

# INTERNATIONAL SKATING UNION

HEADQUARTERS ADDRESS:  
TELEPHONE (+41) 21 612 66 66

CHEMIN DE PRIMEROSE 2  
TELEFAX (+41) 21 612 66 77

CH 1007 LAUSANNE

SWITZERLAND  
E-MAIL: info@isu.ch

Case no. 03/05

## DECISION

of

### The ISU Disciplinary Commission

**Panel:** - Dr. Béatrice Pfister (Chair)  
- Ms Patricia St. Peter  
- Mr Pierre de Lacroix de Lavalette

In the matter of

International Skating Union, Chemin de Primerose 2, 1007 Lausanne, Switzerland

- Complainant -

against

Mr Sergej Ponomarenko (RUS),

- Alleged Offender -

Concerning alleged violation of the ISU Code of Ethics (ISU Communication No. 1221), the conduct requirements stated in ISU Communication No. 1305 and of Rule 125, Paragraph 5

## I. History of the Procedure

On November 24, 2005, the President of the ISU, on behalf of the ISU Council, filed a complaint with the ISU Disciplinary Commission (DC) against the Alleged Offender, together with exhibits. By order dated November 29, 2005, the DC invited the Alleged Offender to file his statement of reply within 15 days. The Alleged Offender submitted his statement of reply in due time on December 13, 2005. Upon receipt of this statement of reply the DC, in accordance with Article 3 Para 2 of its Rules of Procedure and of Implementing Complaints, decided to hold an in-person hearing, which hearing took place in Chicago, Illinois, USA,<sup>[1]</sup> on January 22, 2006. During this hearing the DC heard the testimony of the Alleged Offender and of two witnesses, Ms Marie Bowness and Mr Christopher Buchanan.

## II. Procedural Matters

1. According to Article 21 Para 1 of the ISU Constitution, the DC hears and decides all charges referred to it by any ISU authority against any Official accused of a disciplinary or ethical offence. Article 21 Para 5 defines "disciplinary or ethical offence" as any violation of any material ISU disciplinary or ethical rule and of any other conduct which can be deemed disciplinary or ethical by nature.

The present case arises out of a charge brought against the Alleged Offender in his capacity as Assistant Technical Specialist and therefore as an ISU Official as defined in letter G point 2 of the Constitution of the ISU. The charges concern a possible violation of the ISU Code of Ethics, the conduct requirements stated in Communication No. 1305 and of Rule 125 Para 5, allegedly committed by making certain improper suggestions to other Officials during an ISU Senior Grand Prix event. Because all ISU provisions in question are clearly of disciplinary and/or ethical nature, the DC has full jurisdiction to hear and decide this case.

2. According to Article 21 Para 5 of the ISU Constitution and Article 8 Para 1 of the DC Rules of Procedure and of Implementing Complaints, complaints must be filed in writing within 30 days of the occurrence of the alleged disciplinary or ethical offence. The incident on which the complaint in this case is based, happened on October 29, 2005. Thus, by filing the statement of complaint on November 24, 2005, the time limit was respected.
3. The present case is governed by the provisions mentioned in point 1 above and the DC Rules of Procedure and of Implementing Complaints.

### III. Facts

Based on the documents on file and the testimony given at the oral in-person hearing on January 22, 2006, the DC considers the following facts as established:

1. At the ISU Senior Grand Prix Event MasterCard Skate Canada, held in St. John's, Newfoundland, Canada, from 27<sup>th</sup> - 30<sup>th</sup> October 2005, the Alleged Offender (RUS) officiated as Assistant Technical Specialist for the Ice Dancing competition. The Technical Specialist was Ms Marie Bowness (CDN), and the Technical Controller was Mr Christopher Buchanan (GBR).
2. From practise at the competition, it seemed that the dance couple from Canada (Dubreuil/Lauzon), ranked 8<sup>th</sup> in the world, could win over the couple from Ukraine (Grushina/Goncharov), presently 3<sup>rd</sup> in the world. Due to some disagreement between the Alleged Offender and the Technical Controller regarding the calling of the levels of the performed elements including but not limited to the elements of the Canadian and Ukrainian couples which had occurred during official practice, the Alleged Offender felt troubled about the Technical Controller's arguments regarding his assessment of levels. Therefore, he requested to discuss this issue with the Technical Specialist and the Technical Controller.

The discussion among the three members of the technical panel took place at the hotel on October 29, 2005, the night before the free dance.

