55 defines sexual harassment as a comment or behaviour that is sexual in nature.
- Section 56 defines violence as *"any actual, attempted or threatened conduct of a person that causes or is likely to cause physical or psychological harm, injury or illness or that gives a person reason to believe that they or another person is at risk of physical or psychological harm, injury or illness"*.

UCCMS

76. All National Sport Organizations including CAS must abide by the UCCMS and as such, *"Mr. Szauder was at all material times prohibited from engaging in maltreatment or otherwise breaching the UCCMS"*. Maltreatment is determined by objective conduct, not whether harm is intended or results from the conduct.
77. There are three forms of maltreatment in this proceeding:
- (a) *Psychological (or emotional) maltreatment*: Conduct that has the potential to be harmful to the participant's psychological well-being.
 - (b) *Non-contact physical maltreatment*: Deliberate conduct that has the potential to harm the physical well-being of the participant.
 - (c) *Sexual Maltreatment*: Any sexual act (physical or psychological in nature) committed, threatened or attempted against a participant without the participant's consent.

China Open Incident: Harassment, Violence and Maltreatment

78. According to the Complainants, Mr. Szauder screamed at them and told them he would *"punish them"* and stated, *"I will hit you so hard you won't know where it came from"*.
79. Mr. Szauder and his witnesses suggest that he actually said *"it will hit you so hard"* rather than *"I will hit you so hard"*. Regardless of which version of events the Panel adopts, the Respondent's conduct constitutes harassment because:
- (a) Threatening to punish an athlete by physically hitting her or with additional hard training is unwelcome.
 - (b) The Respondent's conduct was *"intimidating, humiliating, hurtful, demeaning, degrading, and otherwise caused offence, discomfort and personal humiliation"*.
 - (c) The Respondent's conduct constitutes *"verbal abuse, threat and outburst"* as the evidence supports that he angrily and aggressively addressed the team.
80. The Respondent's threat *"constitutes violence because it was a threat that gave several athletes reason to believe that they were at risk of physical harm"*.
81. His conduct also constitutes maltreatment as it not only had the potential to be harmful *"but was in fact harmful to the psychological wellbeing of many of his athletes"*. Though Mr. Szauder admitted he intended to threaten punishment, he did not realize the immense emotional harm caused by his outburst. Furthermore, section 2.2.2.2.2 of the UCCMS lists *"exercise as punishment"* as an *"example of non-contact physical maltreatment"*.

Hoodie Incident: Harassment and Maltreatment

82. The hoodie incident fits within the definition of harassment because:
- (a) On an objective standard, this comment should have been known to be unwelcome.
 - (b) The comment was humiliating, degrading and caused Ms. Ormond offence, discomfort and personal humiliation. Each of Ms. Harrower and Ms. Pratt also felt uncomfortable after hearing the comment.
83. The Respondent's comment about Ms. Ormond's hoodie is sexual harassment because it was a comment of a sexual nature. The incident also constitutes a breach of the UCCMS because it was a "*demeaning and humiliating verbal act*". Mr. Szauder often made sexualized comments such as:
- (a) Winking at Ms. Armstrong.
 - (b) Telling Ms. Armstrong the importance of having nice nails for her husband.
 - (c) Nicknaming Ms. Armstrong "*snow white*".
 - (d) Telling the athletes that women should cook for men.
84. The Panel must focus on the objective assessment as to the potential damage caused by the comment rather than the subjective intention. Additionally, the Panel should rely on Dr. Kerr's suggestion that the context is important and the person in an authoritative position must learn what is appropriate.
85. The Panel should reject the Respondent's suggestion that this incident amounted to an accident because of a language barrier and an alleged different meaning of the word "excited" in Hungarian. What the Respondent subjectively intended to say is irrelevant in the maltreatment analysis. The Panel should also consider Dr. Kerr's response to Panel Member Saroli's question in this regard and should dismiss the Respondent's evidence as not credible.

September 24 Incident: Harassment and Psychological Maltreatment

86. Mr. Szauder made various "*racially charged*" comments in an intense discussion with Ms. Barrett, Ms. Cote and other athletes, including "*All Muslims are extremists*"; "*When was the last time you saw a white person bomb a plane?*"; "*You mean all lives matter, why do their lives matter more than mine?*"; "*Am I supposed to fire 3 of you so I can put 3 black girls on the team?*". The statements amount to harassment contrary to the CAS Conduct Policy.
87. These comments, which were linked to race, colour and religion, amount to harassment contrary to the Conduct Policy. There can be no doubt that, on an objective standard, these comments should have been known to be unwelcome. Ms. Cote conceded that she was

“struck” by the comments and that they did not align with her values and Ms. Holzner met with Mr. Szauder after the incident to inform him of things that he should not talk about with his athletes.

88. The Respondent's comments were insulting, hurtful, demeaning, degrading and otherwise caused offence and discomfort: Ms. Harrower testified that Mr. Szauder’s behaviour made her “*really, really mad, and also scared.*” Ms. Armstrong testified that she was “*really upset*” by the incident, especially because her boyfriend is Muslim, and she was familiar with his personal struggles with racism. Ms. Pratt testified that Mr. Szauder’s behaviour was hurtful, “*really scary*”, and she felt “*stuck there*” listening to him. Ms. Cote testified that Mr. Szauder’s comments caused her concern in the sense that Mr. Szauder needed to be educated on these topics, and that his comments did not align with Canadian values.
89. Mr. Szauder’s comments also amount to psychological maltreatment in breach of the UCCMS. They are a single serious incident or pattern of deliberate, insulting, demeaning, and derogatory statements that not only had the potential to cause serious harm, but did in fact cause serious harm to athletes, as described above. Furthermore:

"The Panel’s job is to assess Mr. Szauder’s behaviour using an objective standard to determine whether he committed psychological maltreatment. There can be no doubt based on the totality of the evidence that this objective standard was met: virtually all of the witnesses agreed his comments were inappropriate, with Ms. Cote going further and conceding they were inconsistent with Canadian values. The Panel should keep in mind that as Head Coach of CAS, Mr. Szauder is supposed to be one of the most prominent Canadian representatives of the sport of artistic swimming on the international stage. With this position comes a requirement that Mr. Szauder know and adhere to the standards of conduct expected of him and of Canadians more generally."

Sexist Comments: Harassment and Maltreatment

90. The Respondent's sexist comments made about women cooking for men constitute harassment because such comments were unwelcome, were linked to gender and were based on an antiquated view of gender roles, and were insulting, humiliating, hurtful, demeaning, belittling, degrading and otherwise caused offence, discomfort and personal humiliation - Ms. Harrower, Ms Armstrong, Ms Pratt, Ms. Winkelaar and Ms. Duncan each gave evidence in this regard and testified that the comments made them feel uncomfortable and upset.
91. The comments constitute sexual harassment and maltreatment *"because they were of a sexual nature and degrading to women"*.
92. The statements also suggest psychological maltreatment as they had the potential to cause harm and did so.

Serious and Potential Harm to Athletes

93. Though each of the four incidents caused individual harm, the important consideration in this proceeding is the aggregate impact on these athletes. One example of the mental distress caused is the fact that Ms. Winkelaar suffered from depression and anxiety from the training environment and as such, did not return to train with the Senior National Team when Mr. Szauder returned in January 2021.
94. Each of Ms. Harrower, Ms. Winkelaar and Ms. Armstrong gave evidence that they would likely retire from artistic swimming if the Respondent is permitted to continue as Head Coach of the Team.
95. The harm caused by the four incidents is consistent with Dr. Kerr's expert evidence based on her academic research on athlete maltreatment. Dr. Kerr suggests that athletes may suffer "among other things, *loss of enjoyment, decreased performance, decreased self-worth, withdrawal from sport, anxiety and depression, difficulty maintaining relationships, and fear of reprisals*".

6 – A Significant Sanction should be imposed on the Respondent

96. The Respondent should be sanctioned with a period of ineligibility from participating in any activity in the sport of artistic swimming in Canada for a period of at least four years.

General Principles applicable to Sanctioning

97. Section 49 of the Complaints Policy states that "*any sanction imposed against an Individual must be proportionate and reasonable, relative to the misconduct that has occurred [...]*".
98. A strong sanction is needed to protect the integrity of sport in Canada and the health and wellbeing of our athletes, and to deter future misconduct. In determining an appropriate sanction in this matter, the Panel can also be guided by general principles established in the anti-doping context, including the key principles of deterrence, harmonization and proportionality.

Aggravating Factors

99. Section 53 of the Complaints Policy outlines certain relevant considerations when determining sanctions:
 - (a) *Voluntary admission of conduct*: Mr. Szauder has never admitted to the violations and harm he has caused. Rather, he has continuously blamed the victims and defended himself at all costs.
 - (b) The individuals ages: "*The athletes on the CAS SNT are young women ranging from approximately 17 to 24.*"

- (c) The Respondent's prior history and patterns: Mr. Szauder's misconduct spans the entire time he has coached the team (i.e. February 2019 to September 2020).
 - (d) If the Respondent poses any sort of ongoing threat: The Complainants felt uncomfortable and unsafe when Mr. Szauder returned to coach the team.
 - (e) *"Real or perceived impact of the incident on the Complainant, the Organization, or the sport community"*: The impacts on the Complainants are real as they have suffered mental harm or decided to retire early. The negative impacts spans further and may even impact the larger artistic swimming community.
 - (f) *"Whether the Respondent holds a position of trust"*: There is little doubt that Mr. Szauder is in a position of trust and authority in relation to the Complainants and other Team members. He makes impactful decisions such as selecting athletes or deciding training and competition programs. *"This means the athletes' future in the sport is largely in Mr. Szauder's hands."*
100. The factors above suggest the imposition of a strict sanction. Additionally, no mitigating circumstances apply as it would be irresponsible to base the sanction on the completion of safe-sport training, rush the decision because of an upcoming Olympic Games or worry about the potential reputational impact on the Respondent. Mr. Szauder's testimony provides a basis for suggesting that the *"training had no meaningful effect on him and that his values are – at best – inconsistent with the members of the Canadian team and – at worst – demonstrate a racial bias"*.

Appropriate Sanction

101. Mr. Szauder should receive a suspension from artistic swimming of not less than four years. This is necessary to send a signal to the sporting community that insidious maltreatment and harassment of athletes will not be tolerated.
102. The *Copeland et al v. Williams* decision provides a basis for Mr. Szauder's harsh punishment and outlines the need for a decision to send a clear message. In *Copeland*, the Panel suspended Mr. Williams for a period of one (1) year. The severity of the *Copeland* case differs significantly from the case at hand as Mr. Szauder made *"multiple inappropriate comments"* in addition to *"aggressive and unwelcome coaching behaviour"*. The Complainants respectfully submit that the *"only appropriate sanction in this case is a suspension of not less than four (4) years"*.

B. The Respondent's Submissions

103. In their written closing submissions, the Respondents make the following requests:

"BY WAY OF SUMMARY DECISION, CONFIRM that the Respondent poses no threat to the safety of the athletes of Canada Artistic Swimming's Senior National Team;

BY WAY OF SUMMARY DECISION, ALLOW *Canada Artistic Swimming to reinstate the Respondent in his position of Head Coach of the Senior National Team;*

BY WAY OF FINAL DECISION, DISMISS *the Complaints submitted by the Complainants;*

BY WAY OF FINAL DECISION, CONFIRM *that the Respondent is responsible for no policy violation."*

104. The Respondents' submissions, in essence, may be summarized as follows:

1 – OVERVIEW

105. The evidence against Mr. Szauder is weak and scattered and lacks credibility and reliability.

106. The Complainants provided similar allegations and submitted their complaints *"in late September/early October"*. The similarity in the allegations as well as Ms. Swift's aggressive reaction suggests collusion among the Complainants.

107. The reliability of the Complainants' evidence was fundamentally impacted by the breach of confidentiality. The athletes cannot be trusted as they failed to abide by one of the most fundamental rules governing this proceeding, which frustrated the Respondent's right to procedural fairness.

