

In the matter of

**THE SINGLE AND PAIR TECHNICAL COMMITTEE,
INTERNATIONAL SKATING UNION**

Avenue Juste-Olivier 17,
1006 Lausanne, Switzerland

- Complainant 1

and

**Mr Benoit LAVOIE, VICE PRESIDENT FIGURE SKATING,
INTERNATIONAL SKATING UNION,**

c/o ISU Avenue Juste-Olivier 17,
1006 Lausanne, Switzerland

- Complainant 2

against

Mr Doug WILLIAMS,

- Alleged Offender

represented by Attorney at Law

Jeffrey G. Benz, FCI Arb, FColl Arb, CEDS, IMI Certified, CEDR Accredited,

and

US FIGURE SKATING ASSOCIATION (USFSA),

- Interested ISU Member

Regarding Violations of the Duties of Judges and the ISU Code of Ethics

I. History of the Procedure

- [1] On 4 July 2023, the ISU Disciplinary Commission (“the DC”) accepted a Statement of Complaint filed by the ISU Singles and Pairs Technical Committee (“the SPTC”), and the ISU Vice President (Figure Skating), against the Alleged Offender, together with 6 Exhibits.
- [2] On 5 July 2023, the Statement of Complaint, Exhibits and Statements of Independence from the three Disciplinary Commission Panel Members were sent to the Alleged Offender and the Interested ISU Member by email. These documents were also sent by courier.
- [3] The Alleged Offender and Interested Party were invited, by the ISU Disciplinary Commission, in Order No 1, to file a Statement of Reply within 21 days upon receipt of the complaint.
- [4] On 24 July 2023 (within the 21-day period), the DC received a request from Ms Tracey Marek, CEO of the USFSA, and the Alleged Offender requesting an additional 30 days to file the Statement of Reply as more time was needed to prepare an adequate response.
- [5] According to Article 8 (3) of the ISU Disciplinary Commission Rules of Procedure, (ISU Communication 2551), time limits may be extended upon application by a Party if made within the original time period allowed by the Rules, on justified grounds.
- [6] The request respected that time limit, and the grounds for extension were accepted as justified. Therefore, on 24 July 2023 the DC panel extended the time limit for filing the Statement of Reply to 24 August 2023.
- [7] On 1 August 2023, Mr Williams wrote to the Chair of the DC Panel asking the DC to order that the Complainant disclose additional documents to him within 7 days. This included, amongst other requests, calculation formulae, any data compilations, reasons and provenance of coloured highlighting of marks in the “Oversight Assessment Committee” report and materials, requests for references to the rules regarding bias in figure skating, validation documentation and any other versions of the exhibits filed¹.
- [8] On 3 August 2023, the DC panel invited the Complainant to submit regarding the existence and relevance of the requested items before making its decision. Mr Williams was advised that the applicant had a right of reply. In the meantime, the DC referred Mr Williams (an ISU Judge in Singles and Pair skating) to the ISU website for the relevant ISU Rules and all ISU Communications (in particular the ISU Code of Ethics and Communications No. 2503, updated by Communication 2583, determining the status, rights and obligations of the independent Officials Assessment Commission).
- [9] On 5 August 2023, the First Complainant (the ISU Singles and Pairs Technical Committee) responded to the DC, who then sought additional clarification pursuant to Article 12 of the DC Rules of Procedure.
- [10] On 7 August 2023, the Chair wrote to Mr Williams granting the application for the competition videos. The video links to the Women’s short and free skate Programmes were provided by the First Complainant (World Championships, Saitama, 2023). Mr Williams was advised that the remainder of his application would be dealt with in DC Order No 3; however, video links were provided earlier to give him more time for review.
- [11] On 9 August 2023, Mr Williams wrote to the DC expressing his frustration that the requested material had not been provided to him within 7 days. He was reminded that there had been no such timetabling order by the DC, it was solely the request of Mr Williams, and the Complainants had a right of reply before the Decision was rendered.
- [12] On 11 August 2023 Order No 3 of the DC was sent to the Parties. The DC declined the remainder of the disclosure request on the grounds that the relevant documents and ISU statutes, Rules and Regulations were contained in the Statement of Complaint, the response and on the ISU website. The further documents and documentation requested either were not relevant to the allegation of National Bias or did not exist. The full responses from the Complainants were provided. The video links had been provided earlier to assist his preparation.

¹ The DC panel notes that there is no such ISU body as the “Oversight Assessment Committee” but assumed that Mr Williams means the “Officials’ Assessment Commission (“the OAC”).

- [13] On 24 August 2023, the DC received a Power of Attorney from counsel Mr Jeffrey Benz, confirming his representation of Mr Williams, dated 23 August 2023.
- [14] On 25 August 2023, the Alleged Offender filed a Statement of Response, along with 7 Exhibits (A-G) and a Statement in Support from the USFSA.
- [15] On 27 September the DC asked the Complainants to confirm Mr William's submission that he had not previously been the subject of warnings or interventions for national bias from the ISU. The DC also requested clarification of a submission in the OAC chart (for the benefit of Mr Williams).
- [16] On 30 September 2023, the Complainants responded, confirmed that Mr Williams had not previously been warned about national bias, and clarified the OAC report chart.
- [17] On 30 September 2023, Counsel for Mr Williams sought leave to file a second response within 5 business days. The DC granted this request, allowing 7 working days.
- [18] On 10 October 2023, this Second Response was received.
- [19] On 31 October 2023, the DC requested a copy of Mr Williams' "Declaration for Competitors and Officials" from the ISU Office (Exhibit 7).
- [20] On 12 December 2023, Order No 4 of the Disciplinary Commission was sent declining the Respondent's application under certain preconditions for an evidentiary hearing.