3. The discussion was about the correct calling of levels in view of the next day's free dance competition, especially for the Canadian couple on one hand and the Ukrainian couple on the other. The exact details of what was said during the discussion on October 29, 2005, and the exact development of the conversation remain unclear to the DC even after hearing the oral testimonies of the three individuals involved. The testimony given by the three individuals established that what they all concur in is that the Alleged Offender emphasized the importance of accurate level calls, not only but especially for the Ukrainian and Canadian couples and, mentioned that the outcome of Skate Canada would have a significant effect on future events, especially the forthcoming Olympic Winter Games.

The Technical Controller and the Technical Specialist understood this to be a suggestion by the Alleged Offender to call levels of elements based on considerations other than the actual performance of the couples in question during the event. This is evidenced by their reactions. The Technical Specialist told the Alleged Offender that she would not have any part in this, that she would call levels as she sees them and she would never take any other factors into consideration in her evaluation. The Technical Controller stated that what ever the consequences of the calls at the event might be, the calls would reflect what the skaters did at this event and whatever happened in the future was of no concern for how he would make calls on the Technical Panel. The Alleged Offender confirmed that these were, in fact, the reactions of Ms Bowness and Mr Buchanan to his statements.

However, the suspicion that the Alleged Offender had tried to influence the Technical Controller and the Technical Specialist by fostering undue favoritism for one particular dance couple over the other has not been confirmed by the evidence presented to the DC.

First, there is a striking inconsistency between the recollection of the Alleged Offender's statements by the Technical Controller on one hand and the Technical Specialist on the other. While the Technical Controller interpreted the Alleged Offender's comments to be a suggestion to call higher levels for the Ukrainian team, the Technical Specialist wrote in her report of November 21, 2005 that the Alleged Offender had been pushing for higher levels for the footwork sequences of the Canadian team.

In her oral testimony before the DC, the Technical Specialist said she needed to correct her written statement in this respect because the Alleged Offender had, in fact, suggested that she favour the Ukrainian couple. Yet, her explanation that the mistake in her written statement probably occurred because she had not really listened to the Alleged Offender's exact statements on October 29, 2005 because she strictly refused to get involved in this sort of discussion makes it seem likely that her detection of her "mistake" - only one week before the oral hearing of January 22, 2006 - is rather the result of an after the fact rational reasoning of what message the Alleged Offender might have wanted to convey on October 29, 2005, rather than her actual perception of the meaning of his statements at the time he made them.

In any event, the fact that the Technical Specialist became aware of her "mistaken" written statement more than 2 months after the discussion in question took place, the details of which she has only a vague recollection, does not allow the DC to conclude as a matter of fact that the Alleged Offender's remarks had to be taken as a suggestion to favour the Ukrainian couple and had been perceived as such by the Technical Specialist. Further, her written report is entirely in line with the Alleged Offender's credible explanation that, in his opinion, the Technical Controller's assessment of the level for the footwork sequences of the Canadian team was too low.

More importantly, the Alleged Offender in his oral testimony has convinced the DC of his commitment to fairplay, to call levels which reflect only the skaters' actual performance, that his statements during the discussion of October 29, 2005, were made only because of what he considered to be incorrect assessments of levels by the Technical Controller, that his intent was nothing more than to assure that correct levels will be called and that his mentioning of the effects of the outcome of Skate Canada on future events was based on his experience that certain Technical Controllers and Technical Specialists, especially inexperienced ones, in fact, look at the levels called at previous events when officiating as Technical Panel members and let themselves be influenced by calls made at previous events.

Accordingly, the DC finds no evidence of any intent on the part of the Alleged Offender to foster undue favoritism for specific competitors at Skate Canada.

4. The Alleged Offender and the two witnesses all testified that the Ice Dance event at the MasterCard Skate Canada itself was called accurately and that the discussion during the October 29 meeting had no effect on the results of the competition.

#### IV. Law

1. Article 1 of the ISU Code of Ethics applies to all Officials as defined in section G point 2 of the ISU Constitution and, therefore, it applies to the Alleged Offender in his function as Assistant Technical Specialist. The Code of Ethics was adopted by the ISU to assure compliance by all involved persons with the fundamental policies and values of the ISU. Among these fundamental values is the organization of fair and impartial international skating competitions (ISU Code of Ethics, Article 3 letters c and d).