108. Not only are there concerns as to the credibility and reliability of the Complainants' evidence, but the very substance of the complaints do not amount to policy violations.

109. In respect of each charge, the Complainants have not met their burden to provide clear and cogent evidence on a balance of probabilities that the Respondent breached the policies or codes of conduct, as alleged.

2 – BACKGROUND AND CONTEXT

110. In 2018 when the Respondent applied for the Team's Head Coach position, he was subject to a rigorous selection process. Mr. Szauder was appointed due to his *"impeccable track record and demonstrated willingness to foster a safe, healthy, athlete-centred, training environment"*. Since his appointment and focus on wellbeing and excellence, the Team has been *"more successful than ever"*, which is exemplified, *inter alia*, by the following:

(a) In 2019, the Team won, for the first time ever, a World Series event;

(b) The Team qualified for the 2020 Tokyo Olympics, while it had not qualified for the 2016 Rio Olympics;

(c) The Team won a total of over thirty (30) medals in less than two (2) years

3 – THE UNRELIABILITY OF THE COMPLAINANTS' EVIDENCE

111. The Panel must critically assess the Complainants' evidence because of:

(a) ***Breaches of Confidentiality***

- Ms. Armstrong, Ms. Winkelaar and Ms. Ormond breached their obligations of confidentiality as they chose to publicly disclose the substance of their complaints. As per Section 62 of the Complaints Policy, there is strict obligation to maintain confidentiality. On January 29, 2021, the parties were reminded of their strict obligation of confidentiality and the rationale behind the obligation. Despite the formal warnings, the Complainants continued to bring their complaints *"in the public sphere"* and as such, the allegations against the Respondent gained widespread attention.
- The breaches of confidentiality impacted the reliability of Ms. Armstrong, Ms. Winkelaar and Ms. Ormond's evidence in two ways. First, their conduct proves that they cannot be trusted. Second, the Complainants have *"tainted the evidence of all witnesses involved in the proceeding"*.

(b) ***Collusion Between Complainants and External Influence of Third Parties***

- The evidence provides an *"inference to the effect that (1) the Complainants have strongly colluded in assembling their complaints and (2) the Complainants are instrumental to a concerted effort, driven by third parties, to discredit the Respondent at all costs"*.
- The Complainants provided similar allegations and submitted them at the same time. They also retained the same attorneys and attempted to align their stories prior to testifying. While the Complainants testified that they have not been pressured by third parties to advance their complaints, text messages and interview transcripts, suggest differently. Ms. Ormond's father's interference with her exit interview as well as Ms. Laura Swift's discussions with Ms. Harrower are two examples of the unfair third-party pressure. The external influence and coordination is concerning and explains the failure to report these matters in a timely manner. The evidence put forth suggests that the Complainants have been acting in bad faith.

(c) ***The Suspect Timing of the Complaints***

- The allegations were not brought forward until a ripe opportunity presented itself. When the Team's training centre was shut down as of September 28, 2020, the Complainants were pressured into seizing the opportunity and attempting to discredit the Respondent. The closure of the training centre along with the recent news that seven (7) new athletes would compete for a spot on the Team triggered the complaints.

- Three (3) out of four (4) of the allegations are about facts that occurred many months ago:
 - Allegation 1 would have occurred around May 5, 2019;
 - Allegation 2 would have occurred around October 22, 2019;
 - Allegation 4 would have occurred around February or March of 2019.

Credibility of Witnesses

112. In considering the reliability of the Complainants', the Panel must consider issues of credibility.
113. *"The Respondent raises below specific issues of credibility with respect to each witness for the Complainants".*
 - ***Ms. Harrower:*** There are three inconsistencies between her written statement and her evidence provided at the hearing. The first inconsistency is with respect to the time in which Allegation 2 occurred. The second inconsistency is with respect to how Mr. Szauder allegedly told Ms. Ormond to zip up her hoodie. The third inconsistency is that Emily Armstrong was initially identified as a witness to an incident but she was not a material witness. When asked about inconsistencies on cross-examination, Ms. Harrower identified that she *"did not proofread"* her statement.
 - ***Ms. Ormond:*** Ms. Ormond's evidence is unreliable because she failed to abide by the rule of confidentiality and was influenced by her father. As per her cross-examination, she knowingly disregarded her obligations under Section 62 of the Complaints Policy.
 - ***Ms. Armstrong:*** Ms. Armstrong is unreliable for several reasons: She failed to abide by the rule of confidentiality, testified with a "double standard", behaved in bad faith, she wrote a false and exaggerated claim, and recorded a private Snapchat group conversation.
 - ***Ms. Duncan:*** The Complainant's testimony demonstrated a lack of maturity and a potentially distorted perception of the alleged incidents.
 - ***Ms. Pratt:*** Ms. Pratt was there to support Ms. Armstrong rather than act as a Complainant. She had not witnessed the allegations and when questioned during cross-examination, she contradicted her previous statements.
 - ***Ms. Winkelaar:*** The Complainant decided to disregard her obligations and to carelessly broadcast publicly her allegations.

4 – THE ALLEGATIONS ARE NOT PROVEN ON A BALANCE OF PROBABILITIES

114. In considering the four (4) allegations made against the Respondent, the Panel must take into consideration the context of the incidents.

Allegation 1: "It Will Hit You..."

115. The Complainants stated around May 5, 2019 that Mr. Szauder yelled at them and threatened to physically hurt them. The comments made were misunderstood as the Team was lacking focus and Mr. Szauder only raised his voice. The Respondent never threatened physical violence and only wanted to improve the team's performance by threatening them with more training. The Respondent's witness, Ms. Lecompte testified that Mr. Szauder actually said *"it will hit you (...)"*. He also suggested that if the Team lacked focus, someone may accidentally get injured.

Allegation 2: "Zip-Up Your Hoodie..."

116. Ms. Harrower initially alleged that the Respondent told Ms. Ormond *"you should zip (sic) up your sweater before you get me all excited"*. It is imperative to recognize that Ms. Harrower's written complaint and her testimony were inconsistent and *"failed to provide reliable evidence to substantiate this claim"*. Ms. Ormond also waited until her exit interview to share this alleged incident and when she did so, she claimed that she couldn't remember when it happened. Additionally, it is important to remember that an artistic swimming coach must remind athletes to dress properly and ensure they are covered up as per CAS's proper clothing policy.

Allegation 3: "Concentration Camps in China..."

117. Several Complainants suggest that on September 24, 2020, the Respondent commented on *"concentration camps"* in China, Muslims and the Black Lives Matter movement ("BLMM"). While the Respondent agrees that those topics did come up, he argues that the Complainants took his words out of context and made him out to be an *"incorrigible racist"*. This situation occurred after Ms. Barrett posted on Instagram and made verbal comments about *"concentration camps"* in China. As the Head Coach, Ms. Szauder felt like it was his duty to take up the issue as he was concerned that the online post could *"jeopardize the whole team's access to international competitions taking place in China"*.
118. The Respondent's comments made about China and the BLMM were as a result of his ignorance surrounding the significance of certain issues in North America. When a political debate ensued, Mr. Szauder was *"unaware of the potentially offensive nature of some views he expressed"*. Ms. Côté stressed that at *"no time the Respondent personally attacked members of the Team, nor expressed comments that could reasonably give rise to safety concerns for the athletes"*.

Allegation 4: "Women Should Cook For Men"

119. The Complainants alleged that the Respondent expressed the importance of women needing to cook for men. The witness' claims were vague and did not specify when or exactly what Mr. Szauder said in regards to women and cooking. Mr. Szauder denies ever specifically suggesting that women need to cook for men. Though he does concede to making comments on the importance of athletes knowing how to cook and create "*healthy nutrition habits*". The Respondent commented on the importance of cooking but never specifically pertaining to women.

5 – THE FACTS PROVEN ON A BALANCE OF PROBABILITIES DO NOT AMOUNT TO POLICY VIOLATIONS

120. Each allegation must be interpreted pursuant to the applicable CAS's Conduct Policy. As such, Allegations 1, 2 and 4 occurred prior to May 5, 2020 and thus must be interpreted pursuant to the 2018 Conduct Policy. Allegation 3 must be interpreted pursuant to the 2020 Conduct Policy.
121. It is important to note that CAS only endorsed the UCCMS as of May 5, 2020. "*As such, reference to the UCCMS to legally qualify the incidents is irrelevant*" in regards to Allegations, 1, 2 and 4. Additionally, the Respondent's employment contract is governed by the laws of Quebec because it is the "*jurisdiction in which the majority of the services contemplated*" were provided.
122. "*The Respondent submits that he is responsible for no violation of CAS's applicable Conduct Policies with respect to the facts proven on a balance of probabilities in relation to each Allegation*".

Allegation 1: "It Will Hit You..."

123. As per the 2018 Conduct Policy, the definition of violence requires "*actual, attempted or threatened conduct of a person that causes or is likely cause physical harm, injury or illness...*" As such, the athletes would need reason to believe that the Head Coach was "*putting them at risk of physical harm*". Mr. Szauder has confirmed multiple times that he never threatened to physically hurt anyone on the Team. It is also unlikely that the Complainants statements are completely accurate on this issue as the complaint was brought forward over sixteen (16) months later which raises the question of the "*athletes' motivation*".
124. Furthermore, this accusation is of utmost importance not only to the allegations but also to performance management in high performance sports. Coaches need to feel comfortable raising their voice and elevating their team's performance without being concerned that they will be told they are violating a policy.

Allegation 2: "Zip-Up Your Hoodie..."

125. The 2018 Conduct Policy outlines sexual harassment as a "*comment or behaviour that is of a sexual nature such as unwelcome, sexual invitations or requests...*" Even if the Respondent suggested that he would get excited if Ms. Ormond did not cover herself, it is

the meaning of the word "*excited*" that is most important. As stated by the Respondent, excited to him meant getting "*upset*" and was used to express that Ms. Ormond needed to fix her clothing. Mr. Szauder was making a "point-blank" or "neutral" statement that had no sexual intention. His comment may have been hostile but that does not amount to harassment as per the Quebec Labour Relations Tribunal.

Allegation 3: "Concentration Camps in China..."

126. The 2020 Conduct Policy defines discrimination as "*any action, behaviour or attitude that negatively affects the employment, performance or volunteer activities of an individual...*". The 2020 Conduct Policy defines harassment as "*a form of discrimination, and refers to conduct, comment or display that is known, or ought to reasonably be known...*" As per the 2020 Conduct Policy, a political debate does not qualify as discrimination or any sort of harassment. While the disagreement might have upset some of the athletes, as per the Quebec Labour Relations Tribunal, the conflict does not amount to harassment.

Allegation 4: "Women Should Cook For Men"

127. The 2018 Conduct Policy is similar to the 2020 Conduct Policy in respect to discrimination and harassment. The Respondent concedes that he often suggested that the athletes should know how to cook but it did not "*negatively affect their performance or activities*". The comments even if taken as sexist remarks, cannot amount to harassment as they did not target any one (1) athlete.

THE IRRELEVANCE OF DR. KERR'S REPORT

128. While the Complainants may rely heavily on the Kerr Report to argue that the Respondent's conduct amounted to maltreatment and a policy violation. "*The Kerr Report should be given no attention by this Panel when it comes to assessing whether the Respondent is responsible for policy violations in relation to each Allegation*" because:

(a) "*Dr Kerr's Opinion is Not Grounded on Accurate Evidence*"

- Dr. Kerr relied on false and incomplete premises when drafting her opinion. She only relied on the "*complaints of Ms. Harrower, Ms. Armstrong and Pratt, and Ms. Winkelaar, and excerpts from the Durant Report*". Dr. Kerr failed to confirm any of the allegations were true as she chose not to interview the Complainants, the Respondents, any other member of the CAS personnel, and any other material witnesses to the alleged incidents. "*She relied on allegations beyond the four (4) triaged ones to support her conclusions*". Additionally, Dr. Kerr's opinion that the Complainants are victims of "*relational maltreatment*" rests on an assumption of a "*critical relationship*" existing between Mr. Szauder and the athletes. While a "*critical relationship*" may be found to exist between most coaches and their athletes, in this situation, there is evidence that rebuts this assumption.