II. Procedural Matters

- [21] According to Article 25, Paragraph 1 of the ISU Constitution 2022, the ISU Disciplinary Commission serves as a first instance authority to hear and decide all charges referred to it by an ISU authority against an Alleged Offender accused of a disciplinary or ethical offence.
- [22] In the "Declaration for Competitors and Officials entering ISU Events" signed on August 29, 2022, the Alleged Offender confirms:

I/we, the undersigned,

I) accept the ISU Constitution, which establishes an ISU Disciplinary Commission (Article 25) and recognizes the Court of Arbitration for Sport (CAS), in Lausanne, Switzerland as the arbitration tribunal authorized to issue final and binding awards involving the ISU, its Members and all participants in ISU activities, excluding all recourse to ordinary courts (Articles 26 & 27);

and

V) I am familiar with the ISU Code of Ethics (ISU Communication 2478 or any update of this Communication) as well as ISU Anti-Doping Rules and ISU Anti-Doping Procedures (ISU Communication 2344 & 2366 or any update of these Communications) and also with the current List of Prohibited Substances and Methods and I declare that I will fully comply with such Rules.

Exhibit 7

- [23] The disciplinary/ethical offences the Alleged Offender is accused of occurred during the ISU Figure Skating World Championships 2023 in Saitama, Japan, between March 20 and 26, 2023.
- [24] According to Article 25 Para. 6 a) of the ISU Constitution, Complaints must be filed with the Disciplinary Commission within one year of learning of the facts or events which constitute a disciplinary or ethical offence. The Statement of Complaint arrived at the ISU Disciplinary Commission respects this limitation period and is admissible.
- [25] According to Article 4, Para 1 of the ISU Disciplinary Commission Rules of Procedure (Communication 2551) the DC rules on Complaints brought before it pursuant to the applicable provisions of the ISU

Statutes, in particular the ISU Constitution, the General Regulations, the Special Regulations, other special rules, including the ISU Code of Ethics, the ISU Anti-Doping Rules, the ISU Anti-Doping Procedures, the Technical Rules, the DC Rules of Procedure, and other decisions of the ISU Council made in accordance with Article 17 of the Constitution communicated and published in accordance with the provisions of Article 28 of the Constitution and general principles of law.

- [26] According to Article 3 of the DC Rules, the proceedings are based upon the written submissions of the Parties. The Panel, at its sole discretion, may decide to hold a hearing.

III. Facts

- [27] The Alleged Offender is listed as an ISU Judge and International Referee for Single & Pair Skating for the season 2022/23 (ISU Communication No. 2502). He served at the ISU Figure Skating World Championships 2023 on the Women's Panels as Judge No. 6 for the Short Programme and Judge No. 8 for the Free Skating. No allegations arise out of his judging of the Short Programme.
- [28] The allegations of national bias arise out of the review of his marking in the Free Skating by the Officials' Assessment Commission ("the OAC") and the ISU Technical Committee, Singles and Pairs (the ISU SPTC)).
- [29] The OAC is an ISU body of experienced and high-level officials convened to examine the marks of Judges at ISU events. The OAC is governed by the relevant ISU Communication (in this case, ISU Communication 2503) and prepares a report, analysing the marks of the judges and overall judging panels for each skater. The SPTC also makes its own evaluation.
- [30] In its evaluation of the Officials' performance, in accordance with the Rules of Procedure for Officials Assessment Commission (ISU Communication No 2503), the Officials' Assessment Commission (OAC) considered the Alleged Offenders' marking of the performances of each of the three USA Skaters, Isabeau LEVITO, Amber GLENN and Bradie TENNELL in Free Skating to reflect National Bias (Exhibit 3). Excerpts follow.
- [31] Regarding US skater Isabeau LEVITO:

"While his marks were in the corridor, they were overall higher for her than for her close competitors". Regarding components, "with a fall by this US skater, a mark of 9.50 given by Mr Williams was impossible and not near a 10.00. Conclusion: National Bias".

- [32] Regarding US skater Amber GLENN:

"While his marks were in the corridor, his marks were overall higher as reflected in the total score". In their opinion he "over-marked in Composition and Skating skills. Conclusion: National Bias"

- [33] Regarding US skater Bradie TENNELL:

"While his marks were in the corridor, his marks were overall higher as reflected in the total score. The Composition was over-marked, and the Presentation and Skating skills too high given her performance and the many small mistakes. Conclusion: National Bias."

- [34] The OAC report did not contain any other such large deviations for skaters from any other of "their" nationality judges in the Free Skate Programmes that would indicate review for national bias.
- [35] The referee of the Women's event recorded discussion of the marks, and some disagreements, including of the USA skaters, but made no comment suggesting national bias.

IV. The Parties' Submissions

[36] The DC allowed a second exchange of writs in this case and regards the parties' submissions as fulsome. The decision is taken on the documentary evidence as set out in Order No 4.

Complainants' submissions

[37] The Complainants (SPTC and Vice President) analysed the marks of the Alleged Offender and concluded that he had acted with serious national bias. Mr Williams is accused that not only did he give higher marks to the three USA skaters than most other Judges, but that he also gave lower marks than the majority of all other Judges to those Skater's strongest Competitors.

[38] The OAC report caused Complainant 1 to undertake a profound analysis of the Alleged Offender's marks. They submitted that this revealed and confirmed that in Free Skating Segments of the ISU World Championships 2023 the Alleged Offender had acted with serious national bias.

[39] Complainant 1 prepared the following chart, entitled "Comparison of Panel Scores and Panel Placements with Scores and Placements of the Alleged Offender for Free Programme (World Figure Skating Championships 2023)" (Exhibit 4).

[40] The Complainants submit that this Chart, in combination with further in-depth investigation, showed that the Alleged Offender did not only give higher marks for 'his' skaters Isabeau LEVITO, Amber GLENN and Bradie TENNELL than most other Judges, but he also gave lower marks than the majority of all other Judges to the Skater's biggest Competitors.

[41] Isabeau LEVITO (ISU World Figure Skating Championships 2023):

In the Free Programme of this event, the Alleged Offender as Judge no. 8 awarded the highest total of GOE's (70,23 points) to this skater awarding the 5th highest number of GOE points to Isabeau LEVITO while the official result showed them on the 10th place.

For Programme Components, the Alleged Offender, awarded to the skater the 3rd highest score (74.10 points) while the official result placed them in the 4th rank.

Whilst the total score of the Alleged Offender for the skater (143.33 points) put them in the 4th place, the official result had them in the 5th place.

[42] Amber GLENN (ISU

In the Free Programme of this event, the Alleged Offender awarded the highest² total of GOE's (63.54 points) to this skater awarding the 13th highest number of GOE points to Amber GLENN while the official result showed them on the 15th place.

