



**Arbitration CAS ad hoc Division (O.G. Salt Lake City) 02/004 Canadian Olympic Association (COA)/ International Skating Union (ISU), order of 14 February 2002**

Panel: Mr. Peter Leaver QC (England), President; Mr. Hans Nater (Switzerland); Mr. Massimo Coccia (Italy)

*Condition for granting a preliminary relief*  
*Order preserving evidence (conservatory measures)*

On 14 February 2002 at 08:10pm, the Applicant, which is the National Olympic Committee for Canada, filed an application for preliminary relief before the ad hoc Division of CAS. In particular, the Applicant requested CAS to make an order that certain individuals be compelled to appear before CAS to provide evidence. The Applicant also requested CAS to issue a decision that the United States Court should issue subpoenas to those individuals requiring them to appear before CAS to give evidence.

The application arises out of the decision of the judges in relation to the award of the Gold and Silver medals in the Figure Skating, Pairs Competition which took place on 11 February 2002. The individuals to whom reference has been made above were judges in that competition. For present purposes it is sufficient for it to be recorded that the decision has given rise to great controversy. The Applicant alleges that improprieties occurred amongst the judges and that one or more of the judges was pressured to cast a vote in a particular way. The Applicant also seeks substantive relief, namely, that a Gold Medal should be awarded to the skating pair Salé/Pelletier.

## **LAW**

The jurisdiction of CAS is to be found in art. 1 of the CAS Arbitration Rules for the XIX Olympic Winter Games in Salt Lake City (the "CAS ad hoc Rules"), which refers to Rule 74 of the Olympic Charter and to the Entry Form for the Olympic Games. Each competitor and official signs the official Entry Form and each National Olympic Committee countersigns that Form. The Panel is satisfied that it has jurisdiction under art. 1 of the CAS ad hoc Rules to entertain this application. As CAS has held in previous cases, International Federations, such as the Respondent, are bound by the arbitration clause contained in the Olympic Charter (see Arbitration CAS ad hoc Division 2000/006 Baumann v/IOC, German NOC and IAAF).

By art. 14 of the CAS ad hoc Rules, the Panel may rule on an application for preliminary relief. When doing so, pursuant to art. 14 para. 2 of the CAS ad hoc Rules, the Panel of arbitrators must apply the following test:

"When deciding whether to award any preliminary relief, the President of the ad hoc Division or the Panel shall consider whether the relief is necessary to protect the Applicant from irreparable harm, the likelihood of success on the merits of the claim, and whether the interests of the Applicant outweigh those of the opponent or of other members of the Olympic Community".

The Panel is of the view that each of these considerations is relevant, but that any of them may be decisive on the facts of a particular case.

The present Application is, in effect, to preserve evidence in a matter which may come to fruition in the next few days. The extreme urgency permits the Applicant to invoke art. 14. This is particularly so in a case such as the present in which it has not been possible to arrange an *inter partes* hearing and where it is obvious that the Applicant may suffer irreparable harm if relief is not immediately granted.

The evidence which it is sought to preserve is that of the judges of the Figure Skating Pairs Competition. It is stated in the application that one of the judges has already left Salt Lake City, and the Applicant seeks an order that will prevent any of the other judges leaving Salt Lake City until the Respondent's Council has considered the judges' decision or an application has been made to CAS in relation to that decision. The Panel has been told that the Respondent's Council is to consider the matter on 18 February 2002, or, possibly, on some earlier date.

Because the judges may leave Salt Lake City at any time, the Panel is satisfied that irreparable harm may be suffered by the Application if an order is not made and that the interests of the Applicant outweigh those of the Respondent or other members of the Olympic Community.

The Panel is also satisfied that in the particular circumstances in which this application has been made it should grant *ex parte* relief.

Although the Panel is sitting in Salt Lake City, under art. 7 of the CAS ad hoc Rules, the arbitration is governed by Chapter 12 of the Swiss Act on Private International Law. Art. 183 para. 1 of the Swiss Act provides that the arbitral tribunal may enter provisional or conservatory orders at the request of one party: "It is the criterion of urgency which justifies the restriction of the opposing parties' right to be heard and to fully offer evidence. In cases of particular urgency the order can be made *ex parte*. Other parties' rights to be heard must be granted as quickly as possible" (see Stephen V. BERTI (ed.), *International Arbitration in Switzerland*, p. 430). Art. 183 para. 2 also provides that if the party concerned does not comply voluntarily, the arbitral tribunal may request the assistance of the judge with jurisdiction who shall apply his own law.

In the present case, the law which is applied would be the U.S. Federal Arbitration Act, which, by Section 7, gives the arbitrators power to summon in writing any person to attend before them as a witness and in a proper case to bring any book, record, document, or paper which may be deemed material as evidence.

The Panel is satisfied that it should issue an order preserving the evidence of the judges in Salt Lake City until after the later of (a) 24 hours from the decision of the Respondent's Council or, (b) in the event that an application is made by the Applicant or any other party within that 24-hour period in respect of that decision, the determination of that application. In the light of this ruling, the Panel does not think it necessary to make any request to the United States Court at this time. Nor does the Panel propose to make any ruling on the application for substantive relief until the Applicant's legal remedies pursuant to the Respondent's Rules have been exhausted.

The application for preliminary relief will be heard *inter partes* at **02:00pm on 15 February 2002** at the CAS premises, Gateway Tower, 15 West South Temple, 5<sup>th</sup> floor. At that hearing, the Respondent and any other party who the Panel permits may attend and make representations. Following that hearing, the Panel may confirm, modify or vacate this decision.

In making this decision, the Panel should not be taken to be expressing any views as to the underlying merits of this case.

**The Panel makes the following orders :**

1. The Respondent is required to use its best endeavours to ensure that

Referees :

Referee : A.  
Assistant Referee : B.

Panel of judges

Judge N° 1  
Judge N° 2  
Judge N° 3  
Judge N° 4  
Judge N° 5  
Judge N° 6  
Judge N° 7  
Judge N° 8  
Judge N° 9  
Substitute Judge

remain in Salt Lake City until after the later of (a) 24 hours from the decision of the Respondent's Council or, (b) in the event that an application is made by the Applicant or any other party within that 24-hour period in respect to that decision, the determination of that application.

2. Each of those individuals named above is summoned to attend before the Panel as a witness on a date to be fixed, and to bring with them any book, record, document, or paper which may be deemed material as evidence.
3. The Respondent shall immediately upon the service of this order on it serve a copy of this order on each of the individuals named above.
4. The application will be heard *inter partes* at **02:00pm on 15 February 2002** at which time the Respondent and any other party whom the Panel permits may attend and make representations.