



**COURT OF ARBITRATION FOR SPORT (CAS)
TRIBUNAL ARBITRAL DU SPORT (TAS)
Ad hoc Division – Games of the XXII Olympiad in Sochi**

CAS arbitration N° CAS OG 14/04-05

AWARD

in the arbitration between

Alpine Canada Alpin (Canada)..... (the “First Applicant”)

Canadian Olympic Committee (Canada)..... (the “Second Applicant”)

Olympic Committee of Slovenia (Slovenia) (the “Third Applicant”)

and

International Ski Federation (FIS) (the “First Respondent”)

International Olympic Committee (IOC) (the “Second Respondent”)

and

Comité National Olympique et Sportif Français (CNOSF).....(the “First Interested Party”)

Sochi Organising Committee for the 2014 Olympic
and Paralympic Winter Games (OCOG).....(the “Second Interested Party”)

1. THE PARTIES

- 1.1 The First Applicant is the Alpine Canada Alpin ("ACA"). ACA is the national ski federation of Canada.
- 1.2 The Second Applicant is the Canadian Olympic Committee ("COC"), which is the National Olympic Committee for Canada.
- 1.3 The Third Applicant is the Olympic Committee of Slovenia ("SOC"), which is the National Olympic Committee for Slovenia.
- 1.4 The First Respondent is the International Ski Federation ("FIS"), which is the International Federation responsible for the sport of skiing.
- 1.5 The Second Respondent is the International Olympic Committee ("IOC"), the supreme authority of the Olympic Movement. One of its primary responsibilities is to organise, plan, oversee and sanction the summer and winter Olympic Games, fulfilling the mission, role and responsibilities assigned by the Olympic Charter ("OC").
- 1.6 The First Interested Party is the *Comité National Olympique et Sportif Français* ("CNOSF"), which is the National Olympic Committee for France.
- 1.7 The Second Interested Party is the Sochi Organising Committee for the 2014 Olympic and Paralympic Winter Games ("OCOG"), which is the entity responsible, pursuant to Article 35 of the OC, for the organisation and staging of the for XXII Olympic Winter Games, Sochi 2014 (the "Sochi OWG").
- 1.8 ACA, COC and SOC are hereinafter jointly referred to as the Applicants.

2. THE FACTS

- 2.1 The elements set out below are a summary of the main relevant facts as established by the Panel on the basis of the submissions of the parties. Additional facts may be set out, where relevant, in the legal considerations of the present award.
- 2.2 On 20 February 2014, the men's ski cross competition of the Sochi OWG (the "Competition") was held at the Extreme Park of Rosa Khutor.
- 2.3 The Big Final of the Competition ended at around 3:00 pm with the following classification:
 1. Jean Frederic Chapuis, France (gold medal and Olympic Champion)
 2. Arnaud Bovolenta, France (silver medal)
 3. Jonathan Midol, France (bronze medal)

4. Brady Leman, Canada.

- 2.4 At 9:47 pm of 20 February 2014, SOC filed with FIS a protest about the suits used by Mr Jean Frederic Chapuis, Mr Arnaud Bovolenta and Mr Jonathan Midol (the "French Competitors") during the Competition (the "Slovenian Protest").
- 2.5 At 10:33 pm of 20 February 2014, ACA and COC sent the First Respondent a letter containing their *"official appeal submission relating to a violation of rule 4511.4 of the FIS Freestyle ICR regarding ski suits for use in the Olympic Mens Ski Cross competition by the French competitors racing February 20, 2014"* (the "Canadian Protest"). In the Canadian Protest, ACA and COC requested *"an immediate disqualification of all of the French competitors from today's Ski Cross Big Final competition: Jean Frederic Chapuis, Arnaud Bovolenta and Jonathan Midol"* and *"an immediate correction to the final standings"*, alleging that a violation of Article 4511.4 ("Ski Suits") of the International Freestyle Skiing Competition Rules ("ICR") had been committed.
- 2.6 More exactly, the Canadian Protest reads as follows:

"The men's ski cross final ended around 3:00 PM today.

Dave Ellis (Team Leader for the Canadian Olympic Ski Cross team) officially notified the FIS equipment controller (Chris Robinson) at 4:20 PM February 20, 2014 that upon video review of today's competition the French support staff had evidently tampered with the French riders suits effectively creating a "fairing" around the lower leg of riders. A "fairing" is being used in this letter as a change to the shaping of the lower leg of the riders suits by pulling the fabric of the suit tight around the front of the lower leg and shaping it in a sharp crease along the back, with the apparent aid of accumulated snow or some other liquid which had a freezing/hardening effect. The COC submits that the fairing created an aerodynamic effect that the COC submits is contrary to Rule 4511.4 of the FIS Ski Cross technical rules.