For Programme Components, the Alleged Offender awarded to the skater the 7th highest score (68.05 points) while the official result placed them in the 11th rank.

Whilst the total score of the Alleged Offender for the skater (131.63 points) put them in the 10th place, the official result had them in the 14th place.

² The Complaint incorrectly states "highest" but the results therein show it is actually the second highest.

[43] Bradie TENNELL (ISU World Figure Skating Championships 2023):

In the Free Programme of this event, the Alleged Offender awarded the highest³ total of GOE's (53.85 points) to this skater awarding the 20th highest number of GOE points to Bradie TENNELL while the official result showed them on the 23th(sic) place.

For Programme Components, the Alleged Offender awarded to the skater the 6th highest score (69.43 points) while the official result placed them in the 7th rank.

Whilst the total score of the Alleged Offender for the skater (123,28 points) put them in the 14th place, the official result had them in the 16th place.

[44] Further, the comparison of the marks of the Alleged Offender for Isabeau LEVITO, Amber GLENN and Bradie TENNELL and his marks for the Competitors most closely placed to them, also clearly showed his undue preference for "his" Skaters.

[45] The fact that the marks of the Alleged Offender did not reflect the Skaters' performance of the day and their merits but were the result of National Bias was submitted as supported by the video recordings of the Free Programme.

	Alleged Offender	Scores of Panel
	Total Segment Score	Total Segment Score
Loena HENDRICKX BEL	139.75	138.48
Isabeau LEVITO USA	143.33	134.62
Rinka WATANABE JPN	125.34	131.91
Kimmy REPOND SUI	128.39	131.34
Niina PETROKINA EST	124.82	125.49
Lara Naki GUTMANN ITA	120.51	123.21
Amber GLENN USA	131.63	122.81
Anastasiia GUBANOVA GEO	110.77	119.52
Bradie TENNELL USA	123.28	117.69
Ekaterina KURAKOVA POL	114.14	115.74

[46] In response to DC questions, the Complainants confirmed that Mr Williams had not been the subject of previous warnings or interventions from ISU.

[47]

³ The Complaint incorrectly states "the highest", but the results therein show it was actually also one of the highest.

- [48] The Complainants submitted that the OAC calculation process was contained in ISU Communication 2503 (para D1). The process is that the marks of each judge for each skater are compared with those for the two skaters ranked above and below in the final result, compared with the panel average.
- [49] A maximum deviation of 20 points was acceptable before evaluation by the OAC. This deviation emerges from a comparison of the scoring of one skater to the scoring of the two higher placed and the two lower placed skaters, as described in the Rules of Procedure for Officials Assessment Commission (ISU Communication No 2503), see also para [10] above. Red and yellow highlighting was routinely added to the calculation sheet by the ISU office before sending it to the OAC, for easier reading.
- [50] Red highlighting indicated skaters where a Judge of the same country had a possible overmarking (over 20 points). Yellow indicated the two competitors who, in the official result of the respective segment, were placed immediately above and below that competitor that could be undermarked. This highlighting is displayed in Exhibit 5.
- [51] Charts of these comparisons were provided for the three USA skaters, all three of whom were marked by Mr Williams in excess of the maximum 20 points deviation according to the calculation system in the OAC process (which leads to a closer investigation of the scoring):

SKATER		TOTAL POINTS	TOTAL POINTS	DIFFERENCE	DIFFERENCE	COMPARISON
		average	Williams	in points	in %	with Glenn
Nina PETROKINA	EST	125.49	124.82	-0.67	-0.534	7.716
Lara Naki GUTMANN	ITA	123.21	120.51	-2.7	-2.191	9.373
Amber GLENN	USA	122.81	131.63	8.82	7.182	
Anastasiia GUBANOVA	GEO	119.52	110.77	-8.75	-7.321	14.503
Bradie TENNELL	USA					
Ekaterina KURAKOVA	POL	115.74	114.14	-1.6	-1.382	8.564
						40.16

SKATER		TOTAL POINTS	TOTAL POINTS	DIFFERENCE	DIFFERENCE	COMPARISON
		average	Williams	in points	in %	with Tennell
Lara Naki GUTMANN	ITA	123.21	120.51	-2.7	-2.191	6.941
Amber GLENN	USA					
Anastasiia GUBANOVA	GEO	119.52	110.77	-8.75	-7.321	12.071
Bradie TENNELL	USA	117.69	123.28	5.59	4.750	
Ekaterina KURAKOVA	POL	115.74	114.14	-1.6	-1.382	6.132
Olga MIKUTINA	AUT	115.26	120.78	5.52	4.789	-0.039
						25.10

SKATER		TOTAL POINTS	TOTAL POINTS	DIFFERENCE	DIFFERENCE	COMPARISON
		average	Williams	in points	in %	with Levito
Chaeyeon KIM	KOR	139.45	143.37	3.92	2.811	3.659
Loena HENDRIKX	BEL	138.48	139.75	1.27	0.917	5.553
Isabeau LEVITO	USA	134.62	143.33	8.71	6.470	
Mai MIHARA	JPN	132.24	136.83	4.59	3.471	2.999
Rinka WATANABE	JPN	131.91	125.34	-6.57	-4.981	11.451
						23.66

- [52] The OAC report deviation for Ms Hendrickx gave a negative number, but Mr Williams had marked her higher than average. This was because for most of the skaters compared (the 2 higher and lower placed skaters relative to each USA skater), Mr. Williams gave scores that were even higher above average than for Ms Hendrickx. Hence, Mr. Williams was "less highly" above average with Ms Hendrickx than with the skaters with comparable performances. Ms Hendrickx was marked less well in comparison than the skaters with comparable performances, even though he marked her higher than the panel average.
- [53] However, this calculation process was just an index to evaluate cases that needed to be studied further. It was not determinative.
- [54] The OAC report was relied on to indicate if there was national bias or just an error. In all three cases, the OAC identified national bias.
- [55] The SPTC agreed with the OAC decision as written in the OAC report.