By serving in the function of ISU Assistant Technical Controller, the Alleged Offender undertook the obligation to observe the Code of Ethics. He agreed to give particular attention to all of its provisions respecting fair, impartial sports competition measures and to exemplify by his conduct and his oral and written expressions the highest standards of honesty, respect, truth, fairness, ethical behaviour, and sporting attitude and to adhere to all rules of the ISU (Code of Ethics, Article 4, letters a and e). Further, he agreed that his performance, conduct and comments, while serving as an ISU Official should also generally stimulate trust and confidence among other officials and that even the appearance of misconduct, impropriety, or insincere attitude can be damaging (Code of Ethics, Article 4, letter f.). The Alleged Offender is also bound to comply with the ISU Code of Ethics under Rule 125 Para 5. All participants in ISU activities were reminded of this by the ISU Council in point 8 of Communication Nr. 1305. However, given that neither Rule 125 Para 5 nor Communication Nr. 1305 contains any material disciplinary or ethical rules regarding the questions which are raised by the present case, Rule 125 Para 5 and Communication Nr. 1305 are of no independent significance in the context of the DC's decision regarding the alleged offence here.

2. One of the main concerns of the ISU within the objective of organizing fair and impartial competitions is to assure that in figure skating and ice dancing, the judges and members of the technical panels strictly limit themselves to evaluate the actual performance of the skaters and do not take into consideration any external factors such as past performance, reputation and popularity, the country which the skaters represent etc. Following an incident at the Olympic Winter Games at Salt Lake City in 2002 concerning undue influence on the outcome of the pair skating competition, the ISU has made enormous efforts in order to prevent similar incidents from happening in the future. The result of these efforts was the adoption of the ISU judging system. Among the essential features of the ISU judging system are precise definitions and requirements which allow the technical specialists and technical controllers to identify performed elements and to call their levels based on objective criteria during the skaters' performances.

To be sure, precise definitions of elements and clear descriptions of features required for reaching certain levels do not prevent different evaluations of a skater's performance by the members of the technical panel because they cannot always avoid differing

perceptions among them of one and the same performance. In the case of differing perceptions among the members of the technical panel, it is not only permissible but it is necessary for the members of the technical panel to discuss the particular element. However, throughout the entire event at which a member of the technical panel is officiating, such discussions must be strictly limited to questions regarding the correct identification of elements and the calling of correct levels of the specific, actual performance of a skater and must not give any consideration to external factors whatsoever, whether made with good or bad intent. Otherwise the ISU judging system risks being undermined in its function to ensure fair and impartial competitions.

3. From the written statements on file and the oral testimonies given at the January 22, 2006, hearing, it is clear that the Alleged Offender's remarks to the Technical Specialist and the Technical Controller were not exclusively based on his conviction that certain levels would need to be called in order to properly reflect the actual performance of the competitors at the MasterCard Skate Canada event. His concern was also that what in his opinion would be incorrect calls at Skate Canada might have a negative impact on future events, especially the Olympic Winter Games. Thus, his comments regarding level calls were not only based on the actual performance but they also took into account external factors, i.e. the effect of the callings at Skate Canada on future events, especially the Olympics. By doing so, the DC concludes the Alleged Offender violated the ISU Code of Ethics and his duty to comply with any applicable statutes and ethical declarations under Rule 125 Para 5. Further, by his comments on October 29, he conveyed the impression upon the Technical Controller and the Technical Specialist that he was trying to influence them to unjustifiably favour one dance couple over another and, therefore, he failed to give sufficient consideration to his duty to stimulate trust and confidence among the other officials and to avoid even the appearance of impropriety which, by itself, is a violation of Article 4 letter f of the ISU Code of Ethics.
4. According to Article 21 Para 12 letter c of the ISU Constitution, the DC shall impose such sanction or sanctions which it finds adequate and justified by the facts of the case, by the seriousness of the offence and by mitigating circumstances.
5. From an objective point of view, the committed offence is serious. Every act perceived by others as an attempt to manipulate the ISU judging system, especially at and with respect to important ISU events, has a great potential to seriously impair the ISU's objective to organize fair and impartial skating competitions and to gravely damage the reputation of the ISU.

The objective seriousness of the offence is not reduced by the fact that the Technical Specialist and the Technical Controller rejected what they considered to be improper suggestions by the Alleged Offender and that the discussion of October 29, 2005, did not have any effect on the results of the MasterCard Skate Canada competition. This fact is due to the personal integrity of both the Technical Specialist and the Technical Controller, factors which are beyond the control of the Alleged Offender for which he can claim no merit.

