

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA No.: SDRCC 24-0724**

**CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA**

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN:**        **Ariana Chia**                                (Claimant)

**AND**

**Equestrian Canada (EC)**    (Respondent)

**AND**

Camille Carier Bergeron    (Affected Party)

Chris von Martels            (Affected Party)

Jill Irving                      (Affected Party)

**ARBITRATOR:**    Professor Richard H. McLaren, O.C.

**COUNSELS/REPRESENTATIVES**

For the Claimant:                                Carlos Sayao & Carlos Lopez

For the Respondent:                              Michelle Kropp

For the Affected Parties:                      Annie Bourgeois (Counsel to Ms. Carier Bergeron)  
Gilles Bergeron (Representative)  
Nick Williams & Richard Martin (Counsels for Ms.  
Irving and Mr. von Martels)

**APPEARANCES**

For the Claimant:                                Ariana Chia

For the Respondent:                              Christine Peters  
Denielle Gallagher  
Eric Bobyn  
Victoria Winter

## ARBITRATION AWARD

1. The Claimant, Ariana Chia is an international Grand Prix Dressage rider and a member of the Respondent.
2. The Respondent, Equestrian Canada (“EC”) is the National Sport Organization (“NSO”) for equestrian sport and recreation in Canada. EC is an independent, not for profit organization that leads, supports, promotes, governs, and advocates for the equine and equestrian community in Canada.
3. In accordance with the Sport Dispute Resolution Centre of Canada (“SDRCC”) Rules for Arbitration Article 1 section 1.1(a) there are three Affected Parties for the Canadian Olympic Dressage Team selection. They are second ranked rider, Jill Irving, third ranked rider, Camille Carier Bergeron and first alternate, Chris von Martels. Their rankings were determined by the objective criteria under section 3.3 of Appendix 1 to the 2024 Olympic Games Equestrian Canada Nomination Criteria & Procedures Dressage (“Nomination Criteria”).
4. Under the same criteria Ms. Chia is ranked as the second alternate person for the Canadian Olympic Dressage Team. The nomination decision of the Dressage High Performance Advisory Group (“HPAG”) came to the attention of Ms. Chia on 11 June 2024 by phone call from Lisa von Martels (“Martels”), one of the athlete representatives on the HPAG and wife of Chris von Martels, the first alternate rider (See above).
5. The function of the HPAG in this proceeding is as an operational committee created by EC to make “...*selection/nomination criteria for the National Team programs...*”. The committee makes its selection and nomination recommendations in accordance with the Nomination Criteria.
6. Following up on its previous meetings the HPAG met on 11 June 2024 to make its final selection and nomination for the Canadian Olympic Dressage Team.

7. Both Martels and Denielle Gallagher (“Gallagher”) are athlete representatives on the HPAG. Gallagher was also the sixth ranked rider. Both athlete representatives of the HPAG declared conflicts of interest.
8. Martels declared her conflict of interest “*specific to Chris von Martels (relationship – husband)*”. She further stated as recorded in the minutes “*that she would like to provide input based on athlete feedback and then step away during the discussion and nomination decisions*”. The committee agreed to this procedure. During the deliberations of the committee further comments were made by Martels, as discussed below.
9. Gallagher declared a conflict of interest “*specific to her Olympic declaration and ranking status for the Olympic games*”. The HPAG members responded indicating that “*with Denielle’s standing in the rankings, she was not up for nomination to the team or for nomination in alternate positions*” (See Committee minutes). Pursuant to the committee’s directions, she participated throughout the HPAG’s decision making process. Following the departure of Martels, Gallagher “*expressed concern with the perception of the withdrawals*” as raised by Martels.
10. The HPAG made its nomination determinations focused on the objective criteria of section 3.3.7(b)(i) of Appendix 1 of the Nomination Criteria. Reference was also made to the subjective criteria in section 3.3.7(b)(ii).<sup>1</sup>
11. The HPAG decision nominated Naima Moreira Laliberte, the top ranked athlete, in accordance with 3.3.7(a) of Appendix 1. The HPAG nominated Affected Parties Jill Irving (“Irving”) for the second team position and Camille Carrier Bergeron (“Bergeron”) for the third team position. Mr. von Martels was nominated for the first alternate position with Ms. Chia nominated for the second alternate position.
12. Following the phone call on 11 June 2024 by Martels, the Claimant filed a Notice of Appeal with Equestrian Canada’s Independent Third Party. The Appeal Manager found permissible

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<sup>1</sup> Some of the subjective material is mixed with objective aspects.

grounds for appeal submitted in time and directed the appeal to the SDRCC for immediate processing.