(b) "*Dr. Kerr's Opinion is Essentially Academic*"

- Dr. Kerr based her opinion on her research and thus she solely focused on academic literature. Her conclusions with respect to physical or psychological safety are highly speculative and lack any justification. Dr. Kerr was focused on providing her academic position but in doing so she lost sight of the allegations of misconduct.
- (c) *"Dr. Kerr Cannot Legally Qualify the Allegations"*
- Dr. Kerr is a qualified expert in the field but she is not a lawyer. Despite not being allowed to legally qualify the allegations, she tends to provide legal analysis in her findings.
- (d) *"Dr. Kerr's Conclusions Are Exaggerated, Thus Unreliable"*
- Throughout her written conclusion and cross-examination, Dr. Kerr switches her findings from *"strong potential"* to a potential *"concern"*. In her findings, she suggested that if English is not your first language, the isolated incident may not be maltreatment. Dr. Kerr's conclusions are also often exaggerated because she has a low threshold for the standard of *"maltreatment"*. She explained that an athlete benched during a game for poor performance could constitute *"maltreatment"*.

6 – NO FURTHER SANCTIONS SHOULD BE IMPOSED

129. Regardless of the finding, no further sanctions should be imposed to the Respondent.
130. After the Respondent learned about Allegation 1, he took immediate action to clarify the situation. Mr. Szauder explained his intentions and explained to the team that he did not threaten to physically hurt anyone.
131. Mr. Szauder was surprised by Allegations 2 to 4. His alleged comments were misunderstood due to immense *"language barriers"* and *"cultural differences"*. Since the complaints were filed, the Respondent has taken initiative to complete thirty (30) hours of extensive training on *"diversity and inclusion"* and if the allegations are proven on a balance of probabilities, the only proportionate sanction would be education.
132. The Respondent has shown *"genuine willingness to adapt to Canadian cultural norms and values, when such norms and values are communicated to him"*. Szauder is always willing to listen to feedback and engage in meaningful conversation. He is eager to learn and *"abide by clearly communicated directives"*.
133. The disproportionate consequences suffered by the Respondent as a result of the complaint process should be considered in determining if further sanction is appropriate. The consequences thus far include: *"suspensions totally five and a half (5.5) months and defamatory media coverage of the Allegations"*.
134. The Durant investigation forced the Respondent to be suspended between October 14, 2020 and January 18, 2021. After briefly returning, the Respondent was *"forced to take a personal leave of absence amid the bad press"*. The *"bad press"* is the most damaging part

of the Allegations as the complaints have caused *"unquantifiable and ever-lasting reputational damage as a result of some, if not all, Complainants' irresponsible decision to breach confidentiality and take their complaints to the media"*.

135. *"The tremendous reputational and psychological damage incurred by the Respondent as a result of the slanderous media coverage of the present dispute must be construed as a relevant factor to determining that no further sanctions should be imposed to him"*.

7 – EXTRAORDINARY CIRCUMSTANCES CALL FOR A SUMMARY DECISION ALLOWING CAS TO REINSTATE THE RESPONDENT WITHOUT FURTHER DELAY

136. This disciplinary process is not only hurting Mr. Szauder but more importantly, Olympic athletes are suffering. The Team needs their Head Coach back immediately. *"As of "May 18, 2021, there are only sixty-five (65) days remaining until the launch of the 2021 Tokyo Olympics"*. The Panel should make a decision as soon as possible.

As per the decision of the Safe Sport Officer, the Respondent poses no threat to the athletes. CAS should "reinstate the Respondent in his position of Head Coach of the Senior National Team without further delay

V. ANALYSIS

A. Jurisdiction

137. Neither the Complainants nor the Respondent objected to the Panel's jurisdiction to adjudicate the Allegations. As registered participants of CAS, the Parties submitted to the jurisdiction of the Panel in this proceeding, which powers arise pursuant to Section 41 of the Complaints Policy.

138. Accordingly, the Panel determines that it has jurisdiction to adjudicate this present matter.

B. Regulatory Framework

Organizational Policies

139. CAS and its members and affiliated organizations have, and historically have had, various organizational policies, codes, or rules regulating the conduct of participants for the overriding purpose of fostering a positive, safe and respectful work and sport environment.

140. The Complaints Policy identifies and provides the procedures for addressing complaints and non-compliance with CAS' and its members' and affiliated organizations' by-laws, policies and rules including the 2020 Conduct Policy, which states:

"[...]"

Purpose

2. The purpose of this Conduct Policy is to foster a positive, safe and respectful work and sport environment where:

a. The Organization's values and expected standards of behaviour are understood, communicated and lived by all individuals:

b. There is adherence to all applicable laws, regardless of where the Activity takes place; and

c. Individual conduct is ethical, transparent and fosters confidence in the integrity of the Organization.

3. The purpose of this Policy is also:

a. To ensure the decisions and actions of Individuals are consistent with the Organization's mission, vision, values and policies; and

b. To define those actions and behaviours that are not permitted so that they are known to Individuals and can be avoided.

[...]."

141. It is undisputed by the Parties that in this matter, (i) the First Allegation, the Second Allegation and the Fourth Allegation refer to incidents that occurred prior to 5 May 2020 and therefore, the 2018 Conduct Policy is applicable, and (ii) the 2020 Conduct Policy is applicable in respect of the Third Allegation.

The UCCMS

142. Section 6 of the Complaints Policy states: "*CAS, CAS Members and Affiliated Organizations endorse the Universal Code of Conduct to Prevent and Address Maltreatment in Sport, as it may be amended from time to time (the "UCCMS").*"
143. The Respondent states: "*[...] CAS only endorsed [the UCCMS] as of May 5, 2020. As such, reference to the UCCMS to legally qualify the incidents is irrelevant, save perhaps for [the Third Allegation].*"
144. By contrast, the Complainants submit that the Respondent "*was at all material times prohibited from engaging in maltreatment or otherwise breaching the UCCMS*" on the basis that the UCCMS applies to the Third Allegation and also applies retroactively in respect of the First Allegation, the Second Allegation and the Fourth Allegation: "*In our view it's undisputed that this disciplinary proceeding is brought pursuant to the [Complaints Policy] and the wording of that policy we say reflects an intent that it apply retrospectively. In other words, for any proceeding brought under the [Complaints Policy], all of its provisions must apply regardless of the dates of the incidents at issue.*" As an example, the Complainants point to the sanctioning provisions of the Complaints Policy as

clearly having application to conduct that took place prior to the effective date of the Complaints Policy.

145. The Complainants have not identified any wording in the Complaints Policy reflecting that the UCCMS shall apply to conduct that occurred prior to the first date of endorsement by CAS of the UCCMS. The Panel notes that the 2020 Conduct Policy states: "*The purpose of this Policy is also: [...] [t]o define those actions and behaviours that are not permitted so that they are known to individuals and can be avoided*" and also the following jurisprudence from the Court of Arbitration for Sport ("CAS") in CAS 2017/A/5003:

"139. According to well-established CAS jurisprudence, intertemporal issues in the context of disciplinary matters are governed by the general principle tempus regit actum or principle of non-retroactivity, which holds that (i) any determination of what constitutes a sanctionable rule violation and what sanctions can be imposed in consequence must be determined in accordance with the law in effect at the time of the allegedly sanctionable conduct, (ii) new rules and regulations do not apply retrospectively to facts occurring before their entry into force (CAS 2008/A/1545, para. 10; CAS 2000/A/274, para. 208; CAS 2004/A/635, para. 44; CAS 2005/C/841, para. 51), (iii) any procedural rule – on the contrary – applies immediately upon its entry into force and governs any subsequent procedural act, even in proceedings related to facts occurred beforehand, and (iv) any new substantive rule in force at the time of the proceedings does not apply to conduct occurred prior to the entry into force of that rule unless the principle of lex mitior makes it necessary.

146. Pursuant to the approach laid out in CAS 2017/A/5003, the Panel determined it must decide "*what constitutes a sanctionable rule violation and what sanctions can be imposed [...] in accordance with the law in effect at the time of the allegedly sanctionable conduct*". In this case, the Respondent's allegedly sanctionable conduct in respect of the First Allegation, the Second Allegation and the Fourth Allegation arose before the implementation of the UCCMS within the CAS. In this respect, the Panel notes that there is neither a provision which departs from the traditional *lex mitior* principle in the UCCMS, nor a provision implying that the UCCMS shall apply to a conduct whenever it occurred, including before its endorsement by a signatory. As a fundamental matter of fairness, the Panel does not find that the Respondent's conduct shall be analysed in respect of a code of conduct not in effect at the date of such conduct.
147. Therefore, the Panel finds that in this procedure, the UCCMS shall only apply in respect of the Third Allegation.

C. Standard of Proof

148. The Parties submit and the Panel agrees that the standard of proof in this matter is as enunciated by the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53. It is proof on a balance of probabilities. As instructed at paragraph 49 therein, the Panel "*must*

scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred".

149. In approaching its task in these proceedings, the Panel is also mindful of the following instructions also set forth in *F.H. v. McDougall* at paragraph 46:

"Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency [...]. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test."

D. The First Allegation

150. The Parties do not dispute in respect of the First Allegation that (i) from early April 2019 until May 6, 2019, the Team participated in several international competitions in different countries, the last of which was the China Open, a FINA World Series competition, held in Beijing from May 4 to 6, 2019; (ii) during the warm-up for the highlight routine on or about May 5, 2019, Team member and "flyer" Audrey Joly ("Ms. Joly") landed in a dangerous manner and around this same moment, Ms. Duncan was laughing, and (iii) the Respondent became angry, briefly addressed Ms. Duncan directly, then later assembled the Team members on the pool deck and referred to punishing them, which caused various members to become upset.
151. What is essentially disputed by the Parties in respect of the First Allegation is whether the Respondent threatened to physically hit the athletes.
152. Ms. Harrower did not make reference to this incident in her complaint letter. However, she gave evidence at the hearing that the Respondent initially *"got really mad"* at Ms. Duncan and *"kind of told her to like, stop and everything, so then the conversation died down and we continued on with our practice, and then a little bit later, we were in a team circle and he targeted the three alternates at the time, he told the alternates that they needed to be more serious when they were at the pool and at these competitions because it was dangerous and that they were endangering the lives of like, the other team, like, the set spots on the team, and then he made the comment about that he was going to hit them so hard they wouldn't know what happened to them, um, and then that was kind of the end of that"*. Ms. Harrower testified that the Respondent's voice and tone was *"really aggressive"* and *"very accusatory"* that it was definitely not a fun conversation to hear. She further stated: *"I really took it as he was threatening to hit them if they didn't smarten up [...] I was pretty scared for them and for myself. Like I felt really uncomfortable."*
153. Ms. Ormond stated in her complaint in respect of the First Allegation: *"Gabor informed Jaiden Regnier, and Cassandra Winklaar and myself that if we didn't perform better we would be punished, and that he would hit us so hard we wouldn't know what happened [...]"*. At the hearing, Ms. Ormond recalled the Team members and coaches being gathered into a circle after the warm-up and stated: *"Gabor told me, Jaiden and Cassie specifically*

that if we continued to swim the way we had just swum and performed in that warm-up that we just did that we were going to be punished and he was going to hit us so hard we wouldn't know what happened." When asked what she understood at the time from the Respondent's comment, Ms. Ormond replied: *"That we were going to be hit, after, or if we continued to perform the way we were, like, physically, I guess, hit."*