As stated above, the Alleged Offender has convinced the DC that his remarks were aimed at assuring correct level calls which properly reflect the actual performance of

the competition, especially of the Canadian and the Ukrainian dance couples and to avoid what, in his opinion, would be incorrect calls. However, this does not alter the fact that his mentioning of external factors and his conveying the impression of trying to exercise undue influence on the other Technical Panel members is serious. Further, his statement that the results of MasterCard Skate Canada could influence the results of future events reflects the Alleged Offender's belief that the judges and other officials of other competitions, especially the Olympic Winter Games, would not evaluate the performances of the competitors exclusively based only on what they see on the ice during the competition event but they also would let themselves be influenced by external factors such as past results. Such attitude seriously puts into question the integrity of the entire ISU judging system and impairs the achievement of its aim to assure fair and impartial competitions.

It is not the task of the DC to examine, within the framework of deciding the present case, whether there are Technical Controllers and Technical Specialists who when officiating, look at level calls made at other events and let themselves be influenced by them which, if it is occurring, remains unsanctioned because the Technical Panels, other than the Judges through the Officials' Assessment Commission, are not under formal scrutiny. Even though the DC cannot rule out this possibility, it needs to point out that such problems, if they should arise, must not be resolved by discussions among the members of a Technical Panel at specific events. Rather, if there should be a systemic flaw in the ISU judging system, it would be the responsibility of the appropriate bodies of the ISU to undertake corrective actions such as *e.g.* to create a supervisory board for the Technical Panels akin to the Officials' Assessment Commission for judges, to address this situation.

6. Based upon all of the evidence presented, the DC concludes that the Alleged Offender acted out of his concern to assure that correct level calls would be made at MasterCard Skate Canada and in future events and he did not intend to foster results that did not correspond with the actual performance of skaters. While the Alleged Offender undoubtedly chose a totally wrong and improper approach and way of action, the DC finds that his intent was not improper.

Another mitigating factor is that when faced with the negative reaction and responses of the Technical Specialist and the Technical Controller to his remarks, the Alleged Offender accepted their point of view, did not push his point any further and cooperated in the accurate calling of levels in the concluding free dance the next day. Moreover, after the conclusion of the competition, in another discussion with the Technical Specialist, he praised her honesty and told her to remain that way and never to change. This underscores his statements made at the oral hearing that he never intended to encourage calls which do not correspond with the skaters' actual performances. For these reasons, the DC believes that the incident at MasterCard Skate Canada was a onetime lapse of the Alleged Offender and that this negative experience will deter him from similar discussions and interventions in the future.

Finally, the DC takes into consideration that the Alleged Offender has a clean record, has never been the subject of any prior complaints and has been reported to have acted properly and in the best interests of the ISU in numerous prior assignments.

7. However, the DC considers it to be its duty to contribute to the safeguarding of the integrity of the ISU judging system by taking seriously each and every act which could be interpreted as an attempt to tamper with the system and influence the outcome of a competition. Therefore, the offence in this case cannot remain without sanction. Considering all circumstances of the case, the DC finds a warning to the Alleged Offender as the sanction here to be adequate and justified. At the same time, the DC wishes to make all Officials aware that in case of future similar alleged violations of the ISU Code of Ethics, alleged offenders would risk to be faced with much heavier consequences.

#### V. Costs

According to Article 15 Para 1 and 2 of the DC Rules of Procedure and of Implementing Complaints, each party bears its own costs, and the costs related to the participation of the witnesses and the court reporter at the in-person hearing shall be borne by the ISU.

Based on the above considerations, the DC issues the following

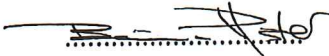


**DECISION**

1. Sergej Ponomarenko is declared responsible for a violation of the ISU Code of Ethics committed at the MasterCard Skate Canada ISU Grand Prix event on October 29, 2005.
2. A warning is issued against Sergei Ponomarenko.
3. Each party bears its own costs.
4. The costs related to the participation of the witnesses and the court reporter are to be borne by the ISU.

This decision is sent to Mr Sergej Ponomarenko by e-mail and registered mail against return receipt and by e-mail and ordinary mail to the ISU and the members of the panel.

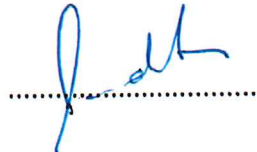
Dr. Béatrice Pfister



Patricia St. Peter



Pierre de Lacroix de Lavalette



January 29, 2006

The present decision is subject to appeal to the ISU Appeals Commission within 21 days upon receipt of the present decision, in accordance with Article 22 of the ISU Constitution and the ISU Appeals Commission Rules of Procedure.

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[1] The DC Chair determined that Chicago was the most appropriate location for the hearing due to the geographic location and travel schedules of the parties, the witnesses and the DC hearing members.