- [56] Article 23 ISU Constitution, rule 440 paragraph 2 e) and Communication 2503 together, showed that "National Bias" meant "giving an unjustified privilege to a Skater of the own nation by either overmarking him or her or by undermarking rival Skaters or by applying both, overmarking of the own Skater and undermarking of one or more rival Skaters". "Overmarking" and "undermarking" are shown by the computerised Programme as defined in Communication 2503.
- [57] The Complaints concluded that these facts proved that the Alleged Offender unduly favoured the USA Skaters at the ISU World Championships 2023. He did not accidentally give marks that were too high to one specific skater who happened to be of the same geographic origin. By "upgrading" all three of "his" Skater's GOEs and Component marks in the Free Skating on one hand, and "downgrading" all marks of his strongest Competitors on the other, he demonstrated a systematic preference for the Skaters from his own nation, i. e. National Bias.
- [58] The Complainants asked the DC to find the Alleged Offender guilty of violations of the Duties of Judges according to Rule 430, General, e) and f) of the ISU Special Regulations and Technical Rules of Single and Pair Skating and Ice Dance and the ISU Code of Ethics and impose a sanction in accordance with Article 25 Para 9a of the ISU Constitution

Alleged Offender's submissions

- [59] The jurisdiction of the DC was accepted.
- [60] The Alleged Offender denies that he did anything intentionally, inappropriately impermissibly or from a biased perspective by marking the Event in a manner he thought appropriate. He denies any national bias, but submits that he is not a perfect judge, made honest mistakes, or had different views of, the skaters in the Event compared to other Officials. He was at the event, not like the Complainants (ISU SPTC and Vice President) OAC who were not there judging in real time.
- [61] The Alleged Offender, in the Statement of Response prepared on his behalf, describes himself as "one of the finest examples of a skating official that the ISU system has ever and could ever produce". He submits that he has served as an official and judge with an unblemished record of officiating with integrity throughout his many years of involvement, so the allegations in the Complaint are particularly hurtful.
- [62] His Statement of Response and bundle of authorities include his Figure Skating Credentials (Exhibit A). This lists his skating successes since 1982 as a pair skater and judge. He lists judging at National events since 1988, and ISU events and Championships as an ISU International and ISU Judge (on 36 occasions) since 2004 and as an International Referee (on 6 occasions since 2016). He has attended 10 ISU seminars since 2007. He lists being a National Technical Controller and Specialist since 2008, other international activities and having been a Team Leader at ISU events for the US team on 22 occasions since 2003.
- [63] He was the co-chair of the junior Olympic Figure Skating Championships in 1997, and in 2002 President of the US Figure Skating Championships, Los Angeles where he created a legacy fund to support figure skating in Southern California.
- [64] He lists ongoing and active involvement in USFSA Board and Committees since 1981, including most recently Referee Education and Training (2020-2023), Member of Nominating Committee (2000-1, 2006-7, 2019-20), Chair of the International Committee (2010, 2011, 2012, 2013), Delegate to Governing Council (1981-2023). His professional curriculum vitae was included as Exhibit B.

[65] His submission recites the Complaint, comments on the procedural history, the standard of legal proof required, and submits that the complaint must fail as there is insufficient definition of national bias for a case to succeed, that there is no definition of national bias in the ISU legislation and no allegation that his marks affected the outcome of the Event, nor that there was some untoward activity attempting to unfairly or inappropriately affect the outcome of the Event.

[66] The evidence presented is an after the Event review. He submits that the OAC report expresses subjective opinions only and cannot be valid as the writers were not present and judging the event in real-time, considering in some high-level manner the marks given by him to each skater relative to the other judges. Their report/analysis is full of opinion about qualitative matters and devoid of hard facts.

[67] This is, according to the Alleged Offender, an insufficient basis for an ethics complaint or to meet the Complainants' burden to establish a violation for review by the Disciplinary Commission. Disagreements about the quality of skaters cannot, on their own, absent any other evidence, form the basis for any form of ethical violation.

[68] In Exhibit C, he provides a "Performance Review of Douglas Williams for the Event" (by author unknown). This shows variance from the mean by skater for each judge in the event. It concludes that:

"the USA judge was both rewarding and penalizing skaters in a manner consistent across the event and consistent with his scoring in the short Programme, with the exception of his scoring of Levito. Awarded scores to Levito, particularly the Performance Component score is not reflective of the performance and is a mistake. Even though his ultimate ordinal placement was off by only one position, the judge should be advised of the mistake".

[69] Exhibit D (author not provided), "Analysis of TSS and PCS for Douglas Williams for the event" and provides a table of the free skate placement result with total segment scores (TSS) and Programme Component Score (PCS) of the Alleged Offender compared to those of the panel by placed skater. It submits no marking down of the strongest competitors by Mr Williams occurred.

[70] Exhibit E, "*42 Analytics Accuracy and National Bias of Figure Skating Judges: The Good, the Bad and the Ugly*" is labelled as presented at MIT Sloan Sports Analytics Conference (2020) (author not provided). This is a conference paper on novel statistical tools to examine judging of various sports including skating at the 2018 PyeongChang Olympic Winter Games. The paper expresses concern about national bias in figure skating, criticizes the current ISU monitoring system, and provides novel alternative equations for nationalistic bias and gender bias and what it refers to as judging accuracy.

[71] However, whilst this document has no standing in regard to the ISU statutes and Rules, the DC notes that the opening paragraph states that:

"National bias in figure skating is well-documented in the scientific community and also appears in other sports...Judges have the tendency to favour athletes of the same nationality, while simultaneously penalizing their competitors".

[72] The Alleged Offender submits that you cannot ascertain national bias from analysis of the judging a single event, and that the entire ISU judge evaluation system for determining "(national) bias" is flawed in its basic approach. The lack of a definition of "national bias" in the ISU legislation is a fatal flaw to the prosecution of Mr Williams who will have no idea how to avoid a claim of national bias against him nor how to prepare a defence.

[73] The CAS decision of *FK Pokeba, Aleksander Zabrcanec, Nikolce Zdraveski v UEFA* (Award of 15 April 2010 regarding match fixing) is annexed as Exhibit F, regarding the well accepted standard of burden of proof for such cases as that of "*the comfortable satisfaction of the Court, having in mind the*

seriousness of the allegation which is made" (The DC notes this is the standard as adopted by the ISU DC in previous decisions).