154. Ms. Armstrong and Ms. Pratt stated in their joint complaint in respect of this incident: *"Jaiden and the alternates were laughing because Audrey Joly fell in the last highlight of highlight team during warmup- Gabor pulled us out after warmup and yelled at us saying that the alternates they were 'expendable to his team and that if you keep fooling around I'm gonna hit you so hard you don't know what happened' [...] one month later he told us we didn't understand- claimed he meant he was going to hit us so hard with training. However, the whole team and staff interpreted it as he was going to physically hit us [...]."*
155. Ms. Armstrong gave testimony at the hearing that around the end of the warm-up, she started laughing when she saw Ms. Joly land *"weirdly"*, which angered the Respondent who gathered the athletes into a team circle on the pool deck. According to Ms. Armstrong, the Respondent yelled at the alternates who had also been laughing, told them that they were expendable and that *"if they didn't stop fooling around he was going to hit them so hard they wouldn't know what happened"*. Ms. Armstrong further testified: *"I thought he meant he was going to physically hit us if we didn't stop fooling around."*
156. Ms. Pratt recalled during the hearing that while practicing highlights, one of the athletes fell and some other athletes were laughing and trying to keep the mood light. The Respondent then called the team into a circle on the pool deck and yelled at the alternates, telling them that they should not be goofing around, that this is the only event they have to impress him and that they should take it more seriously. *"Then he said if you ever do that again I'm gonna hit you so hard and then I can't remember the conversation after that."* Ms. Pratt further testified that she understood from the Respondent's comment that if the alternates ever made a mistake like that again, he was going to hit them physically.
157. In her *"Early Retirement"* email dated May 12, 2019, Ms. Duncan described the First Allegation as follows:
- "During the day of highlight team after our music practice Gabor had a serious talk with the team and said that Sion, Cassie and myself were performing at a much lower level of energy then the rest of the team. Saying that if we were to continue like this we would be punished and he would hit us so hard that we wouldn't know what happened and that we would not have a chance of going back on the team for tech and free. He continued to refer to the other 7 swimmers as 'his team' making me feel like I wasn't part of that team."*
158. At the hearing, Ms. Duncan described the China Open as *"one of the worst competitions I've been to, it was quite traumatic for me"*: She recalled that the team was working on some highlights in the warm-up and a swimmer was injured, although Ms. Duncan did not realize it at the time. According to Ms. Duncan, she laughed when she looked over at Ms.

Armstrong, who had made a funny face. *"As soon as I started laughing Gabor became very angry with me and was yelling at me and accused me of acting like a kindergartner."* Ms. Duncan testified that the team went on to do the practice routine with music and the swim through, subsequent to which they were pulled out of the pool, gathered around on the pool deck and addressed by the Respondent who was very angry and used a raised voice: *"He said that the way that myself, Cassandra Winkelaar and Sion Ormond were performing, that, [...] if we were to continue like this, we would be hit so hard until we didn't know what had happened."* When asked what she understood at the time from the Respondent's comment, Ms. Duncan stated that she was afraid that he actually might hit the athletes because she was *"very terrified"* of him based on her previous experiences with him.

159. Ms. Winkelaar's complaint included the following in respect of the First Allegation:

"[...] Gabor threatened me and 3 other teammates in front of the rest of the staff right after a training session while going to our bags. He said that he would hit us so hard that we wouldn't know what happened if we didn't smarten up and perform like the rest of the team. I was terrified. I didn't know he was upset with the way we're performing before this and he never specified what he expected from us after that. After the performance, I was scared that it wouldn't be up to the standard and that he would hit us [...]."

160. At the hearing, Ms. Winkelaar confirmed having been in the pool for the official warm-up for the highlight routine and recalled seeing Ms. Duncan talking with someone and laughing around the same time that Ms. Joly *"landed a little bit funny"* and was hurt and crying. Ms. Winkelaar further testified that as they left the pool, the Respondent called the athletes together and *"that's when he pointed out like me, Jaiden and Sion and that's when he said that he was going to hit us so hard that we wouldn't know what happened if we weren't going to perform or show our best selves the way that the other eight do"*. Ms. Winkelaar also recalled that the Respondent *"was angry for sure; he wasn't particularly yelling on the top of his lungs because there were other teams around I would say, that's the reason, but he was definitely angry and intimidating [...] I thought he was going to physically hurt us in some sort of fashion"*.

161. The Respondent testified in relation to the First Allegation that when they arrived in China, the team was tired: *"It was the fifth week. That team never been away from Canada for fifth week and they never had this kind of endurance or for stamina. They were obviously tired – emotionally, physically [...] but we still had a competition [...]"*. The Respondent also gave evidence that the team had suffered a *"wave of concussions"* in the previous years and also recently, which severely impacted upon the team's ability to compete. For example, he pointed out that Ms. Barrett had recently suffered a concussion during a highlight practice and could not travel with the team and that Ms. Ormond had recently been concussed. According to the Respondent, Ms. Duncan, who was prone to losing her focus during training sessions, had also recently suffered a concussion at a training camp in Japan when she was not concentrated.

162. The Respondent further explained that highlight was a particularly dangerous routine as the flyer was thrown three meters into the air and landed with contact to the water, or sometimes with other athletes in the pool. *"And because of the wave of concussions I always said we have around 35, 50 highlights per week where we practice and I'm saying to the team every single time please keep your eye on the flyer [because of the danger] it's very very important to keep eye contact on the flyer [...]."*
163. The Respondent recalled that on this particular occasion during the music practice, the highlight did not go well and so he instructed the team to try it one more time. They did and according to the Respondent, Ms. Joly *"hit herself"*, landing around 20 centimetres from Ms. Duncan, who *"absolutely didn't give attention to the whole thing, I even believe that she show her back to the whole happened. Audrey hit herself very badly and landed very close to Jaiden who came up and started to laughing. I don't even understood if she saw what happened or not but it was very very annoying. So I asked her to be concentrated and focused and after that I called out the team, we created a circle and I told them that one more time you fool around during highlight practice and you put your team members in a danger, I will punish you and it will hit you so hard that you not gonna know where it come from"*.
164. The Respondent acknowledged that he was really mad and had raised his voice because he simply could not understand, with all the previous history of injuries including that Ms. Duncan herself had recently suffered a concussion, how someone could show such a lack of focus. He further testified that it was very clear, even despite his poor English, what he had said and further, that his use of the words *"punish"* and *"hit you so hard"* was obviously in relation to making the Team do concentration stamina and focus exercises, which are not easy for the brain. The Respondent added that he wanted to raise the athletes' adrenaline to raise their focus for the purposes of performance and especially, for injury prevention since they were heading into the last day of competition, which studies show is when the risk of injury is significantly increased.
165. The Respondent testified that later that day he took the team for a walk and learned that some of the athletes had been disappointed by his earlier comments. According to him, he clarified to the athletes during the walk what he had said to them, but *"honestly the team didn't even turn towards me – they were watching the stadium, the trees, the birds and everything. I have a strong voice, I know they heard me, but they didn't give me attention [...] we just kept going, we had very good atmosphere, we won a ton of gold medals, so everyone was happy [...]."*
166. In cross-examination when asked if he intended to punish his team with training, not physical violence, the Respondent testified that he would not call it *"punishment"* but rather, training that is in the best interest of the athletes since it would improve focus, which was obviously missing and therefore causing danger to the athletes and their teammates.
167. Current Team Captain Ms. Holzner gave evidence that the Respondent became upset when at the same time that the highlight routine failed and Ms. Joly was visibly hurt, Ms. Duncan was laughing. Ms. Holzner stated: *"[...] he said it will hit you so hard. I never heard him*

say I will hit you so hard. And I always immediately thought that he was talking about the training load when we got came back from our time off and our break after China. I never assumed that it was because he was actually going to cause a physical threat." Ms. Holzner further testified that back at the hotel after the competition, she *"started to hear kind of grumblings from different athletes, mainly Jaiden and Emily, saying that they thought that he had said 'I will hit you so hard' and that was to me a little bit of a concern"*. Ms. Holzner explained that she then went to discuss the situation with (i) Ms. Cote, who confirmed to Ms. Holzner that her impression was also that the Respondent had said *"it will hit you so hard"* in reference to increased training upon the team's return from their post-China break, and (ii) Ms. Lecompte and CAS Team physiotherapist Katie Smith ("Ms. Smith") (which was confirmed by Ms. Lecompte in her testimony), to whom Ms. Holzner communicated her impression that the Respondent had said *"it will hit you so hard"* and also that the Respondent needed to clarify what he had said. According to Ms. Holzner, the team went for a walk near the Athletes' Village later that evening and the Respondent clarified to the team that *"it will hit you so hard"* referred to the training load and that he did not make a physical threat.

168. Ms. Lecompte gave evidence that she was present during the Respondent's address to the team after the failed highlight, and that his words included: *"I'm going to punish you, it's gonna hit you so bad you're never gonna see where it's coming from"* after which she said the atmosphere amongst the athletes changed. Ms. Lecompte also testified that she went immediately to speak with the Respondent about the use of the word "punish" being inappropriate in the situation, with which the Respondent agreed. Ms. Lecompte explained that she did not raise the words *"it will hit you"* with the Respondent because for her, it was very clear that he had said *"it will hit you"* and completely improbable that anyone could allege that he said he would hit them.
169. Ms. Cote recalled in her testimony that during the highlight practice, an athlete landed dangerously close to her, head first, and that some girls were laughing. The team and staff were then gathered by the pool, close to where they had their bags and the Respondent was angry. According to Ms. Cote, the Respondent criticized the substitutes' lack of seriousness and in particular, said that *"it will hit you"* while referring to a hard training session that they would have to endure back in Montreal if their focus did not improve. Ms. Cote testified that in her view, this was simply a coach pushing his athletes for a better performance and further, that never, never did she have the impression that the Respondent was going to hit them. Ms. Cote also gave evidence that the Respondent sometimes used the word "hit" during training sessions, for example "hit it" just before turning on the music.
170. Ms. Fiola-Dion gave testimony that during the highlight practice, some of the athletes were not focused on training and the Respondent asked them to be more serious. During a highlight, Ms. Joly was pushed into the air and landed head first dangerously close to Ms. Cote. The team was subsequently called for a meeting by the pool and the Respondent communicated that he was angry and disappointed by some of the team members' behaviour and in particular, that they were not respecting what he had told them since January 2019 in respect of staying focused on the flyer during highlights for safety reasons. Ms. Fiola-Dion testified that she did not remember all of the Respondent's words, but that

he said that one of the consequences of further lack of seriousness and focus putting athletes at risk would be that *"it will hit you so hard"*. Ms. Fiola-Dion also stated that the Respondent never said *"I will hit you so hard"* or threatened the athletes with violence. When confronted in cross-examination with the Durant Report which states at page 31 *"[Ms. Fiola-Dion] recalled that he stated that he would hit the athletes so hard"*, Ms. Fiola-Dion denied that she had ever made this statement to the investigator and confirmed that she had told the investigator that the Respondent had said: *"It will hit you so hard."*

171. Ms. Simoneau recalled observing the highlight routine warm-up and that key acrobatic movements were failing. She testified that the Respondent called the team together and urged them perform to their standards. According to Ms. Simoneau, the Respondent said *"it will hit you so hard [...]"* not in any way as a threat of physical violence but in relation to training for future performances and also to give the team a pep talk before their competition. Ms. Simoneau also gave evidence that later that day during a team walk in the Olympic Village, it was clarified that what the Respondent said was no threat of any sort of violence whatsoever and was meant to pump up the team and *"make sure that we're able to perform up to these standards"*. In cross-examination, Ms. Simoneau was confronted with the following statement from page 31 of the Durant Report: *"Ms. Simoneau was not in attendance for the highlight warm up and was not a direct observer of the events"* to which Ms. Simoneau replied: *"That is false. I was there. I was present. I remember that day, the warm-up like I described, and the little team huddle afterwards."*
172. The Panel has carefully considered the testimonies of the Respondent, the Complainants and each witness in respect of the First Allegation, which involves the particularly disturbing charge that the Respondent made a threat of physical violence against his athletes.
173. In observing the Respondent's demeanor and the content of and manner in which he testified in relation to the First Allegation, the Panel is satisfied that the Respondent gave sincere and credible evidence about the language he used and the message he attempted to communicate. The Panel also found credible the Respondent's testimony in respect of the contextual factors surrounding this incident. In particular, the Panel understands that all of the following factors contributed to the emotional and forceful manner in which the Respondent addressed his Team: (i) the prevalence of brain injuries amongst Team members, including Ms. Duncan's recent concussion during training, (ii) the inherent serious physical dangers of performing highlights and the frequency with which the Team practiced highlights, (iii) the Respondent's repeated messages to his athletes in respect of being focused on and aware of the position of the flyer during highlights for reasons of health and safety, and (iv) the fact that on the day that this incident occurred, the team was on the brink of completing a gruelling international trip, but nevertheless still had to compete.
174. The Complainants submit in respect of the First Allegation that their evidence, as well as that of Ms. Duncan and Ms. Ormond, should be preferred for reasons including that (i) Ms. Armstrong's Google Doc is the *"only contemporaneous written account of this incident that is before the Panel"* (ii) Ms. Duncan's "Early Retirement" email *"was written less than*

a week after the incident" and (iii) the Respondent's evidence in respect of the language he used when addressing the athletes is inconsistent considering his email to Ms. Healy dated May 12, 2019, his written response to Ms. Durant dated October 23, 2020 and his evasive testimony at the hearing in relation to the exact words that he used.