The fairing was created for each of the French Ski Cross competitors and had a lasting effect throughout at least the entire run of the Big Final competition occurring at 2:41 PM today.

Upon discussion with the equipment controller at 4:20 PM, Dave Ellis (of Canadian Ski Cross and the COC) was made aware that during the Big Final phase of the Ski Cross competition the FIS Technical Director (Jyrki Saaemaenen) witnessed French Ski Federation support staff pulling on the material of the lower leg of the French riders in an effort to create a fairing effect around the lower leg thus effectively violating rule 4511.4 of the FIS Freestyle ICR (below). The TD notified the FIS equipment controller (Chris Robinson) that this was seen. Chris Robinson subsequently tested the suits of the French riders following the flower ceremony of the SX men's event and noted that the suits seemed to have a stiffness to them and were wet – which he erroneously dismissed as material stiffness and wetness from the spring-like conditions.

Subsequently, prior to the team captains meeting which was held at 5:00 PM

for the women competition on the following day, the FIS Technical Director confirmed what he had seen and Dave Ellis then showed him some photo evidence of the fairing effect created. Mr Ellis was told the FIS Technical Director would discuss with the French coaches and then address the issue in the meeting. While the FIS Technical Director did discuss this with the French coaches he did not bring the issue up in the meeting until Mr. Ellis asked him specifically to comment. He then expressed that he spoke to the French coaches and told them this was not allowed and to not do it again in the women's event tomorrow. Canadian Ski Cross and the COC submit that this effectively confirms that the French team was in violation of rule 4511.4, but no sanction was imposed regarding the men's event.

Under the circumstances, we submit that we have addressed the present appeal at our earliest opportunity as the facts were known to the International Ski Federation during the Men's Ski Cross competition, but then only presented by the International Ski Federation at the Women's preparation meeting for tomorrow's Ski Cross competition.

We include the photos of the pants in question. Additional High Resolution photos and video evidence are available".

- 2.7 On 21 February 2014, at 4:20 pm the FIS Jury (the "Jury") met to discuss the Slovenian Protest and the Canadian Protest (the "Protests"). At the end of its meeting, the Jury issued the following decision (the "Decision"):

"The jury met to discuss the letters FIS received from the Canadian Olympic Committee and the Slovenian Olympic Committee during the evening of 20.02.2014 regarding the men's ski cross final heat, which finished at around 14.50 the same day. Details on both letters were quite similar. The letters were about the French team ski cross ski suits and the bottom their pants.

As there was no protests, submitted by either NOC or team officials, within defined ICR timelines (15 minutes after the results have been published, see 3050.3 Protests). The results of the competition are valid and official.

Therefore, the jury members cannot take any other actions as the results are official".

3. THE CAS PROCEEDINGS

- 3.1 An application was received at 1:00 pm on 22 February 2014 by the CAS *ad hoc* Division, and registered as CAS OG 14/04. In such application, ACA and COC requested that:

"the Court of Arbitration for Sport compel the Respondents to work together to correct this injustice and to award the three medals granted in Men's Ski Cross to the next three fastest competitors in the Big Final which occurred February 20, 2014 DURING the Sochi Winter Olympic Games such that the three medallists will not be deprived of the experience of receiving their medals within the Games Window and the attendant recognition and attention that this event receives".

- 3.2 Upon receipt of the application filed by ACA and COC, the Co-President of the CAS *ad hoc* Division appointed as arbitrators Prof. Luigi Fumagalli (Italy), President of the Panel, Mr Patrick Lafranchi (Switzerland) and Prof. Matthew Mitten (USA).
- 3.3 Upon its formation, the Panel granted the Respondents and the Interested Parties a deadline until 22 February 2014, 9:00 pm Sochi time to file, if they so wished, written observations, including any evidence and witness statements, to the application.
- 3.4 The First Interested Party submitted on 22 February 2014 at 6:05 pm its observations, drafted in the French language, to the application filed by ACA and COC.
- 3.5 The First Respondent filed its answer on 22 February 2014 at 6:09 pm, requesting the Panel to dismiss the application filed by ACA and COC.
- 3.6 No written submissions were filed by the Second Respondent and the Second Interested Party.
- 3.7 At 8:25 pm of 22 February 2014 the CAS *ad hoc* Division received a second application, filed by SOC, and registered as CAS OG 14/05. In such application, SOC indicated as relief sought "*the same as Team Canada application*".
- 3.8 Upon receipt of the application filed by SOC, the Co-President of the CAS *ad hoc* Division decided that the application filed by ACA and COC and the application filed by SOC be heard and decided together by the Panel of arbitrators already appointed.
- 3.9 A hearing was held on 22 February 2014 at the CAS *ad hoc* Division's offices at the Ayvazovsky Hotel, 1 Morskoy Boulevard, Adler District, 354340 Russian Federation. It started at 11:10 pm and ended at 3:30 am of 23 February 2014. The Panel was assisted at the hearing by Mr Fabien Cagneux and Jean-Philippe Dubey, Counsel to CAS. The following persons attended the hearing:
- i. for ACA and COC: Mr Yann Bernard and Ms Jolan Storch;
 - ii. for SOC: Mr Blaz Perko;
 - iii. for the First Respondent: Ms Sarah Lewis;
 - iv. for the Second Respondent: Mr Howard Stupp, Mr André Sabbah and Ms Tamara Soupiron;
 - v. for the First Interested Party: Mr Denis Masegla, Mr Luc Tardif, Mr Patrick Cluzaud and Mr Michel Vion;
 - vi. for the Second Interested Party: Ms Anastasia Shkarina.
- 3.10 At the outset of the hearing the parties confirmed that they had no objections as to the composition of the Panel. During the hearing, ACA and COC presented video evidence in support of their claim. Mr Willy Raine, Mr Dave Ellis, Mr Jyrki Säämänen (on the phone) and Mr Joseph Fitzgerald (on the phone) were heard as witnesses. All parties were given ample opportunity to present their views on the dispute, and