13. The Claimant and Respondent mutually agreed to the appointment of the Arbitrator on 17 June 2024.
14. Mr. Nick Williams of Morgan Sports Law representing two Affected Parties cross-examined the Claimant. The cross-examination focused on whether Gallagher had a real or perceived conflict of interest with the Claimant due to Gallagher's relationship with horse breeder Massa and as such, should have been declared.
15. The Arbitrator finds that the Claimant often gave answers unrelated to the question being asked apparently to avoid answering questions. She failed to make appropriate concessions when presented with the documentation which might contradict her evidence. The Arbitrator finds that the evidence is wholly insufficient to establish a conflict of interest based on whether Massa and Coves Darden (the Claimant's breeder) are competitors which might have given rise to a perceived or direct conflict of interest. That allegation on behalf of the Claimant is dismissed. Therefore, there can be no breach of section 3.1 of Appendix 1 to the Nomination Criteria for that reason.

### **Submissions**

#### ***i. Ariana Chia***

16. Ms. Chia submits that Equestrian Canada breached the Nomination Criteria in three ways during the 11 June 2024 meeting. First, when it allowed two HPAG panelists with conflicts of interest to participate in the nomination discussion. Second, when Equestrian Canada did not evaluate potential athletes with regard to the factors for consideration beyond athlete standing. Third, when the HPAG failed to recognize that the list of factors for consideration was non-exhaustive and allowed the panel the freedom to consider relevant factors raised at the meeting such as strategic withdrawal.

17. Ms. Chia submits that section 3.1 of Appendix 1 to the Nomination Criteria was breached by permitting the participation of two panelists with perceived or real conflicts of interest. It is submitted that two members of the nomination panel had perceived and real conflicts of interest, but they still participated in the nomination discussion.
18. It is submitted that section 3.3.7(b) of Appendix 1 to the Nomination Criteria was breached because the HPAG did not review or evaluate factors listed under subsection (i), (ii) or (iii). Ms. Chia submits that the HPAG failed to consider the mandatory factors and decided the nominations based on the objective rankings.
19. Ms. Chia submits that EC did not apply section 3.3.7(b) of Appendix 1 to the Nomination Criteria properly as the HPAG failed to recognize that the list of considerations was non-exhaustive. This misapplication precluded discussion on relevant factors that were not expressly listed, particularly the strategic withdrawal decisions mentioned at the beginning of the 11 June 2024 HPAG meeting.
20. The relief requested is that the nominations made by the HPAG are set aside. The further request is for an order for EC to remove Martels and Gallagher from the nomination panel and appoint two individuals to the nomination panel who are mutually agreed upon by Ms. Chia and EC. Ms. Chia requests that SDRCC order the reconstituted nomination panel to issue a new team selection decision with full consideration of the factors listed in the Nomination Criteria, including the factors listed in section 3.3.7(b) as well as other relevant factors such as withdrawals during the qualifying period.
21. The following jurisprudence was submitted in support of the Claimant's position:

*Old St. Boniface Residents v Winnipeg* 1990 CanLII 31 (SCC); *Newfoundland Telephone v Newfoundland (Public Utilities Board)* 1992 CanLII 84 (SCC); *Re Moskalyk-Walker and Ontario College of Pharmacy*, 1975 CanLII 1173 (ON SCDC); *Sternberg v Ontario Racing Commission*, 2008 CanLII 50514 (ON SCDC); *Beaudet v Federation of Canadian Archers* (2008), SDRCC 08-0083 (Arbitrator: Patrice M Brunet); *Li v Badminton Alberta* (2011), SDRCC 11-0140 (Arbitrator: Stephen L Drymer); *Beaulieu v Speed Skating Canada* (2013), SDRCC

13-0199 (Arbitrator: Graeme Mew); and *Laberge v Bobsleigh Canada Skeleton* (2013), SDRCC 13-0211 (Arbitrator: Graeme Mew).