175. First, the Panel agrees with the Respondent that there are some concerns regarding the characterization of Ms. Armstrong's Google Doc as "*contemporaneous*", given that she acknowledged in her testimony making revisions after the initial dates of entry and additions after events allegedly occurred.
176. Second, the Panel also observes that not only Ms. Duncan but the Respondent also wrote an email on May 12, 2019 in respect of the First Allegation.
177. Third, and particularly given that English is not the Respondent's first or even second language, the Panel does not find that the Respondent's inability to consistently recall the exact words used during this incident detracts from the credibility of his evidence given at the hearing.
178. Fourth, in considering the Complainants' submission that the Panel should prefer their evidence to that of the Respondent, the Panel notes several factors serving to detract from the credibility of the Complainants' evidence, including:
 - (i) Ms. Pratt and Ms. Armstrong in their joint complaint stated: "[...] *I month later he told us we didn't understand – claimed he meant he was going to hit us so hard with training. However, the whole team and staff interpreted it as he was going to physically hit us.*" Here the Panel notes that it was not disputed that approximately one week after the incident at the China Open, the Respondent spoke to the team about this incident. Additionally, several Team members gave evidence demonstrating that they did not share the interpretations of Ms. Pratt and Ms. Armstrong.
 - (ii) Ms. Ormond gave evidence that the Respondent's emotional address to the Team was triggered by his disapproval of her, Ms. Duncan's and Ms. Winkelaar's performance. This was contradicted by multiple witnesses who clearly indicated that the trigger was certain athletes' lack of focus and seriousness during a dangerous training exercise.
 - (iii) Ms. Armstrong, Ms. Winkelaar and Ms. Ormond each admitted that before this hearing commenced, they had discussed matters related to it with journalists despite knowing they were subject to strict obligations of confidentiality. This factor leaves the Panel with concerns over their commitment to fairness and integrity in respect of this procedure.
179. Based on the totality of the evidence in relation to the First Allegation, including the testimonies, credible in the Panel's view, of the Respondent, his athlete witnesses and Ms. Lecompte, the Panel does not find in respect of the First Allegation that the evidence is sufficiently clear and cogent to establish that it is more likely than not that the Respondent

made a threat of physical violence directed towards Team members. The Panel also finds that any perceived threat of physical harm by athletes was the result of athletes' misinterpretation of his words.

180. The Panel also does not agree with the Complainants' submissions that even if the Panel finds that the Respondent did not make a threat of physical violence, his conduct in respect of the First Allegation nevertheless falls within the 2018 Conduct Policy's definition of harassment, which states:

"2. Harassment

Harassment is a form of discrimination, and refers to conduct, comment or display that is known, or ought reasonably to be known, to be unwelcome and where the wrongful conduct may be linked to things like the person's race, colour, religion, sexual orientation, disability, age or body type. Harassment includes bullying and can take many forms but often involves conduct, comment or display that is insulting, intimidating, humiliating, hurtful, demeaning, belittling, malicious, degrading, or otherwise causes offence, discomfort, or personal humiliation or embarrassment to a person or group of persons. One incident could be enough to constitute harassment.

Harassment does not include:

- *Interpersonal conflict or disagreement; or*
- *The proper exercise of performance evaluation, appropriate managerial direction, delegation, performance management or attendance management.*

[...]"

181. It is clear to the Panel that some Team members did not welcome the Respondent's message after the highlight routine warm-up at the China Open. The Panel also finds based on the evidence before it that some other Team members did welcome his message for reasons that included considerations of safety and performance. More fundamentally, the Panel finds in respect of the First Allegation that the Respondent's message to his athletes, which he described and the Panel accepts as essentially "*that they have to be aware and take care of each other for the rest of the competition and not to get injured*" does not constitute wrongful conduct in violation of the 2018 Conduct Policy.
182. Finally, having previously found that the UCCMS does not apply in respect of the First Allegation, the Panel does not address the Complainants' submissions in respect of UCCMS violations in relation to the First Allegation.
183. The Panel, therefore, dismisses the First Allegation.

E. The Second Allegation

184. Ms. Ormond testified that during a team dinner in a hotel room in Prince George in October 2019, the Respondent told her to zip up her hoodie before he got too excited. Ms. Ormond recalled that after the Respondent's comment, she went back to her hotel room and called Ms. Armstrong about this incident. Ms. Armstrong gave evidence that corroborated Ms. Ormond's testimony about the phone call and the content of their discussion.
185. Ms. Harrower's evidence was that in late October or early November 2019, at a Team dinner in Prince George during the Team's cross-Canada tour, the Respondent said to Ms. Ormond: "*You should zip up your hoodie before you get me all excited*".
186. The Respondent noted that Ms. Harrower had specified in her complaint dated September 28, 2020 that (i) this incident had taken place during the World Series Circuit (which occurred from February to June of 2019), (ii) only Ms. Armstrong was a witness in respect of the incident, and (iii) the Respondent had referred to Ms. Ormond's sweater, not her hoodie. When confronted in cross-examination with these inconsistencies, Ms. Harrower explained that she did not proof-read her complaint because it was too stressful to do so and that Ms. Ormond had called Ms. Armstrong right after the incident and that is why she specified Ms. Armstrong as a witness. Ms. Harrower also referred to her use, first, of "sweater" and then second, "hoodie" as "semantics" and denied that her version of the story had been influenced (and changed) by media coverage of this allegation.
187. Ms. Pratt gave detailed evidence that during a team dinner in Prince George at the family home of an athlete from the club that the Team was visiting, she was sitting at the head of the table with Ms. Ormond across at an angle from her. Ms. Pratt further described that the Respondent sat down across from Ms. Ormond and said to her: "*Sion, you better zip up your hoodie before I get too excited*", which caused Ms. Ormond to turn to Ms. Pratt with a terrified look and zip up her hoodie.
188. Ms. Holzner gave testimony that she was not certain of the date or location but believed that this incident occurred in Prince George in a room by the pool. Ms. Holzner confirmed, in direct and in cross-examination, witnessing the Respondent tell Ms. Ormond to zip up her hoodie before he got too excited: "*I did witness that statement and she zipped up her hoodie and we kind of moved on. I didn't hear anything about that after that event.*" When asked about the Respondent's tone, Ms. Holzner replied: "*I felt like it was a point blank statement – he was just asking her to zip up her hoodie and that was it [...] no one really said anything during that time, we kind of just moved on from it.*"
189. The Respondent testified that when he first learned of this allegation in August 2020, his reaction was that he did not remember it happening but also that "*it doesn't even make sense – excited in Hungarian means getting ready to fight [...] when you getting mad, when you getting ready to face your opponent [...] plus thirty years now I'm seeing athletes worldwide with swimsuits, I didn't get it and I didn't remember at all, that was the first time I heard about it [...].*"

190. The Respondent acknowledged that he made comments about his athletes' clothing "*all of the time*" because he had been given instructions by CAS Chief Sport Officer Ms. Healy to ensure that Team members dressed professionally and modestly. The Respondent further explained that a unique problem in the world of artistic swimming is that the "*back part of swimsuits sometimes goes into the back part*" and this contributes to making it difficult for the Team to attract commercial sponsorship. According to the Respondent, he repeatedly asked his athletes to respect the CAS clothing policy and to cover their body parts since this was part of his and his staff's duties.
191. In cross-examination, the Respondent stated that he never said anything of a sexual nature to his athletes and also did not recall making the alleged comment to Ms. Ormond.
192. Ms. Fiola-Dion testified that while she could not remember the Respondent's exact words, she recalls him asking Ms. Ormond to zip up her hoodie. According to Ms. Fiola-Dion, the Respondent's comment was made with a very, very neutral tone, while the Respondent was looking down at his meal and without any sexual connotation whatsoever. Ms. Fiola-Dion also testified that it was not uncommon for the Respondent to ask athletes to dress properly and modestly and to generally "cover up" as a matter of professionalism. Ms. Cote gave similar evidence in this regard while Ms. Simoneau testified that the Respondent would frequently instruct Team members to stay warm by putting on extra layers of clothing.
193. The Respondent submits that Ms. Lecompte's testimony that the Respondent never sexualized his communications with his athletes corroborates the evidence of Ms. Fiola-Dion and Ms. Holzner – that the Respondent's comment to Ms. Ormond was nothing more than an instruction to "cover up" before he got upset.
194. The Panel is satisfied that in respect of the Second Allegation, the alleged comment is established on a balance of probabilities.
195. The Panel recognizes that at first view, the Respondent's words to Ms. Ormond appear to be a sexualized comment. However, in the final weighing of all of the evidence of the Complainants and the Respondent in relation to the Second Allegation, the Panel does not arrive at that conclusion.
196. First, the Respondent gave evidence, candid and credible in the Panel's view, that he made comments about his athletes' clothing "*all of the time*" because as Head Coach of the Team, he was required to enforce the CAS clothing policy, including that athletes dress modestly and professionally. The Panel accepts as credible the corroborating testimonies of Ms. Holzner, Ms. Fiola-Dion and Ms. Simoneau that the Respondent would frequently encourage Team members to "*cover up*" and also notes that this incident took place during a Team dinner, hosted at a home in Prince George by the family of an athlete from a club that the Team was visiting.
197. Second, other than the Respondent's bare words spoken in his third language, the evidence before the Panel does not suggest that the Respondent's comment to Ms. Ormond was made in a manner or tone suggesting a sexual joke or innuendo, or was meant to taunt or

humiliate. By contrast, Ms. Fiola Dion and Ms. Holzner each gave evidence, credible in the Panel's view, which indicated that the Respondent's comment was made in a stern and admonishing tone and manner, which is consistent with the contextual explanation offered by the Respondent.