answered questions asked by the Panel.

- 3.11 Each party, at the conclusion of the hearing and in response to the President of the Panel's query, affirmed that it had received a full and fair hearing, that it was treated equally, and that there were no additional matters or requests that it wished to raise.

4. THE PARTIES' SUBMISSIONS

- 4.1 The following outline of the parties' positions is illustrative only and does not necessarily comprise every contention put forward by the parties. The Panel, indeed, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

a. *The Applicants' Submissions*

a1) The Submissions of ACA and COC

- 4.2 The First and Second Applicant's submissions challenge the Decision rendered by the Jury, which came to the conclusion that, as there was no protest submitted by either NOC or team officials within the defined ICR timeline (15 minutes after the completion of the last competition run of that phase of the competition), the results of the Competition were valid and official. The First and Second Applicant's submissions may be summarized as follows:

4.2.1 *In the written Application*

- i. at the beginning of the Big Final race of the Competition, the Canadian Coach, Mr Willy Raine, noticed the coaches of the French Competitors "*pulling and shaping the[ir] lower pants legs*" and observed a "*significant crease*" on the French Competitors' pants. At this moment, the Technical Director for FIS, Mr Jyrki Säämänen, stood a few meters away from the French Competitors and their coaches;
- ii. as the First and Second Applicants later became aware, Mr Jyrki Säämänen had concerns with respect to the actions of the French Competitors, enough for him to contact via radio the FIS equipment controller, Mr Chris Robinson, and to ask him to investigate the French Competitors' pants at the end of the Competition;
- iii. Mr Jyrki Säämänen did not take any immediate action to materially investigate the actions of the French Competitors before the start of the Big Final of the Competition, and the potential implications for a FIS Rule violation, but rather allowed the race to continue. He certainly did not stop or delay the start of the race to investigate further this unusual behaviour of the French Competitors;
- iv. the Competition ended at about 3:00 pm. Soon after the flower ceremony that followed it, which would have occurred at approximately 3:30 pm, Mr Chris

Robinson, the FIS equipment controller, tested the suits of the French Competitors and noted that the suits seemed to have a stiffness and were very wet – which he erroneously dismissed as material stiffness and wetness caused by the spring-like conditions;