*ii. Equestrian Canada*

22. EC submits that it properly executed the Nomination Criteria when the HPAG made the nomination decisions during the 11 June 2024 meeting. EC submits that the conflict of interest was managed appropriately by having the conflicts declared at the outset of the meeting and that section 3.1 of Appendix 1 to the Nomination Criteria was complied with fully. EC submits that Martels' declaration of her conflict of interest and removal from the discussion was sufficient to meet the requirements under the Nomination Criteria. EC submits that Gallagher did not have a real conflict of interest because she was not up for nomination due to her low standing in the athlete rankings.
23. EC submits that the HPAG considered the order rank of athletes and other considerations before determining that athletes should be nominated based on their sequential order in the rankings. EC submits that the recording of the HPAG 11 June 2024 meeting and the score rankings are evidence that the athletes who achieved qualification scores were considered using the non-exhaustive list of section 3.3.7(b) of Appendix 1 to the Nomination Criteria.
24. EC submits that the standard of review in this appeal is reasonableness. EC states that the nomination decision should not be interfered with because the decision is transparent, intelligible and justified and falls within the range of reasonable, acceptable outcomes.
25. EC requests that Ms. Chia's appeal be dismissed entirely.
26. The following jurisprudence was submitted in support of the Respondent's position:
- MacDonald Estate v Martin* 1990 CanLII 32 (SCC); *R v S. (R.D.)*, 1997 CanLII 324 (SCC); *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65; *R v Cowan*, 2022 ONCA 432; *Rolland v Swimming Canada* (2002), ADR 02-0011 (Arbitrator: Clement, Jean-Guy); *Palmer v Athletics Canada* (2008), SDRCC 08-0080 (Arbitrator: Richard W Pound); *Marchant and DuChene v Athletics Canada* (2012), SDRCC 12-0178 (Arbitrator: Graeme Mew); *Veloce v Canadian Cycling Association* (2012), SDRCC 12-0182 (Arbitrator: Stephen L Drymer); *Mehmedovic and Tritton v Judo Canada* (2012), SDRCC 12-0191/92 (Arbitrator: Hon. Robert Decary); *Beaulieu v Speed Skating Canada*, *supra* para

20; *Pyke v Taekwondo Canada* (2016), SDRCC 16-0296 (Arbitrator: Carol Roberts); *Bui v Tennis Canada* (2020), SDRCC 20-0457 (Arbitrator: Carol Roberts); *Resetar v. Law Society of Ontario* (2021) ONLSTH 168; and *Wilkinson v Bowls Canada Boulingrin* (2024), SDRCC 24-0699 (Arbitrator: Peter Lawless).

**iii. Affected Parties**

27. Affected parties Irving and Chris von Martels' counsel submitted that there was on the facts no breach of section 3.1 of Appendix 1 of the Nomination Criteria. It was further submitted that there was no failure or improper interpretation of the application of the criteria for selection and nomination found in section 3.3.7(b) of Appendix 1 to Nomination Criteria.

28. In support of its position reference was made to the following authorities:

*Hutchinson and Ors v British Fencing Association* (2012), SR (Sports Resolution UK) (Arbitrator: Charles Flint); and *Renshaw v British Swimming* (2012), SR (Sports Resolutions UK) (Arbitrator: Jonathan Taylor).

29. Ms. Annie Bourgeois representing the Affected Party Camille Carier Bergeron made similar submissions to that of the above two Affected Parties. In respect of Gallagher, it was submitted that there is insufficient evidence to establish a conflict of interest on the basis of the competitive relationship of the Claimant and Gallagher's respective breeders as discussed above. In all other respects, the submissions of this Affected Party are similar to the above submissions.