198. Third, the Panel accepts the Respondent's submissions that "excited" translates literally to the Hungarian term "izgatott" which "*has absolutely no sexual connotation*" but refers to becoming agitated and getting ready for a conflict or confrontation. Here, the Panel also notes that while "excited" in English does not necessarily carry a sexual connotation, the circumstances of this particular allegation easily allow for such a superficial conclusion to be drawn.
199. The Panel wishes to emphasize that the Respondent's statement, when read in isolation, presents in a way that can be interpreted as a sexual comment. However, when placed in the proper context, the Panel arrives at a different interpretation. Context matters. In particular, the Panel has considered the following factors:
 - (a) the words that were uttered;
 - (b) the circumstances surrounding the utterance – both before and after;
 - (c) the manner and tone with which the words were uttered;
 - (d) the reactions of the individuals who witnessed the event;
 - (e) the Respondent's history and his directions to athletes regarding clothing;
 - (f) the CAS clothing policy;
 - (g) the Respondent's language barrier;
 - (h) the fleeting nature of the words uttered; and
 - (i) the lack of any history of the Respondent sexualizing the Team's training environment or making sexualized comments to his athletes.
200. Considering the totality of the evidence before it and the Panel's weighing of that evidence, the Panel accepts that the Respondent may have selected the wrong word to express himself and may simply have been instructing Ms. Ormond, with a "*point blank statement*" to zip up her hoodie or sweater before he got upset or agitated.
201. Based on the evidence before it, the Panel does not find that the evidence is sufficiently clear and cogent to establish it is more likely than not that the Respondent's comment was of a sexual nature.
202. In respect of the Second Allegation, therefore, the Panel does not find that the alleged misconduct is established on a balance of probabilities.

203. Finally, having previously found that the UCCMS does not apply in respect of the Second Allegation, the Panel does not address the Complainants' submissions in respect of UCCMS violations in relation to the Second Allegation.

204. The Panel dismisses the Second Allegation.

F. The Third Allegation

205. It is alleged that during a training session at the INS on September 24, 2020, the Respondent engaged in a conversation primarily with Ms. Barrett and Ms. Cote and during this conversation, he made racist or discriminatory statements.

206. Ms. Harrower includes in her complaint dated 28 September 2020 that four days earlier, on 24 September 2020, the Respondent stated that "*All muslims are extremists...black lives matter? You mean all lives matter, why do their lives matter more than mine?...who are you to say what hate speech is*".

207. At the hearing, Ms. Harrower gave the following evidence in relation to the Third Allegation:

- On the morning of 24 September 2020 during activation or warm-up, she, Ms. Barrett and some other teammates were discussing what they had read the day before about concentration camps in China, which "*was really big in the news*".
- The Respondent overheard their conversation and commented that these were not concentration camps – they were prisons. This comment led to a short debate between Ms. Barrett and the Respondent, which quickly died down as the athletes prepared to get into the pool for the morning training session.
- Towards the end of the morning training session, the Respondent assembled the Team and told them that he was going to educate them on what was happening in China – he explained that in certain dictatorships and those types of areas, you had to follow the government's rules including in respect of religion and that is why in China there are prisons and not concentration camps.
- At this point, Ms. Cote and Ms. Barrett engaged in some debate on this topic with the Respondent, which upset him and eventually, he started a "*whole rant about how all Muslims are extremists and that like, even, when was the last time you saw a white man crash a plane*", to which Ms. Barrett replied that this is hate speech and in Canada you can't use hate speech against minority groups.
- The Respondent was "*really really mad at this point*" and yelled at Ms. Barrett "*who are you to tell me what hate speech is*" which made Ms. Barrett, who was trying really really hard not to cry, to become extremely anxious and caused her to "*do this thing where she scratches her arms when she gets really anxious*".

- The Respondent kept going and brought up the Black Lives Matter movement and said that he did not understand what this was and said: "*All lives matter – my life was just as important*". Ms. Barrett and Ms. Cote then tried to explain to the Respondent that "*these people have been hurt for hundreds and hundreds of years and that's why we have the Black Lives Matter movement and that's why it's so important*". This led to a discussion about not seeing black people swimming at the pool and not having any black people on the Team and a further discussion about historical repression and segregation of black people and the effects thereof and also conflicts between Caucasian groups or countries where white people are oppressing other white people.
 - At this point, Ms. Barrett was "*really really anxious and crying*" and Ms. Cote was crying and the Respondent told the athletes to get back to their training.
208. The joint complaint of Ms. Armstrong and Ms. Pratt includes the following allegations:
- "*Jihadists are muslims so therefore all muslims are extremists*
 - "*Muslims are high jackers*
 - "*All muslims bomb airplanes, it's a fact, have you ever heard of a white person trying to bomb an airplane*
 - "*Am I supposed to fire 3 of you so I can put 3 black girls on the team*
 - "*Not my fault black people don't do synchro, there is pools in every city*"
209. At the hearing, Ms. Armstrong testified that the athletes were swimming parts and going over some highlights when "*randomly, out of the blue*", the Respondent said to Ms. Barrett "*do you know what is going on in China right now*" to which she replied "*yes, Muslims are being imprisoned due to their religion*", with which the Respondent disagreed and said: "*Let me educate you.*"
210. According to Ms. Armstrong, the conversation continued some minutes later and the Respondent said "*all Jihadists are Muslims so therefore all Muslims are extremists*" to which Ms. Armstrong and Ms. Barrett replied that this was hate speech and "*you're not really allowed to say that*". Ms. Armstrong testified that the Respondent then said "*have you ever seen a white person bomb an airplane*" and then talked about the Black Lives Matter movement and said that it was discriminatory against all the other lives that matter.
211. Ms. Armstrong further testified that the conversation, at times heated and aggressive, then turned to artistic swimming being a privileged sport without much diversity and the Respondent commented that it's not his fault that black people don't do synchro because there are pools in every city and "*am I supposed to fire 3 of you so that we can put 3 black girls on the team*".

212. In particular, Ms. Armstrong gave evidence that the conversation really upset her because her boyfriend is Muslim and she knew about many of his struggles with racism. She also testified that she was "*really moved on the subject*" and was ashamed and let down that her national team coach would make such statements.
213. Ms. Pratt's evidence in respect of the Third Allegation included the following:
- Team members were taking a break on the pool deck and Ms. Barrett was speaking with Team members about concentration camps in China. After training resumed, the Respondent called the Team to the wall and told them that he wanted to educate them about something. The conversation evolved and different subject matters were discussed.
 - The Respondent spoke mainly to Ms. Barrett and said that "*all Muslims are extremists*" and "*have you ever seen a white guy take down a plane*".
 - The Respondent said "*should I just fire 3 of you so I can have 3 black girls on the team*" and "*as soon as you say black lives matter you're telling me that my daughters' lives don't matter*".
214. Ms. Pratt's evidence was that the Respondent was shouting, was really upset and was swearing and that "[Ms. Barrett] *was really calm, she wasn't like trying to aggravate him, she was just trying to defuse the situation, and talk politely and he just kept getting more and more frustrated and louder and angrier and it was scary because we couldn't leave, we were in the pool, we couldn't leave, we were stuck there*".
215. Ms. Cote, who along with Ms. Barrett and the Respondent was an active participant in this discussion, gave testimony that Ms. Barrett had started to talk about concentration camps in China and a debate ensued between the Respondent and Ms. Barrett in relation to human rights in China. According to Ms. Cote, the topic of the conversation shifted to the Black Lives Matter movement during which she defended Ms. Barrett's positions. Ms. Cote testified that during this segment of the conversation, it became apparent to her that the Respondent had no real understanding about what they were speaking about and that he made the statement "*all lives matter*".
216. When asked how she felt about this conversation with the Respondent, Ms. Cote stated that it was "*flagrant*" that the Respondent should have education about the topics of the conversation and also about Canadian and Quebec values. She characterized the conversation as a political debate clearly involving people with very, very different cultural backgrounds, but that there were never any personal attacks – it was just a political discussion during which the Respondent defended positions with which she and Ms. Barrett did not agree. According to Ms. Cote, the Respondent ended the conversation by saying that the "*break is over*" and the Team returned to training.
217. In cross-examination, Ms. Cote confirmed that this incident caused her concern in the sense that she wished that the Respondent would be educated in the subject matters of the

conversation and in respect of Canadian values. She repeated that she never felt attacked during the conversation, but also stated that the Respondent had work to do; for the good of the entire Team, the Respondent should be more aligned with the Team on certain values.

218. The Respondent testified that the conversation forming the basis for the Third Allegation arose as the result of the Respondent noticing Instagram posts by Ms. Barrett about concentration camps in China. This concerned the Respondent, who feared that the Team could be barred from attending international competitions in China and also, that the Team's relationships within the international artistic swimming community and specifically with China could be damaged.
219. The Respondent explained that based on these concerns, he initiated a discussion with Ms. Barrett about concentration camps in China. A political debate ensued within which the Respondent acknowledged that he said, in respect of prisons in China keeping Muslims against their will because of their religion: *"Is their rules, doesn't matter how horrible it is, as is the situation in North Korea, as is the situation in China, we can't really do anything about it, they live there, their rules, what they do, maybe just the prevention to don't let people to drive airplanes into the building"* to which Ms. Barrett replied: *"You mean all Muslims are hijackers?"* and to which the Respondent replied: *"No [Ms. Barrett], this is not what I said. The hijackers are jihadists, which is the right-alt side of the Muslim religion"*. According to the Respondent, he never said or implied that Muslims are terrorists or hijackers, as charged by the Complainants.
220. According to the Respondent, Ms. Barrett then raised that artistic swimming was a *"racist wealthy white people's sport"* because there is a lack of *"people of colour"* in the sport and this moved the conversation to the Black Lives Matter movement. The Respondent said that he had very little knowledge of the Black Lives Matter movement and during his conversation with Ms. Barrett, he said that *"all lives matter"* and that *"for me, my two daughters' lives matter"*. The Respondent pointed to his Exhibit R-19, a Hungarian government post stating in Hungarian *"Every life matters"* and explained that when he used this phrase in his discussion with Ms. Barrett, he had no idea that this could be racist. He also pointed to a Slovakian Artistic Swimming Association post stating that *"Everybody Matters"* to support his use of the phrase *"all lives matter"*, which he did not know could be racist or hurtful and *"I'm really sorry I did not have that knowledge – I feel very bad about it."*
221. In cross-examination, the Respondent denied saying to Ms. Barrett that all Muslims are extremists, or all Muslims are hijackers, or Muslims bomb airplanes. He insisted that he said to Ms. Barrett that hijackers are jihadists, which is the alt-right side of the Muslim religion.
222. The Complainants submit at paragraph 49 of their written closing submissions that based on the totality of the evidence, the Panel should find on a balance of probabilities that the Respondent made the following comments during the 24 September 2020 training session:

- (i) All Muslims are extremists.
- (ii) When was the last time you saw a white person bomb a plane?
- (iii) You mean all lives matter, why do their lives matter more than mine?
- (iv) Am I supposed to fire 3 of you so I can put 3 black girls on the team?

223. The Panel strongly denounces any such statements in any context.

224. The Panel has, however, considered all of the evidence of the Complainants and the Respondent in relation to the Third Allegation and concludes as follows:

- The evidence is not sufficiently clear and cogent to establish that it is more likely than not that the Respondent said to Team members during the training session on 24 September 2020 "*all Muslims are extremists*". In coming to this conclusion, the Panel in particular accepts as credible the Respondent's testimony in relation to this specific allegation, including his responses in relation to challenges put to him on cross-examination and also the candid nature in which he gave evidence relating to other allegations within the scope of the Third Allegation.
- The evidence is sufficiently clear and cogent to establish that it is more likely than not that the Respondent said to Team members during the training session on 24 September 2020: "*When was the last time you saw a white person bomb a plane?*" In coming to this conclusion, the Panel accepts as credible the testimonies of Ms. Harrower, Ms. Armstrong and Ms. Pratt on this specific allegation and also notes the Respondent's testimony that during his conversation with Ms. Barrett, he speculated in respect of the topic of Chinese prisons: "*what they do, maybe just the prevention to don't let people to drive airplanes into the building*".
- The evidence is sufficiently clear and cogent to establish that it is more likely than not that the Respondent said to Team members during the training session on 24 September 2020: "*You mean all lives matter, why do their lives matter more than mine?*" and "*Am I supposed to fire 3 of you so I can put 3 black girls on the team?*" In coming to these conclusions, the Panel notes in particular that (i) when the Respondent was asked in cross-examination whether he said "*you mean all lives matter, why do their lives matter more than mine?*", the Respondent did not deny saying this but expressed that he could not understand or remember why he would say this, (ii) the Respondent's use of his Exhibit R-19, presumably as a basis for having used such language, and (iii) when asked in cross-examination whether he said "*am I supposed to fire 3 of you so I can put 3 black girls on the team?*", the Respondent did not deny saying this, seemed to have reluctantly confirmed that he said this, and stated that he would have used the term "people of colour" and not "black girls".