- v. reviewing the video footage of the Competition, in the period between the end of the flower ceremony and approximately 4:00 pm, Mr Willy Raine, the Canadian Assistant Coach, became aware that *“the molding, shaping and creasing”* of the French Competitors’ pants lasted for the entire duration of the race and, by reviewing photo evidence in conjunction with the video review, became concerned that a FIS rule violation might have occurred;
- vi. at 4:20 pm, the Team leader for the Canadian Olympic Ski Cross team, Mr Dave Ellis, officially notified Mr Chris Robinson, the FIS equipment controller, that it was noticed, upon video review of the Competition, that the French support staff had evidently tampered with the French Competitors’ suits, effectively creating a *“fairing”* around the lower leg of riders that remained present throughout the Big Final;
- vii. a *“fairing”* implies *“a change to the shaping of the lower leg of the riders suits by pulling the fabric of the suit tight around the front of the lower leg and shaping it in a sharp crease along the back, with the apparent aid of accumulated snow, ice or some other liquid which had a freezing/hardening effect”*. It created an aerodynamic effect that is contrary to Article 4511.4 IRC;
- viii. for each of the French Competitors a fairing was created, which had a lasting effect during the entire run of the Competition;
- ix. prior to the team captains’ meeting which was going to be held at 5:00 pm for the women’s competition on the following day, the FIS Technical Director confirmed to Mr Dave Ellis what he had seen. The latter then showed him some photo evidence of the fairing effect created. It was, in fact, Mr Jyrki Säämänen who indicated that this was a rule violation and directed Mr Dave Ellis to Article 4511.4 ICR;
- x. at this same time, Mr Chris Robinson indicated that the 15 minute appeal window according to Articles 3050.1-3050.3.3 ICR had already elapsed. At that moment, Mr Dave Ellis was told that Mr Jyrki Säämänen would discuss Article 4511.4 ICR with the French coaches and then would address the issue at the 5:00 pm meeting with all the delegations’ representatives present;
- xi. as Mr Jyrki Säämänen had not mentioned this issue at the women’s technical meeting, Mr Dave Ellis asked him at the end of the meeting to comment on it. Mr Säämänen then expressed that he had spoken to the French coaches and told them this was not allowed and not to do it again in the women’s event the following day. This effectively confirms on the one hand that the French team was in violation of Article 4511.4 ICR and on the other hand that the FIS Technical Director was aware of it, but no sanction was imposed regarding the men’s event;

- xii. in the Decision, the Jury only addressed the fact that no protest had been filed within the 15 minute window provided by Articles 3050.1-3050.3.3 ICR. This is a fundamental breach of natural justice, as the 15 minutes following the Big Final of the Competition did not provide sufficient time to attend to the athletes who have competed, to gather sufficient evidence to realize that a formal protest should be raised and then to actually provide notice of the desire to appeal. It is to be noted that Article 3050.3.3 ICR requires a written notice of protest accompanied by CHF 50. It appears to be factually inapplicable to situations like the one at hand where one can only realize the presence of a violation upon video review or if it has direct access to the other team's competitors' equipment, which is not the case;
- xiii. the 15 minute protest window is entirely unreasonable under the circumstances. The appeal window rule is designed for issues that could be known to competitors and sport federations occurring during the race, and should not be used to circumvent a proper enforcement and application of the very rules by which Ski Cross races are to follow;
- xiv. there were many reasonable and timely courses of action available to FIS to investigate the potential for a FIS rule violation. FIS chose not to take any material steps to investigate, police and enforce their own rules. This would be a travesty to the reputation and integrity of Ski Cross as a discipline at the Winter Olympic Games and must be corrected;
- xv. the appeal to FIS was addressed at the earliest opportunity as the facts were known to the FIS Technical Director during the Competition, but then only presented by the FIS at the Women's preparation meeting for the following day's competition;
- xvi. only through examination of the video recordings of the final race available after the 15 minute appeal window was the Canadian Team in a position to see that creases created by the French Team through alteration of the equipment were present through the whole race and had an obvious impact on the aerodynamics of the French competition gear. It would be unreasonable and absolutely unfair in the present circumstances to consider that the other competing country in this race, Canada, had a 15 minute period to realize that a rule violation had been made by the French team;
- xvii. finally, because the violation was observed before the start of the race by the Technical Director, this should have warranted some investigative action on his part before the race to prevent an adverse effect on the fairness of the race, which effectively constituted a failure to enforce Article 4511.4 ICR. It was the Technical Director's duty under Article 3032.1.2 ICR to cancel, interrupt or postpone the race on obvious grounds of fairness;

4.2.2 At the hearing

- xviii. Mr Willy Raine, Assistant Coach confirmed in his testimony the First and Second Applicant's statements and stated that he stood at the start of the Competition 15

feet away from one of the French Competitors, when he realized that his coach had pulled, folded and shaped his lower leg pants in a way he had never seen before. He also noticed a significant crease at the back of the leg of the French Competitor. Mr Raine radioed his observations to Mr Eric Archer, Head Coach of the Canadian Freestyle Team, and, after the Competition, went to the Canadian technical room to review the photos and the video footage of the seeding and of the Big Final of the Competition. This was at about 3:40 pm. Mr Raine's comparison of the pants worn by the French Competitors and by the other participants in the Competition confirmed his suspicion: while the lower part of the pants of the other competitors were flapping, the pants of the French Competitors were stable during the entire race. The lower part of the pants maintained its shape throughout the French Competitors races. At 4:12 pm Mr Willy Raine tried to call Mr Eric Archer. At 4:13 pm he reached Mr Dave Ellis on the phone and told him about his suspicions. At 4:15 pm. Mr Raine emailed to him the photos he had made with his telephone at the start of the Competition;