[74] The CAS decision of *Horse Sport Ireland (HSI) & Cian O'Connor v Federation Equestre Internationale (FEI)* (award of 15 July 2016) - a CAS decision of a panel chaired by Mr Williams' attorney, is annexed as Exhibit G. It considers application of the "field of play" doctrine, concerning whether or not a referee should have stopped a competitor when a crew member entered the course and potentially disrupted the competitor.

[75] In the second response, submissions on behalf of Mr Williams are summarized as follows.

[76] Following the legal construct of "*nulla poena sine lege*", you cannot be punished for doing something that is not prohibited by law. The Complainants were making up the legal constructs as the basis for the grounds against Mr Williams. Communication 2503 makes it clear that the OAC is only to consider:

"mathematical calculation of the percentage difference between / (sic) each Judge's total score for one Competitor [...] and his total scores for the two Competitors who, in the official result of the respective segment, are placed immediately above and for the two Competitors placed immediately below that competitor".

[77] The Communication does not refer to considering any other data, deviation points, nor how "percentage difference" shows national bias or lack of. There is no "rule" stating that 20 deviation points is the appropriate standard. It is made up, makes no sense and has no legal basis. This random number carries no weight or proof of tendency to bad faith or unethical activities and is a made-up standard never made part of a Rule and is a secret analytical tool used unfairly to target judges who make mistakes.

[78] There is no definition of "national bias" in the ISU statutes, nor how to calculate it. It is unfair when charged with a violation of the Code of Ethics or other disciplinary proceeding when he may have been innocently wrong or guilty of a mistake in his marking.

[79] The Respondent asks the DC to dismiss the Complaint, asks that the ISU be admonished for bringing this type of complaint without intent, bad faith or other inappropriate motivation rather than as a complaint of error relative to other judges; and that there should be an order of costs against the ISU.

Interested ISU Member's submission – USFSA.

[80] The Interested ISU Member, the United States Figure Skating Association (USFSA) through its President and Chief Executive Officer, supports Mr Williams' response to these allegations "without reservation" and opines there are serious issues regarding the ISU evaluation of judges after the fact and that this issue needs to be examined more carefully, especially in years following reduction in the number of Programme Components.

[81] The USFSA submits that Mr. Williams is a very good judge who has represented the United States with excellence as a skater and then as a judge. They submit they have no reason to believe that he has engaged in any effort to favor United States skaters at the 2023 World Championships or at any other event. He has at times marked United States skaters lower than the panel. They consider this shows he is "*a fair, forthright, honest figure skating judge of the highest caliber who is not afraid to mark events and skaters as he sees them and as he thinks is right under the circumstances. We are proud to call Mr. Williams one of ours and have no reservations about his judging whatsoever*".

V. Law

[82] It is questionable whether the Disciplinary Commission can review the Alleged Offender's marks from the World Figure Skating Championships 2023.

[83] Article 25 Paragraph 8 c) ISU Constitution 2022 rules:

“Assessments, Letters of Warning and Demotions issued by the Technical Committees and/or Council against Officials for errors and mistakes in their officiating, and the appointment or removal of ISU Officials, are not disciplinary but technical decisions. Accordingly, they are not subject to the jurisdiction of the DC. However, if errors and mistakes by Officials at the same time reveal a violation of the Duties and/or of the ISU Code of Ethics, such violation is, apart from Assessment, Letter of Warning and Demotion, also subject to disciplinary sanctions and to the jurisdiction of the DC.”

[84] Article 25 thus follows the "field of play" doctrine applicable to sports law. In its award of 28 June 2018 - CAS 2017/A/5373 - the Court of Arbitration for Sport summarises the doctrine:

The principles stated in CAS jurisprudence regarding the Field of Play (FOP) doctrine include the following: (i) a referee's decision affecting the result of a race or game cannot be reviewed on appeal absent proof of bias, malice, bad faith, arbitrariness or legal error; (ii) thus, if such a decision is made under the correct race or game rules, it can only be reviewed on appeal if there is sufficient evidence of prejudice for or against a competitor.

In the case Korean Olympic Committee (KOC) / International Skating Union (ISU) - CAS ad hoc Division (O.G. Salt Lake City) 02/007 - CAS decided that, as a rule, the evaluation of a judge cannot be challenged, but that this rule is waived in exceptions:

CAS Panels do not review “field of play” decisions made on the playing field by judges, referees, umpires, or other officials, who are responsible for applying the rules or laws of the particular game.

Before a CAS Panel will review a field of play decision, there must be evidence, which generally must be direct evidence, of bad faith. If viewed in this light, each of those phrases, such as “arbitrary”, “breach of duty” and “malicious intent”, means that there must be some evidence of preference for, or prejudice against, a particular team or individual. CAS accepts that this places a high hurdle that must be cleared by any Applicant seeking to review a field of play decision. However, if the hurdle were to be lower, the flood-gates would be opened and any dissatisfied participant would be able to seek the review of a field of play decision.

[85] The decision of CAS OG 16/028 refers to the "field of play doctrine". In this decision OG 16/028, para 37, CAS rules as follows:

Furthermore, for a CAS Panel to overturn a field of play decision, there must be evidence, which generally must be direct evidence, of bad faith. In other words, “there must be some evidence of preference for, or prejudice against, a particular team or individual. The best example of such preference or prejudice was referred to by the Panel in [CAS OG 00/013], where they stated that one circumstance where the CAS Panel could review a field of play decision would be if a decision were made in bad faith, e.g. as a consequence of corruption (see Para 17). The Panel accepts that this places a high hurdle that must be cleared by any Applicant seeking to review a field of play decision. However, if the hurdle were to be lower, the flood-gates would be opened and any dissatisfied participant would be able to seek the review of a field of play decision” (CAS OG 02/007).