225. Having considered all of the evidence of the Complainants and the Respondent in relation to the Third Allegation, the Panel does not accept the Complainants' submissions that the

Respondent's comments which are established on a balance of probabilities fall under the 2020 Conduct Policy's description of "*Harassment*", which states:

"Harassment

47. Harassment is a form of discrimination, and refers to conduct, comment or display that is known, or ought reasonably to be known, to be unwelcome and where the wrongful conduct may be linked to things like the person's race, colour, religion, sexual orientation, disability, age or body type. Harassment includes bullying and can take many forms but often involves conduct, comment or display that is insulting, intimidating, humiliating, hurtful, demeaning, belittling, malicious, degrading, or otherwise causes offence, discomfort, or personal humiliation or embarrassment to a person or group of persons. One incident could be enough to constitute harassment.

Harassment does not include:

- *Interpersonal conflict or disagreement; or*
- *The proper exercise of performance evaluation, appropriate managerial direction, delegation, performance management or attendance management.*

[...]"

226. The Panel agrees with the Respondent's submission that his conduct in respect of the Third Allegation "*can be summarized as engaging in a political debate, amounts to neither discrimination, nor harassment as defined in the 2020 Policy*". In particular, the Panel notes the testimony of Ms. Cote, who was one of three main participants in this debate and who alongside Ms. Barrett vigorously contested several of the Respondent's positions. Ms. Cote gave evidence, credible in the Panel's view, that the Respondent never made comments that could be described as a personal attack directed at another participant. In the Panel's view, the 2020 Conduct Policy requires, for harassment to occur, that someone be harassed.
227. The Panel similarly does not accept the Complainants' submissions that the Respondent's comments which are established on a balance of probabilities constitute psychological maltreatment in breach of the UCCMS, which has application to the Third Allegation on the basis that the UCCMS was endorsed by CAS on 5 May 2020 and the events forming the basis for the Third Allegation occurred on 24 September 2020.
228. Psychological Maltreatment is defined in the UCCMS as follows: "*Any pattern or a single serious incident of deliberate conduct that has the potential to be harmful to the psychological well-being of the Participant. Psychological Maltreatment includes, without limitation, verbal conduct, non-assaultive physical conduct and conduct that denies attention or support. Psychological Maltreatment is determined by the objective behaviour, not whether harm is intended or results from the behaviour.*"

229. In the Panel's view, no maltreatment occurred during the exchange of opinions within the context of the political debate which took place in respect of the Third Allegation.
230. The Panel observes that the participants to this debate expressed different points of view and the Respondent made comments which may be characterized as controversial, uninformed and ignorant, particularly in the context of Black Lives Matter, which has a long history of racism against black people and the killing of black people by police forces. The Panel would expect that persons in positions of leadership be role models in respect of such issues, in addition to being qualified in their profession or craft. While the circumstances of this case do not amount to harassment of specific members of the Team, in the Panel's view, awareness of and education on such important and sensitive issues should be highly relevant factors to be considered when hiring coaches or extending their tenure.
231. The Panel dismisses the Third Allegation.

G. The Fourth Allegation

232. It is alleged that in early 2019, the Respondent made sexist comments to Team members about cooking for men.
233. Ms. Harrower gave evidence at the hearing that in early 2019, the Respondent presented a recipe for waffles to Team members and told them they needed to cook for their men. She added that comments from the Respondent about women and cooking happened quite frequently.
234. Ms. Armstrong and Ms. Pratt testified that on 1 February 2019 the Respondent made comments to the Team including that if they wanted to keep their men, they needed to learn how to cook for them. Ms. Winkelaar and Ms. Duncan each gave similar testimony.
235. According to Ms. Holzner, the Respondent "*never just said that he wanted us to cook for a man; the topic was that he wanted us to learn how to cook so we could sustain ourselves*" and that on a few occasions, the topic of "cooking for men" was raised in passing conversation as nothing more than playful banter. In cross-examination, Ms. Holzner did not recall the Respondent saying that in order to keep their men, Team members needed to learn to cook for them.
236. The Respondent denied telling or implying to Team members that women should, or need to, cook for men. He noted that he and the Team members spent eleven hours together on a daily basis and during some of this time, they might engage in discussions and back-and-forth banter, sometimes unrelated to sport. He also testified that a key element of his approach to coaching the Team was to encourage and educate the athletes to cook as a means of developing healthy eating habits, especially since many Team members were living on their own for the first time. "*In many occasion, I advised my athletes to learn to cook. We hired a nutritionist and the nutritionist main job was to teach the athletes how to make healthy food.*" According to the Respondent, the nutritionist made personal visits to athletes' apartments to teach them how to cook and also, together with Ms. Lecompte, gave

cooking lessons to athletes in the kitchen at the INS. "*We made many efforts to the athletes to really know how to take care of themselves. I believe that in today's sport, the nutrition can make a difference between an Olympic gold and silver medal [...].*" The Panel notes that in addition to Ms. Holzner, each of Ms. Cote, Ms. Fiola-Dion and Ms. Simoneau gave evidence, credible in the Panel's view, about the Respondent's repeated focus communications on the importance of athletes being able to cook.

237. Having considered all of the evidence of the Complainants and the Respondent in relation to the Fourth Incident, the Panel accepts the Respondent's submissions that "*the purpose of the Respondent's comments with respect to cooking was to encourage athletes to develop a set of skills that is key to healthy nutrition habits, hence, to performance*". The Panel also does not find that in respect of the Fourth Allegation, the evidence is sufficiently clear and cogent to establish that the alleged misconduct is more likely than not to have occurred.
238. The Panel, therefore, dismisses the Fourth Allegation.

VI. CONCLUSIONS

239. The Panel dismisses each of the First Allegation, the Second Allegation, the Third Allegation and the Fourth Allegation.
240. Consequently, the Panel confirms that the Respondent is not responsible for the policy violations asserted by the Complainants.

ON THESE GROUNDS

The Discipline Panel rules that:

1. The First Allegation, the Second Allegation, the Third Allegation and the Fourth Allegation (each as defined at paragraph 2 of this Decision) are dismissed.
2. As a consequence, Gabor Szauder is not responsible for the policy violations asserted by Rebecca Harrower, Cassandra Winkelaar, Halle Pratt and Emily Armstrong.
3. All other motions or requests for relief are dismissed.

June 7, 2021

Toronto, Canada

DISCIPLINE PANEL

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Daniel Ratushny
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Daniel Ratushny
Discipline Panel Chair

Marianne Saroli
Discipline Panel Member

Michael Smith
Discipline Panel Member

ON THESE GROUNDS

The Discipline Panel rules that:

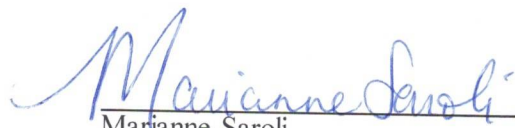
1. The First Allegation, the Second Allegation, the Third Allegation and the Fourth Allegation (each as defined at paragraph 2 of this Decision) are dismissed.
2. As a consequence, Gabor Szauder is not responsible for the policy violations asserted by Rebecca Harrower, Cassandra Winkelaar, Halle Pratt and Emily Armstrong.
3. All other motions or requests for relief are dismissed.

June 7, 2021

Toronto, Canada

DISCIPLINE PANEL

Daniel Ratushny
Discipline Panel Chair



Marianne Saroli
Discipline Panel Member

Michael Smith
Discipline Panel Member

ON THESE GROUNDS

The Discipline Panel rules that:

1. The First Allegation, the Second Allegation, the Third Allegation and the Fourth Allegation (each as defined at paragraph 2 of this Decision) are dismissed.
2. As a consequence, Gabor Szauder is not responsible for the policy violations asserted by Rebecca Harrower, Cassandra Winkelaar, Halle Pratt and Emily Armstrong.
3. All other motions or requests for relief are dismissed.

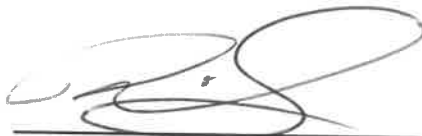
June 7, 2021

Toronto, Canada

DISCIPLINE PANEL

Daniel Ratushny
Discipline Panel Chair

Marianne Saroli
Discipline Panel Member



Michael Smith
Discipline Panel Member

APPENDIX A

From: Daniel Ratushny
Sent: Friday, January 29, 2021 11:11 AM
To: 'James Bunting'; 'Sebastian Pyzik'; 'Antoine Godin-Landry'; 'Carlos Sayao'
Cc: 'slinttell@lmslawyers.com'; 'Michael Bardagi'; 'Julia Miller'; 'msmith@lmslawyers.com'; 'Marianne Saroli'
Subject: RE: [EXT]: RE: Harrower, Winkelaar, Ormond, Regnier, Pratt and Armstrong vs. Szauder
re: Canadian Artistic Swimming

Dear Mr. Pyzik,
Dear Mr. Sayao,
Dear Mr. Bunting,
Dear Mr. Godin-Landry,

The Panel has considered the emails received on January 26, 2021 from the Complainants and the Respondent. In relation to the preliminary issues raised therein by the parties, the Panel informs the parties as follows:

1 – Mr. Bardagi will provide you with a copy of Ms. Durant's report dated December 23, 2020 (the "Durant Report"), with redactions made in accordance with Sections 61 and 62 (the "Confidentiality Provisions") of the Canada Artistic Swimming Discipline and Complaints Policy (the "Complaints Policy"). The Panel reminds the parties of their strict obligations of confidentiality pursuant to the Confidentiality Provisions.

2 – The Panel confirms that the Durant Report was included in the background materials provided to the Panel upon its appointment. The Panel has not discussed the Durant Report and is of the view, at this point in time, that such report will not influence or be used by the Panel in this disciplinary process. The Panel's findings and rulings in relation to the four complaints to be adjudicated by it will be based solely on submissions and evidence submitted and tested and in this respect, the Panel confirms that each party will have the opportunity to challenge the credibility of the other party's witnesses.

3 – In order to move forward with this matter as expeditiously as possible, the Panel proposes the following procedural format and timeline and welcomes the parties' comments by email:

- The disciplinary process will be comprised of written submissions and an oral electronic hearing.
- The parties will produce for the Panel an agreed statement of facts if possible.
- The Complainants will have [XX days] to file their written submissions setting out arguments, issues to be determined by the Panel and the Complainants' request(s) for relief. Such written submissions will include exhibits and other evidence upon which the Complainants intend to rely, including the name(s) of any witness(es) they intend to call and a will say statement for each such witness. The name and expert report of any expert, including a statement of their area of expertise, shall also be included in the Complainants' written submissions.
- Upon receipt by the Panel of the Complainants' written submissions, the Respondent will have [XX days] to file his written submissions setting out arguments, issues to be determined by the Panel and the Respondent's request(s) for relief. Such written submissions will include exhibits and other evidence upon which the Respondent intends to rely, including the name(s) of any witness(es) he intends to call and a will say statement for each such witness. The name and expert report of any expert, including a statement of their area of expertise, shall also be included in the Respondent's written submissions.
- Depending on the number of witnesses to be heard by the parties, the Panel may request that the parties file, with their written submissions and instead of witness will say statements, sworn affidavit evidence for each witness in order to reduce the amount of time spent during the hearing on examination-in-chief.

- The parties may only call such witnesses and experts which they have specified in their written submissions. Each party is responsible for the availability of the witnesses and experts it will call.
- A detailed hearing schedule, including time for brief closing arguments, will be prepared by the Panel in consultation with the parties after the Respondent's filing of its written submissions as outlined above.