- xix. Mr Davis Ellis testified that he was informed by Mr Willy Raine about the manipulation of the French Competitors' pants. At about 4:40 pm, he called the FIS Controller, Mr Chris Robinson, and informed him about it. Some minutes before the team captains' meeting he discussed the incident with Mr Chris Robinson and Mr Jyrki Säämänen. In this discussion, Mr Robinson – according to the testimony – agreed that Mr Säämänen mentioned the shaped pants of the French Competitors. Mr Säämänen informed Mr Ellis about the rule governing the competitors' suits, including pants. He mentioned a rule which is similar to Article 4511.4 ICR and showed it on his tablet. Mr Säämänen told Mr Ellis that he would discuss the shaping of the French Competitors' pants at the team-coaches meeting. Before the meeting, he would discuss the issue with the French coaches and announce that a such a modification of the suit was not allowed. According to Mr Ellis, the shaping of the pants was not discussed in the meeting until he raised the issue at the end of the meeting. Mr Robinson then explained that he had already controlled the three French Competitors at about 3:35 pm, after the flower ceremony at the end of the Competition. Finally, Mr Ellis testified that the photos and the videos clearly show that the material of the French Competitors' pants does not naturally fall during the Competition;
- xx. Mr Säämänen is the FIS Technical Delegate for the Men's Ski Cross competition at the Sochi OWG. In his written statement he declared that he had noticed that a member of the French team adjusted the lower part of the pants of one of the French Competitors immediately prior to the Big Final in a way that caused him to wonder what he was doing. Mr Michael Neuenschwander, the Assistant Referee, stood next to him and noticed the same. After the start, Mr Säämänen went down to the finish area as the French Competitors were just approaching equipment control. Before they arrived, he had asked Mr Robinson to check their pants, to see if there was anything unusual with them. After a while, he got a report from Mr Robinson concluding that the pants were conforming: their lower part was wet and otherwise normal. Mr Säämänen further mentioned that when he met with Mr Robinson the Canadian team had expressed concerns about the pants of the French Competitors. They decided to first discuss the

issue with the French coaches and then bring it up at the upcoming meeting of the team coaches for the women's competition. When the French coaches arrived at the meeting, he told them: "whatever you are doing, don't do it again".

a2) The Submissions of SOC

4.3 The Third Applicant challenges the Decision rendered by the Jury and joins the submission of the First and the Second Applicants regarding it.

4.4 In the written submissions and at the hearing, the Third Applicant asked from the Panel the same relief requested by ACA and COC.

b. *The Respondents' Submissions*

b1) The Submissions of the First Respondent

4.5 The First Respondent's submissions in support of its request that the Applicants' applications be dismissed may be summarized as follows:

4.5.1 *In its written submissions*

- i. according to Article 3050.3 ICR, protests need to be submitted within 15 minutes after the results of a race have been published;
- ii. the Competition ended on Thursday, 20 February 2014, at 2:50 pm local time;
- iii. a protest was not filed by the First and Second Applicants until 10:33 pm. The Third Applicant filed his protest at 9:47 pm the same day. Both Protests were obviously late;
- iv. there is no reason why a protest could not be filed before the start of the final race of the Competition or immediately after it. Obviously, that final race was closely observed by the First and the Second Applicants since it was a Canadian athlete (Mr Brady Leman) who competed against the French Competitors. It was therefore not necessary for ACA and COC to spend so much time for the analysis of video footage to confirm the suspicion they had already before the start of the race;
- v. the Equipment Control took place after the seeding (qualification) round that took place at 11:45 am, where athletes are timed on an individual run and every single athlete must pass the control immediately after crossing the finish line. Such control includes a verification of the skis, the boots and the clothing. The seeding round concluded at approximately 12:45 am and the finals began at 1:30 pm. The top three athletes' equipment was controlled again immediately after the flower ceremony, whilst the athlete in the fourth place was controlled shortly beforehand as he was not involved in the flower ceremony;
- vi. as the Applicants correctly submit, the FIS' Equipment Controller, Mr Chris

Robinson, tested the suits of the French Competitors immediately after the flower ceremony. He also paid attention to their pants following the request to do so by the FIS Technical Delegate, Mr Jyrki Säämänen. His conclusion was that the suits (including the pants) were compliant with the applicable FIS equipment rules;

- vii. ACA and COC assert that at the team captains' meeting on 20 February 2014, 5:00 pm, for the ladies' competition the following day, the FIS Technical Director "had indicated that this [i.e. "creating a fairing" around the lower leg of the riders]" was a rule violation. That is contested by the FIS Technical Delegate: he did not say that the French team had violated the rules, but reminded the captains that they should refrain from any treatment of the equipment immediately before the start, in order to avoid discussions like those between the Canadian and the French teams;