- [86] It follows that only in serious cases can the decision of a judge be challenged.
- [87] A violation of the Code of Ethics occurs when the judge acts in bad faith. According to the CAS principle of “Field of Play”, there must be evidence, which generally must be direct evidence, of bad faith. If viewed in this light, each of those phrases, such as “arbitrary”, “breach of duty” and “malicious intent”, mean that there must be some evidence of preference for, or prejudice against, a particular team or individual. The judge must have acted with the intention of favouring his or her own skaters and disadvantaging the other skaters. It is not enough that the judge's scores differ from the scores of the other judges because of differing opinions about the skaters' performance. A violation of the Code of Ethics and acting in bad faith must be obvious and serious.
- [88] Conclusions drawn from the objective facts/actions and circumstances of a certain proceeding towards this aforementioned required subjective element (bad faith) are possible, when assessing the detailed circumstances of an individual case (relevant factors can be - for example, but not limited to – e.g. clear/significant deviations (exceeding the given individual judicial discretion) in the marking, which are identified by an official, neutral expert body and which cannot be comprehensibly explained, and/or when certain or all skaters of a certain nation/same nation as the Judge or in a certain position within/after a segment are affected by significant judging anomalies, and/or the level of experience/professionality of an Official, and so forth; the clearer/more significant the deviations/anomalies are, and/or the larger the number of skaters who are positively/negatively affected by the deviations, and/or the bigger/more severe the impact for the result is etc., the more self-evident is a conclusion from the objective circumstances towards the required subjective element – bad faith).
- [89] This principle (conclusions from objective circumstances of an action to the subjective intent of the actor under certain circumstances) is recognized as it ultimately follows both from the theory of criminal law in democratic jurisdictions and from the constant jurisprudence of the courts in general, the assessment requires a thorough analysis of all given objective and subjective circumstances of the respective proceeding / case.
- [90] The Respondent provides the case of CAS 2015/A/4208 which outlines the distinction drawn between incorrect decisions which cannot be changed as they remain as “field of play”, and other decisions which are reviewable. In referring to the relevant CAS decisions, the latter are those where there is evidence “*which generally must be evidence of bad faith. If viewed in this light, each of these phrases mean there must be some evidence of preference for, or prejudice against, a particular team or individual*”.⁴
- [91] In that case the decisions under challenge are described as “*arbitrary*”, with no allegation of “*preference for or prejudice against a particular team or individual*”. Mr Williams is in a different position. He faces allegations of prejudice and bias, having a preference for the USA skaters or USA team, not a challenge to an “*arbitrary*” decision.
- [92] In CAS decision 2015/A/4208 it is noted that the Appeal Committee’s decision was made at the venue on the night of the incident, immediately after a Grand Jury rejected the protest, and was itself a “field of play” decision that enjoyed qualified immunity⁵. The DC notes that the ISU OAC is different, being a body convened solely to assess Officials marks after completion of an event.

⁴ CAS OG 02/007 quoted in CAS2015/A/4208 at para 56, and followed in CAS2004/A/704, CAS 2004/A/727 and CAS 2008/A/1641.

⁵ Supra at para 68.

[93] The marks of the judges in the relevant Event were reviewed by the Officials Assessment Commission (OAC), which is their primary task. Article 23 Para a) ISU Constitution reads:

The OAC shall evaluate

a) evident anomalies and suspected (national) bias in the Judges' scores identified based on predetermined criteria, including mathematical criteria, confirmed by the Council.

[94] Rule 440 of the Special Regulations & Technical Rules for Single & Pair Skating and Ice Dance 2022 describes the functions of the OAC Commission and SP Technical Committee relevant to this case (the World Championships is an ISU Event) as follows:

2. Evaluation of anomalies in the Judges scores at ISU Events (and Olympic Winter Games and Winter Youth Olympic Games).

a) The OAC members shall prepare a report for each competition, including the identification of in the Judges scores which in their opinion are errors and/or indicate (national) bias (as per Article 23 of the Constitution and the related Rules of Procedure published in an ISU Communication). This report shall be made available without delay to the respective Technical Committee through the ISU Secretariat.

b) The respective Technical Committee shall proceed with its own evaluation of the OAC report...

e) Cases of identified (national) bias shall be submitted by the respective Technical Committee and/or the respective Sports Technical Director and/or the Vice President Figure Skating and/or the Council to the ISU Disciplinary Commission (9DC) by filing a Statement of Complaint for violation of the ISU Code of Ethics. In case (national) bias emanated from erroneous Judges' scores, the assessment procedure as well as the filing of a Statement to the DC shall be undertaken. In case the evaluation process leads to the conclusion that there is an indication of (national) bias in a Judge's scores but not sufficient evidence for submitting the case to the DC, the respective Technical Committee shall issue a Letter of Warning to the Concerned Judge. Such Letter of Warning and its underlying facts shall be taken into consideration as relevant evidence in any further case involving the same Judge where the conclusion of the presence of (national) bias is not solely based on his marking at the competition under evaluation but supported by a certain scoring pattern of the Judge which is revealed only by observation of his marking at several competitions.

[95] The procedure to be followed by the OAC is described in the ISU Communication No. 2503, Rules of Procedure for Officials Assessment Commission codified in Rule 440 of the ISU Special Regulations & Technical Rules, Single and Pair Skating and Ice Dance 2022.

[96] Communication 2503 describes:

D) Evaluation Procedure and Report,

Paragraph D. 1 sets out the materials the OAC receive for evaluation:

- Electronic documents the Grades of Execution (GOEs) of every element and the Programme Component scores of all Judges.*
- Electronic documents highlighting the cases of evaluation based on the criteria outlined under paragraph F) below;*

- *Excel sheets indicating cases of evaluation;*
- *Electronic documents of statistical grids highlighting cases of possible (national) bias which are based on a mathematical calculation of the percentage difference between / each Judge's total score for one Competitor (Single Skater, Pair, Ice Dance Couple, Synchronized Skating Team) and his total scores for the two Competitors who, in the official result of the respective segment, are placed immediately above and for the two Competitors placed immediately below that Competitor.*
- *Video recording of the competition;*
- *Other supplementary materials, as decided by the respective Technical Committee.....*

The OAC reporting duties are then set out as follows:

3. The OAC members must review all scores identified as cases of evaluation as described in paragraph F) below and/or as cases of possible (national) bias and/or undue favoritism, but shall also evaluate and indicate as errors, scores not highlighted on the electronic documents which they consider as unjustifiable.

4. The OAC members shall also review the individual Judges' scores and identify irregularities which reveal possible violations of the ISU Code of Ethics, in particular any bias, but also any type of undue favoritism.