4 – In order to begin planning a hearing date or dates, the parties are also invited to advise on their availability during the month of March 2021.

On behalf of the Panel,
Dan Ratushny



Daniel Ratushny
Partner, Bennett Jones LLP

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APPENDIX B

From: Daniel Ratushny
Sent: Monday, February 1, 2021 5:20 PM
To: 'Carlos Sayao'; 'Sebastian Pyzik'; 'James Bunting'
Cc: 'Antoine Godin-Landry'; 'slinttell@lmslawyers.com'; 'Michael Bardagi'; 'Julia Miller'; 'msmith@lmslawyers.com'; 'Marianne Saroli'
Subject: RE: [EXT]: RE: Harrower, Winkelaar, Ormond, Regnier, Pratt and Armstrong vs. Szauder re: Canadian Artistic Swimming

Dear Mr. Sayao,
Dear Mr. Pyzik,
Dear Mr. Bunting,

The Panel has considered the emails received on January 29, 2021 from the Complainants and the Respondent. The Panel informs the parties as follows:

1- In her role as third-party investigator, Ms. Durant was obliged, under Section 40 of the Discipline and Complaints Policy (the "Policy"), to prepare and submit to the Case Manager at the conclusion of her investigation a written investigation report which included her determination as to whether the factual allegations in the various complaints have been established on a balance of probabilities. In this regard, Ms. Durant states in her Executive Summary: *"Pursuant to the [Policy], it is the Investigator's role to determine whether there is sufficient evidence, on a balance of probabilities standard, to support the complaints. I have reviewed all of the evidence and have determined that the following allegations have enough evidence to proceed to a disciplinary hearing [...]"*.

2- The Panel does not specifically agree with the Respondent that the third-party investigator's role is to "filter" which allegations may proceed to a Discipline Panel. Rather, the Panel understands that the investigator's determination pursuant to Section 40 of the Policy serves to assist the Case Manager, who along with the Safe Sport Officer forms part of the Safe Sport triage team in accordance with Section 9 of the Policy, to exercise his or her discretion under Section 41 of the Policy in respect of appointing a Discipline Panel.

3- Once appointed, the Discipline Panel shall handle its duties *"as described in this Policy"* in accordance with Section 1(i) of the Policy. Section 41 of the Policy describes that the Panel's duties include a determination of whether a policy violation occurred. Here, the Panel agrees with the Respondent that such a determination involves first, an assessment of whether allegations are proven on a balance of probabilities and if so, then second, whether a policy violation has occurred. More fundamentally, the Panel notes that Section 42 of the Policy describes the Panel's duty to *"hear the complaint"* and that Section 48 describes that the Panel will reach a decision *"[a]fter hearing the matter"*. The Panel also agrees with the Respondent, in addressing the Complainants' interpretation of Section 41 of the Policy, that deference by the Panel to Ms. Durant's findings would insult the Respondent's right to procedural fairness for the simple reason that Ms. Durant's conclusions were made within the context of an investigatory and not an adjudicatory process.

4- In conclusion, the Panel refers the parties to the email already sent by the Panel to them on January 29, 2021.

On behalf of the Panel,
Dan Ratushny

 **Daniel Ratushny**
Partner, Bennett Jones LLP

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APPENDIX C

From: Daniel Ratushny
Sent: Sunday, April 25, 2021 8:03 AM
To: 'Sebastian Pyzik'; 'Carlos Sayao'; 'Antoine Godin-Landry'; 'James Bunting'
Cc: 'Michael Bardagi'; 'msmith@lmslawyers.com'; 'Camille Santerre'; 'slinttell@lmslawyers.com'; 'mariannesaroli@me.com'
Subject: RE: [EXT]: RE: Harrower et al. v. Szauder (O.f. 6709-1) - Will-Say Statements and Request for Preliminary Hearing

Dear Mr. Pyzik,
Dear Mr. Godin-Landry,
Dear Mr. Sayao,
Dear Mr. Bunting,

The Panel has considered the parties' submissions in respect of the preliminary issues raised by the Respondent in his letter to the Panel on 2 April 2021, wherein the Respondent submits the following:

- "1. Ms. Winkelaar has breached her strict obligation to maintain confidentiality about all information related to her complaint, despite repeated warnings. As such, her complaint should be dismissed, and she should be barred from testifying at the upcoming hearing.*
- 2. Ms. Ormond has breached her strict obligation to maintain confidentiality about all information related to her complaint while she was a Complainant, despite repeated warnings. As such, she should be barred from testifying at the upcoming hearing.*
- 3. Ms. Viktoria Reichova and Ms. Natalia Pivarciova should be prevented from testifying at the upcoming hearing. Their testimonies would be irrelevant and add disproportionate costs to the current proceedings.*
- 4. Dr. Gretchen Kerr's report should be dismissed at this preliminary stage. Dr. Kerr drafted her report while in a conflict of interests. Her report, if admitted into evidence, would amount to an usurpation of the jurisdiction of the Panel.*
- 5. The Complainants should not be allowed in attendance during the testimonies of the Respondent's witnesses, particularly their fellow athletes.*

[...]"

The Panel makes the following rulings:

Issues 1 & 2 – Alleged breaches of confidentiality by Ms. Winkelaar and Ms. Ormond:

The Panel (i) understands that the Respondent submitted a formal complaint against Ms. Armstrong, Ms. Pratt, Ms. Harrower, Ms. Reigner and Ms. Ormond on 4 November 2020 "*for serious breaches of confidentiality on their part under section 62 of the Discipline and Complaints Policy*", and (ii) is not aware of a formal complaint having been advanced by the Respondent against Ms. Winkelaar. Nevertheless, the Panel refers to the procedures for addressing complaints set out in the Discipline and Complaints Policy and finds that it does not have jurisdiction to determine whether policy violations occurred in respect of the Respondent's allegations against Ms. Winkelaar and Ms. Ormond.

However, the Panel will hear oral testimony, if any, during the hearing, in respect of such alleged confidentiality breaches, but only for the limited purpose of its possible relevance to the Panel's assessment of credibility and the weighing of evidence.

Issue 3 – Admissibility of Slovakian athletes in respect of incidents during 2015 – 2017:

The Panel finds that the anticipated testimonies of Ms. Reichova and Ms. Pivarciova are not sufficiently relevant to the complaints that are at issue in this matter and, therefore, are not admitted.

Issue 4 – Admissibility of Dr. Kerr's Expert Report:

The Panel does not find that (i) Dr. Kerr's engagement by Canada Artistic Swimming ("CAS") to provide training sessions to CAS staff and coaches including the Respondent, and (ii) communications between CAS and Dr. Kerr, or the Respondent and Dr. Kerr, demonstrate that Dr. Kerr is in a position of conflict of interest or is not able to provide opinion evidence to the Panel that is fair, objective and non-partisan.

In this matter the Panel must first determine in respect of each complaint whether the alleged conduct is established to the applicable standard of proof. For any positive findings, the Panel must then, as a second step, determine if a policy violation has occurred and if it has, the appropriate sanction to be applied, if any. The Panel agrees with the Complainants' submissions that Dr. Kerr's expert report shall have no impact on the Panel's execution of the first step in its mandate. It is only in respect of the second step that the Panel may consider and determine what weight, if any, to assign to Dr. Kerr's evidence.

The Panel, therefore, admits into evidence Dr. Kerr's expert report dated 19 March 2021.

Issue 5 – The Complainants' attendance during the testimonies of the Respondent's witnesses:

The Complainants are not barred from attending the testimonies of the Respondent's witnesses (except for the usual order excluding witnesses prior to giving their testimony).

Proposed Hearing Schedule / Interpreter:

The Panel requests that the parties work together to produce and send to the Panel before 6pm Toronto time on 28 April 2021 a proposed detailed hearing schedule for 4, 5 and 6 May, 2021 and also requested time for oral closing arguments on 14 May 2021.

The Case Manager has informed the Panel that CAS is not willing to pay for an interpreter for the hearing and suggests that this could be arranged through the SDRCC at the parties' cost.

On behalf of the Panel
Dan Ratushny



Daniel Ratushny
Partner, Bennett Jones LLP

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APPENDIX D

From: Daniel Ratushny
Sent: Monday, May 10, 2021 4:16 PM
To: 'Antoine Godin-Landry'; 'Carlos Sayao'; 'Sebastian Pyzik'; 'James Bunting'
Cc: 'Michael Bardagi'; 'Camille Santerre'; 'Julia Miller'; 'msmith@lmslawyers.com'; 'Marianne Saroli'; 'slinttell@lmslawyers.com'
Subject: RE: [EXT]: Harrower et al. v. Szauder - Additional Hearing Date

Dear Mr. Pyzik,
Dear Mr. Godin-Landry,
Dear Mr. Bunting,
Dear Mr. Sayao,

The Panel has considered the parties' submissions in respect of issues raised subsequent to the conclusion of Day 3 of the hearing and informs the parties as follows:

1- Hearing Day 4 (Tuesday 11 May 2021)

The Panel understands that the parties are available on 11 May in the afternoon only and therefore the Panel can be available from 1pm until 5:30pm.

2- Additional Documents re: Cross-Examination of Respondent

The Panel does not agree with the Respondent that the parties' agreed protocol or ground rules with respect to cross-examinations in these proceedings precludes the Complainants from submitting additional documents for the purpose of putting these to the Respondent in their cross-examination of him. Therefore, the Panel denies the Respondent's request for a limit in this regard.

3- Day 3 Hearing Recording

The audio recordings of Days 1 and 2 were sent to the parties shortly after the conclusions thereof. Any advantage to counsel for the Complainants arising from receiving the audio recording of Day 3 prior to the resumption of the cross-examination of the Respondent is simply the product of the hearing schedule jointly proposed by the parties and the Panel will not further delay sending that recording to the parties.

4- Complainants' Request for Production of the Unredacted Responses

The Panel dismisses the Complainants' request for production of the Respondent's redacted responses to the investigator in respect of allegations originally made against him but which are not before the Panel in this matter. The Panel finds that production of these redacted responses would neither be proportional as submitted by the Respondent, nor sufficiently relevant to the issue of the credibility of the Respondent in relation to the four complaints before the Panel in this matter. The Complainants have also already had the opportunity to explore issues of context and credibility in particular in their direct examination of the Complainants.

5- Complainants' Reply Evidence / text messages from Catherine Barrett to Ms. Winkelaar

As submitted by the Respondent, Ms. Barrett is not one of the Complainants and the Complainants have chosen not to call her to give evidence. The Panel finds that the anticipated evidence of Ms. Winkelaar in respect of communications received by her from Ms. Barrett is not relevant to the matters before the Panel in these proceedings and therefore denies the Complainants' motion to recall Ms. Winkelaar.

Finally, the Panel requests, before 11am Toronto time tomorrow, a joint proposed hearing schedule for Day 4 of the hearing.

On behalf of the Panel,
Dan Ratushny



Daniel Ratushny
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No. 500-06-001134-218
SUPERIOR COURT
(Class Action Division)
District of Montréal

CHLOE ISAAC, residing and domiciled at
5655 Vallerand Street, in the City of Brossard, in
the Judicial District of Longueuil, in the Province of
Québec **et als.**

Petitioners

vs.

**CANADA ARTISTIC SWIMMING / NATATION
ARTISTIQUE CANADA**, a company registered
pursuant to the Canada Not-For-Profit corporations
act, with its head office located at 700 Industrial
Avenue, Suite 401, in the city of Ottawa, in the
Province of Ontario

Respondent

EXHIBIT R-36

ORIGINAL

DAVIES

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Respondent

EXHIBIT R-1

*(APPLICATION FOR PERMISSION TO AMEND THE
ORIGINATING APPLICATION FOR AUTHORIZATION
TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE
STATUS OF REPRESENTATIVE AND
SWORN STATEMENT OF CARA CAMERON)*

ORIGINAL

DAVIES

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