4.5.2 At the hearing

- viii. Mr Joseph T. Fitzgerald, FIS Race Director Freestyle Skiing, testified in his written statement addressed to Ms Sarah Lewis, and confirmed at the hearing, that he had not received any remarks, comments or protests from any coaches concerning the different runs during the Competition, or after its end. According to Mr Fitzgerald, he received the Canadian Protest on 20 February 2014 in his hotel at 11:35 pm. He further mentioned having fully observed the French Competitors from the time they entered the finish area after competing and during the flower ceremony. He then escorted them to the equipment control and after that to the anti-doping control officials at the exit gate.

b2) The Submissions of the Second Respondent

4.6 The Second Respondent made no submission.

c. *The Interested Parties' Submissions*

4.7 The First Interested Party submitted observations as follows:

- i. the time limit to file a protest needs to be submitted within 15 minutes after the end of the competition with no exception in every FIS event. Due to the timing of the Protests, the Jury had to dismiss them because they were late;
- ii. the Applicants were already suspicious before the Big Final Race about the French suits and so had enough time to lodge the Protests within the indicated time limit. Even before the Applicants were in possession of the video footage they were in the position to file the protest in time;
- iii. the equipment control took place several times, also during the seeding, the quarter and the semi finals of the Competition. The equipment of the First

Interested Party always was found compliant with the rules;

- iv. the First Interested Party presented the pants of one of the French Competitors (which were identical to those worn by the two others) to the Jury at its meeting of 21 February 2014. The French Ski Federation ordered five pairs of special, individually produced pants which are been worn by the men. The women have different pants that have no internal protection and do not wear the pants used by the French Competitors, because they were not produced in time in a sufficient number.

4.8 The Second Interested Party made no submission.

5. APPLICABLE PROCEDURAL LAW

5.1 These proceedings are governed by the CAS Arbitration Rules for the Olympic Games (the "CAS *ad hoc* Rules") enacted by the International Council of Arbitration for Sport (ICAS) on 10 July 2012. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (the "PIL Act"). The PIL Act applies to this arbitration as a result of the express choice of law contained in Article 7 of the CAS *ad hoc* Rules and as the result of the choice of Lausanne, Switzerland, as the seat of the *ad hoc* Division and of its panels of arbitrators, pursuant to Article 7 of the CAS *ad hoc* Rules.

6. JURISDICTION AND ADMISSIBILITY

6.1 The jurisdiction of the CAS *ad hoc* Division is defined in Article 1 of the CAS *ad hoc* Rules and Article 61 of the OC.

6.2 The wording of Article 1 of the CAS *ad hoc* Rules is the following:

"Article 1. Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)

The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 61 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games.

In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective".

6.3 Article 61.2 of the OC provides as follows:

"61 Dispute Resolution

[...]

2. *Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration*".

- 6.4 Except if a respondent is in default, the arbitral tribunal examines the validity and the scope of an arbitration clause only if an exception is raised (KELLERHALS/BERGER, *Internationale und interne Schiedsgerichtsbarkeit in der Schweiz*, Rz. 626; A. HEINI in: *Zürcher Kommentar zum IPRG*, N 7 to Article 186 CPIL). In addition, the objection of a lack of jurisdiction must be raised prior to any defence on the merits (A. HEINI in: *Zürcher Kommentar zum IPRG*, N 10 f. to Article 186 CPIL). In fact, Article 15 lit. a of the CAS *ad hoc* Rules indicates that respondents have to raise an objection to jurisdiction at the latest at the start of the hearing. Afterwards their right to raise a plea of non-jurisdiction is forfeited.
- 6.5 The Respondents did not dispute the jurisdiction of the CAS. The Panel has therefore jurisdiction to decide the present matter.

7. APPLICABLE SUBSTANTIVE LAW

- 7.1 Under Article 17 of the CAS *ad hoc* Rules, the Panel must decide the dispute "*pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate*".
- 7.2 The Panel notes that the "*applicable regulations*" in this case are the rules and regulations of FIS.
- 7.3 The applicable rules do not contain any provisions regarding their interpretation. According to Article 17 of the CAS *ad hoc* Rules, the Panel shall resolve the dispute pursuant to the rules of law it deems appropriate. As FIS is an association under Swiss law, the interpretation of its statutes and regulations is governed by Swiss law.
- 7.4 Under Swiss law, the interpretation of statutes has to be rather objective and always to start with the wording of the rule. The adjudicating body – in this instance the Panel – will have to consider the meaning of the rule, looking at the language used, and the appropriate grammar and syntax. In its search, the adjudicating body will have further to identify the intentions (objectively construed) of the association that drafted the rule, and such body may also take account of any relevant historical background that illuminates its derivation, as well as the entirely regulatory context in which the particular rule is located (CAS 2008/A/1673; CAS 2009/A/1810; CAS 2009/A/1811; see also ATF 87 II 95 consid. 3; ATF 114 II 193, p. 197, consid. 5.a; decision of the Swiss Federal Tribunal of 3 May 2005, 7B.10/2005, consid. 2.3; decision of the Swiss Federal Court of 25 February 2003, consid. 3.2; and P. ZEN-RUFFINEN, *Droit du Sport*, 2002, par. 168, p. 63).
- 7.5 The regulations of FIS that have been invoked by the parties in this case are contained in the ICR as follows:

222. *Competition Equipment*

222.1 *A competitor may only take part in a FIS competition with equipment which conforms to the FIS Regulations. A competitor is responsible for the equipment that he uses (skis, snowboard, bindings, ski boots, suit, etc). It is his duty to check that the equipment he uses conforms to the FIS specifications and general safety requirements and is in working order.*

3050 *Protests*3050.1 *Pre-Conditions for a Protest*

No protest shall be considered by the Jury unless:

- *The written protest has been made within the time limits under 3050.3.*
- *The reason for the protest and a sum of 50 CHF or its equivalent in other currency has to be handed to the Jury. If the protest is accepted, the sum will be reimbursed; if not, the FIS retains the sum.*

3050.2 *Examination of Protests*

The Jury shall meet as soon as logistically possible, taking into consideration the urgency of the request (i.e.: re-run required). The Jury will invite, for a discussion on protests, the starter and other officials involved, possible witnesses, the competitor concerned and the pro- testing Team Captain. In addition, any other material such as videotape, film, photographs, etc., shall be examined. Only the members of the Jury shall be present for the final decision on the protest. This must have the support of a majority of the entire membership of the Jury, not only of those present.

In case of a tie, the Chairman of the Jury's vote shall be decisive. The decision shall be posted on the Official Notice Board immediately after the hearing, with the time of posting. The Chairman of the Jury will preside at the hearing.

Minutes of the hearing must be taken and must be signed by the Chairman of the Jury. Protests concerning re-runs shall be examined immediately by the Jury.

3050.3 *Different Types of Protests*3050.3.3 *Protests During the Competition*

A competitor or Team Captain who protests against any action by another competitor or an official during the competition must take his protest to a Jury member within 15 minutes of completion of the last competition run of that phase of competition.

3056 *Disqualifications.*

... Disqualifications will be imposed: ...

3056.3 *for violating any rules on equipment according to sections ... 4511 and*

4511.4 *Ski Suits*

Ski suits must be two pieces; pants and a separate top. Suits worn in the Alpine events of Downhill (DH), Super-G (SG), Giant Slalom (GS), Slalom (SL), and Speed Skiing are not allowed.

Suit base material shall be textile fabrics excluding rubber, neoprene, leather or vinyl like materials or fabrics. Patches of different material are allowed provided that textile fabrics shall remain, in any event, predominant.

Non-protruding body protection and padding is recommended.

Protection equipment including back protector or any other padding or body amour must be worn on the body and separate from the ski suit (outerwear). Protection

and padding must not be built into the ski suit or attached to the ski suit by a zipper, Velcro or any other means. Fastening devices such as elastic straps, zippers, nylon straps, buttons, snaps, velcro, one or 2 sided tape, or any other methods shall not be used to tighten the suit material closer to the body or prevent the natural fall of the clothing.

7.6 In addition, reference was made to Rule 40 of the OC, which reads as follows:

To be eligible for participation in the Olympic Games, a competitor, coach, trainer or other team official must comply with the Olympic Charter, including the conditions of eligibility established by the IOC, as well as with the rules of the IF concerned as approved by the IOC, and the competitor, coach, trainer or other team official must be entered by his NOC.

The above-noted persons must:

- *respect the spirit of fair play and non violence, and behave accordingly; and*
- *respect and comply in all aspects with the World Anti-Doping Code.*

8. THE MERITS

8.1 By their application to the CAS *ad hoc* Division, the Applicants are requesting disqualification pursuant to Article 3056.3 ICR of all three of the French Competitors (Jean Frederic Chapuis, Arnaud Bovolenta and Jonathan Midol) who won the gold, silver, and bronze medals respectively during the 20 February 2014 men's Ski Cross Big Final competition. They also seek an order requiring Respondents to correct the final standings in this Competition in accordance with Article 3056 ICR. Applicants assert that the Jury improperly determined that their Protests were untimely because they were not made within 15 minutes of posting of the official competition results as required by Article 3050.3.3 ICR and failed to determine the merits of their claim that the three French Competitors violated Article 4511.4 ICR by using a prohibited method, and Rule 222.1 ICR by using equipment that does not conform to FIS regulations. The Respondents ask that the Applicants' application be denied because their respective protests were not filed in a timely manner pursuant to Article 3050.3.3 ICR and two FIS equipment controls determined that the three French Competitors' suits (including the pants) complied with FIS equipment rules.