5 states that the Report of the OAC shall include

.....

c) The opinion of the OAC members on whether highlighted cases of possible (national) bias actually do reflect (national) bias;

d) Observations of irregularities in the scores of individual judges which the OAC members consider indicating violations of the ISU Code of Ethics, in particular bias, lack of impartiality, neutrality and honesty, manipulation of the competition by using unfair strategies or undue favouritism. (emphasis added)

[97] Paragraph E describes rules for the Processing of OAC Reports, which are reviewed by the Technical Committee and any points of disagreement further reviewed by the Vice President Figure Skating and/ or the Sports Technical Director. Cases identified as (national) bias or as indication of (national) bias are then handled in accordance with Rule 44 Para 2e and referral to the DC.

[98] Article 23 of the ISU Constitution sets out that the OAC shall evaluate suspected (national) bias, including mathematical criteria, as confirmed by the Council.

[99] Communication 2503 sets out that assessments were not being undertaken in the 2022-2023 season due to the implementation of a reduced number of Programme Components, but specifically states that "since bias calculations are not part of the corridor calculations, they will continue to be done". This supports the independent nature of technical assessment and ethical/ disciplinary behaviour. A Judge's marks need not be outside the corridor before they can be considered as bias. (The corridor is a defined range of judges' technical and component marks).

[100] Rule 430 of the ISU Special Regulations for Single and Pair Skating 2022 sets out the General and Specific Duties and Powers of Officials. Of particular relevance are the following paragraphs (e) and (f):

e) Officials must adhere fully to the ISU Code of Ethics; and

- f) Officials must (inter alia)
 - ...not show bias for or against any Competitor on any grounds;
 - ...be completely impartial and neutral at all times.

Application to this case

- [101] The direct evidence against Mr Williams is provided in the OAC report and by the SPTC profound analysis.
- [102] Mr Williams challenges the legal basis to impose a penalty submitting that the ISU Regulations do not have any provision specifically for or defining “National Bias”, so this would violate the legal principle “*nulla poena sine lege*”. Rule 430 General f) ISU Special Regulations for Single and Pair Skating 2022 states that: f) Officials must - not show bias for or against any Competitor on any grounds. The term “bias” comprises any kind of bias, personal bias as well as bias due to the same origin or nationality.
- [103] In addition, Article 23 of the ISU Constitution proscribes that the OAC shall evaluate suspected (national) bias, including mathematical criteria, as confirmed by the Council.
- [104] ISU Communication 2503 defines the OAC’s task is to evaluate any type of bias, favouritism and national bias.
- [105] In addition, national bias is well understood in the ISU and wider sporting community, as noted in the quoted extract from the submission of Mr Williams. There is also extensive prior case-law from the ISU Disciplinary Commission, which deals with the relevant principles, structures and requirements/preconditions for the identification of national bias in the judging of Figure Skating. Therefore, a solid legal base (“*lex*”) is given, which leads to the consequence that in the present case, the “*nulla poene sine lege*” – doctrine does not apply in the way/to the extent described by the Alleged Offender.
- [106] The Panel has reviewed the report of the OAC of the Women’s event at the World Figure Skating Championships 2023. The OAC considered the Alleged Offenders’ marking of the performances of the USA Skaters, Isabeau Levito, Amber Glenn and Bradie Tenell in the Free Programme reflected national bias (as set out above). This is supported by the SPTC.
- [107] The ISU Disciplinary Commission follows the report of the OAC. The OAC is the appropriate expert body for the assessment of judges' marking. It is not the role of the Disciplinary Commission to overturn a field of play decision without evidence, which generally must be direct evidence, of some type of bad faith.
- [108] The correct procedure has been carried out by the OAC and SPTC, following the ISU legislation as set out above. The DC rules on complaints brought under the applicable provisions of the ISU statutes. These statutes, including the ISU Communications have been passed and approved by Congress. The assessment process by the OAC, and the calculation process have been approved and passed by the ISU Congress.
- [109] The Alleged Offender’s marks were examined by the OAC Commission, the expert body who concluded that they were influenced by National Bias. Therefore, the Panel relies fully on the outcome of the OAC regarding the presence of National Bias.
- [110] By his marking the Alleged Offender disregarded his duty not to show bias for or against any competitor on any grounds and to be completely impartial and neutral at all times according to Rule 430, General, f) of the ISU Special Regulations and Technical Rules Single and Pair Skating and Ice Dance 2022.

- [111] This also violates Article 3 of the ISU Code of Ethics 2022, the obligation to exemplify the highest standards of honesty, fairness, fair play, ethical behaviour, and sporting attitude and not to act in any manner which might damage the reputation of the ISU or the ISU sports.
- [112] Article 12 of the ISU Code of Ethics 2022⁶ is violated by not acting in a neutral manner and in a manner free from bias, including but not limited to national bias (Art. 12.3.)
- [113] In the DC case of 2022-01 (*ISU v. Pethes*), the DC confirmed that the standard for finding a violation of the Code of Ethics violation was high and required more than a mistake. Unlike some earlier cases, Mr Pethes (like Mr Williams) had not previously been the subject of a warning or intervention from the ISU. In that case, however, the OAC report as filed to the DC did not specify national bias. It was submitted in response that his marks were mistakes, and that he needed further training in the Pairs discipline which he judged infrequently. There was a level of suspicion, absent proof of bias, malice or bad faith. For that reason, the ISU Disciplinary Commission adhered to the principle of Roman law "*in dubio pro reo*" and to the principle of "Field of Play" and the case was dismissed.
- [114] However, the present case is distinguishable. Mr Williams is an experienced Judge. In his own submission, he is "*one of the finest examples of a skating official that the ISU system has ever and could ever produce*". He has undertaken numerous ISU assignments, been involved in training other Judges, and nationally in positions of governance. This submitted standard of experience, knowledge and skill implies that the potential for mistakes (regarding number and severity) is significantly reduced, compared to the above-mentioned case.
- [115] Furthermore, in the present case, there are three complaints of national bias, involving each of the three USA skaters in in the same free skating event of the World Championships.
- [116] Regarding the scoring for the skater Isabeau Levito, the DC follows the submission of the Complaint. without remarks.
- [117] However, contrary to the submission of the Complaint, the GOEs of the Alleged Offender for the skater Amber Glenn were – in total - not the highest GOEs in the Judging Panel, but were the second highest (the highest GOEs for this skater were awarded by Judge No 3, cf. Exhibit 4); however, the Alleged Offender's GOEs were still clearly above the average of the Judging Panel and above those of the Referee, cf. Exhibit 4. Additionally, the Programme Component Scores of the Alleged Offender were significantly higher than the scores of the average of the Judging Panel and of the Referee, cf. Exhibit 4.
- [118] Regarding the skater Bradie Tennell, the GOEs of the Alleged Offender were only slightly above the average of the Judging Panel and above those of the Referee (contrary to the Complaint, he – within the Judging Panel - had the third highest GOEs for this skater in the Free Programme); however, his Programme Component Scores were significantly higher, cf. Exhibit 4.
- [119] The Alleged Offender has significant (positive) deviations in the scoring of all three USA skaters in the Free Programme.
- [120] There are three distinct instances, in the same event. His marks (comparing his Total Segment Score in the Free Skating, when compared to the Panel average of the other Judges (respectively to the Total Segment Score of the complete Judging Panel) or compared to the Referee, systematically favour each of the USA skaters.
- [121] This can be objectively assessed as a factor/potential indication of national bias., from an objective point of view. Furthermore, the positive deviations in his scoring in favour of each USA skater are