**Decision**

30. There are two issues raised by the facts to be determined in this matter.

- (i) Did the two athlete representatives of the HPAG have a perceived or real conflict of interest under section 3.1 of Appendix 1 to the Nomination Criteria? If so what is the appropriate remedy?
- (ii) Was there a misapplication of the Nomination Criteria, in particular section 3.3.7(b) of Appendix 1 to the Nomination Criteria? If so what is the appropriate remedy?

**Issue (i):**

31. The EC Nomination Criteria in section 3.1 of Appendix 1 reads as follows:

*No voting or non-voting member of the HPAG shall participate in any discussions or decisions **regarding the nomination of any athletes with whom they have a perceived or real conflict of interest.** Any member of the HPAG who considers that they are in a position of perceived or real conflict of interest **must declare such a conflict before any discussions are held or decisions are made and must remove themselves from any meetings** until the matter giving rise to the perceived or real conflict of interest has been resolved by the HPAG (highlighting that of the Arbitrator).*

32. In addition to the foregoing EC provision on conflicts of interest, reference may be made to the general law on conflicts of interest. Most of the case law submitted is distinguishable or of no application.

33. The declaration by Martels concerning her husband's potential nomination by the HPAG is on its face unquestionably a real conflict of interest. The appropriate course of action was for her to make a declaration of the conflict before any discussion and remove herself from the meeting so as to not participate in the nomination decision making process. Her actions were in breach of section 3.1 of Appendix 1 to the Nomination Criteria as indicated by the highlighted aspects of the provision. The error of the HPAG was to permit her to provide the committee with "athlete feedback" before recusing herself (see *Beaulieu v Speed Skating*, *supra* para 20).

34. The comments before departing the meeting included:

*"[t]op ranked rider – non-negotiable... Second ranked rider – no comment or concern. Third ranked rider – concern expressed regarding two withdrawals on her record."*

35. Under the guise of "athlete feedback," Martels expressed her views on how the HPAG should rank riders in accordance with her comments (above). On review of the minutes of the meeting, comments by Martels regarding "withdrawals" were discussed in the course of arriving at the final nomination decisions. Following these comments and her departure from the committee Gallagher expressed "concern with the perception of the withdrawals". The Arbitrator finds



that it will never be known what the impact or effect on the other HPAG members was in respect of these comments. It is clear that the comments generated at least a perception of a conflict of interest and perhaps a real conflict of interest being Martels' view as to how to decide the nominations.

36. Gallagher declared that she was an eligible athlete for nomination and had not withdrawn her declaration. The error of the HPAG was permitting her to continue as an active member of the HPAG and its nomination process because *“they felt that with Denielle’s standing in the rankings, she was not up for nomination to the team or for nomination in alternate positions”*. Gallagher is in a real conflict of interest with all of the other athletes being considered. The error of the HPAG was to presume she was not up for nomination to the team or the alternate positions before discussion of that topic by HPAG. Thereby determining in advance of their nomination decision that she would not be nominated and permitting her to participate in the nomination discussion. The HPAG cannot waive a conflict of interest in the way they have done.
37. Given the language in section 3.1 of Appendix 1 to the Nomination Criteria concerning perceived and real conflicts of interest and the facts as found herein, this section is breached. There are perceived and real conflicts of interest. The HPAG must reconvene as constituted by the Operational Committee Manual Terms of Reference and reconsider its final nomination decision in accordance with the Nomination Criteria of the EC. The reconvened HPAG committee must exclude Martels and Gallagher as required by the section 3.1 of Appendix 1 to the Nomination Criteria.
38. All of the foregoing makes it unnecessary for me to consider issue (ii) on the appropriate interpretation of the Nomination Criteria as applied to the facts herein because the decision is to be set aside.
39. The following orders are made:
  1. The final decision of the HPAG dated 11 June 2024 selecting the Paris 2024 Dressage Team is set aside;

2. The HPAG as reconstituted will issue a new final nomination decision in accordance with the Nomination Criteria as soon as possible; and

For the purposes of reconsideration by the HPAG, Martels and Gallagher are not to be involved in the HPAG reconsideration and decision.

DATED AT LONDON, ONTARIO CANADA THIS 24<sup>th</sup> DAY OF JUNE 2024



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Professor Richard H. McLaren, O.C.

Arbitrator