⁶ ISU Code of Ethics, Communication 2450, now updated by Communication 2478.

- [122] significant (see chart above) which compares his Total Segment Score with the Total Segment Score of the Judging Panel.
- [123] Furthermore, his scoring of the USA skaters also significantly exceeds the scoring of the Referee of the Event, cf. Exhibit 4), which, altogether, rules out the possibility of classifying the deviations as singular mistakes or being within the range of given individual judicial discretion.
- [124] For these reasons, the DC follows and comes to the same conclusion as the OAC (which is a specialised body for assessing the given anomalies, see above), and assesses these deviations (under the given circumstances) are the result of national bias by the Alleged Offender. The submissions of the Alleged Offender do not include any substantiated argument submission averment that delivers a plausible explanation for his deviations, given that all of the USA skaters have benefitted from his significantly higher scores. compared to the scoring of the Event Referee (who is a highly experienced Judge and Referee, cf. also the averment of the Alleged Offender in his First Statement of Response under I), 1.2) and also compared to the average scoring of the Judging Panel, see above.
- [125] The Alleged Offender's submission that he did not act intentionally, is not substantiated. The DC also considers this to be an evasive defense (see also the remarks above, which establish the existence of the preconditions of the subjective element in the present case (acting in bad faith)).
- [126] The evidence of preference for a particular team or individual (in this case a systematic preference for the USA skaters in the Free Programme) is clearly shown, as per the cited caselaw (see., CAS OG 16/028, and the further references above under section V).
- [127] The DC, therefore, does not accept that this is a case where there is a single, elevated Component mark which is an error, and finds the threshold standard of proof of "comfortable satisfaction" is reached in this case.
- [128] The principle "*in dubio pro reo*" does not apply with regard to the above-mentioned part of the Complaint (clear overmarking of all of the USA skaters), as there are no doubts remaining when assessing the facts and circumstances of the present case, see above.
- [129] However, the DC does not overlook that Mr Williams has not previously been subject to a warning or intervention from the ISU concerning national bias. The DC penalty imposed for Mr Williams reflects this, in contrast to those in previous DC cases where there have been interventions or warnings.
- [130] Furthermore, the DC does not agree with part of the Complainant's allegation, that that there was systematic and/or obvious undermarking of the USA skaters' close rivals by the Alleged Offender in this case ("*downgrading*" *all marks of his strongest Competitors*").
- [131] While the overall scoring of the Alleged Offender in the Free Skating for some close competitors of USA skaters was indeed significantly lower than the average of the Judges in the Panel., e.g. the scores of the Alleged Offender for the skaters Watanabe or Gubanova, other negative deviations for close competitors to USA skaters were insignificant (e.g. negative deviations in the scoring for the skaters Gutmann or Kurakova).
- [132] In other cases, the scoring of the Alleged Offender for close competitors (e.g. to the highest placed USA skater Levito) was even higher than the average of the Judging Panel (i.e., the scoring of the Alleged Offender for the skaters Hendrickx and Kim); cf. Exhibit 4.
- [133] In contrast to the significant overmarking of all the USA skaters, where a sufficient base of proof for the assumption of national bias is given (evidence of preference for a certain group/nation, see V),

[134] this further allegation by the Complainants (of systematic undermarking of close rivals to USA skaters - "all marks", cf. the Complaint) is not found to be proven to the requisite standard of proof.

[135] Therefore, the principle "*in dubio pro reo*" applies to this second set of allegations.

[136] Regarding the question of national bias itself (which is already given through the Alleged Offender's scoring for the USA skaters, see the ruling regarding the first limb of the allegations), his second limb of the Complaint (intentional undermarking) does not need to be proven to find national bias. However, the lack of evidence of this intentional undermarking clearly reduces the severity of the misconduct.

[137] Therefore, the request of the Complainants to suspend the Alleged Offender - without any prior letter of warning or comparable intervention having been given- is declined by the DC.

[138] That sanction would be overly punitive in the present circumstances. In cases of national bias, the DC will only consider a suspension without any prior letter of warning/comparable intervention in exceptional circumstances, where the misconduct is significantly higher. That standard is not reached in the present case.

[139] Therefore, a warning is the appropriate sanction from the DC in this case.

[140] Based on the above considerations the ISU Disciplinary Commission rules as follows:

VI. Decision

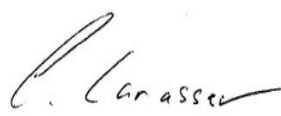
1. Mr Doug Williams is found guilty of a violation of the duties of judges and the ISU Code of Ethics 2022 at the World Figure Skating Championships 2023.
2. A warning is issued to Mr Doug Williams, regarding the finding of national bias in his judging at the ISU World Championships 2023.
3. The parties bear their own costs.



Sue Petricevic



Dr. Allan Böhm



Eugen Larasser

The present decision is subject to appeal to the Court of Arbitration for Sport, Avenue de Beaumont 2, CH-1012 Lausanne, Switzerland, within 21 days upon receipt of the decision, in accordance with Article 25 Paragraph 12 and Article 26 of the ISU Constitution.