8.2 The Applicants' submissions raise two issues:

- i. is the Applicants' acknowledged failure to submit a timely protest to the FIS Jury in accordance with Article 3050.3.3 ICR excused by the factual circumstances of this case?
- ii. if so, have Applicants proven that the three French Competitors violated Articles 4511.4 and 222.1 ICR, thereby justifying their requested relief?

8.3 Regarding the first issue, it is undisputed that the official results of the men's Ski Cross Big Final Competition were posted by FIS prior to the time of the flower ceremony, which was held at the competition venue no later than 3:30pm on 20 February 2014. Applicant SOC does not contest Respondents' assertion that its written protest was not submitted until 9:47 pm on 20 February 2014. During the hearing Applicants ACA and COC testified that their written protest was not filed until 10:33 pm.

- 8.4 The Panel concludes that the Applicants did not comply with the explicit requirement of Articles 3050.1 and 3050.3 ICR that “[n]o Protest shall be considered by the Jury unless” a written protest is made “to a [FIS] Jury member within 15 minutes of completion of the last competition run of that phase of competition”. Article 3050.3 ICR (*Protests During the Competition*), which establishes this 15 minute deadline within which a Protest must be filed, is the applicable subpart of Article 3050 ICR (*Protests*) because three French Competitors’ alleged equipment rules violations occurred during the men’s Ski Cross Big Final Competition.
- 8.5 Applicants ACA and COC contend that their failure to comply with Articles 3050.1 and 3050.3 ICR should be excused because it was impossible as a practical matter to establish proof they used a prohibited method during this competition (i.e., the use a “*fairing*” by pulling the fabric of the suit pant tight around the front of the lower leg and shaping it in a sharp crease along the back as a means “to tighten the suit material closer to the body or to prevent the natural fall of the clothing”) within this time frame. Therefore, the 15 minute deadline for an appeal is unreasonable under the circumstances and its strict enforcement would preclude proper application and enforcement of Article 4511.4 ICR, which would violate Rule 40 of the OC requiring that competitors, coaches, and other team officials “*must respect the spirit of fair play*”.
- 8.6 The Panel rejects their foregoing contention because Article 3050.1 ICR explicitly requires only the “*reason for the protest*”, not substantiated evidence or proof that a violation of FIS rules occurred during the competition. In their Application, the ACA and COC state as follows: 1) at approximately 2:52 pm, shortly before the Big Final began, “*Canadian Coach Raine noticed the French coaches pulling and shaping the lower pant legs of the three French athletes and noticed a significant crease on the French pants being molded by the coaches through this action*”; 2) by approximately 4:00 pm “*Coach Raine became concerned that a FIS rule violation occurred*” after his review of video and photo evidence of the competition; and 3) Mr Dave Ellis (Team Leader for the Canadian Olympic Ski Cross team) officially notified the FIS equipment controller (Mr Chris Robinson) at 4:20 pm 20 February 2014 that upon video review of the competition the French support staff had evidently tampered with the French riders’ suits, effectively creating a ‘fairing’ around the lower leg of riders that remained present throughout the Big Final. Thus, by no later than 4:20 pm, the ACA and COC had a sufficient reason to submit a written protest pursuant to Article 3050.1 ICR, yet they did not do so until more than six hours later at 10:33 pm.
- 8.7 The Panel finds no basis for determining that Applicants’ failure to file a timely written Protest in accordance with the clear requirements of Articles 3050.1 and 3050.3 ICR should be excused. The ACA and COC do not contend that the verbal notification Mr Ellis provided to Mr Robinson satisfies the requirements of these rules. The Panel concludes that the Applicants’ delay of more than six hours in filing a written Protest is not justified in the circumstances of the case: the Applicants, in fact, became aware of the possibility that the three French Competitors may have violated Articles 4511.4 and 222.1 ICR at the time the Big Final of the Competition was run. No valid excuse that would justify the consideration of their claims has been offered, at least for the period following the women team-coaches meeting. Holding the contrary would contravene

the natural expectation of athletes, sports governing bodies, spectators, and the public that competition results are final unless promptly and properly protested within a reasonable amount of time after the competition ends. In addition, it is not for this Panel, but for the competent FIS bodies, to change the rules governing protests.

- 8.8 In light of the conclusion reached with respect to the first question, there is no need for the Panel to address the question of whether a violation of Article 4511.4 ICR was committed by the French Competitors. The failure of the Applicants to file a timely protest in accordance with Article 3050 ICR, in fact, precludes this Panel from resolving this issue.

9. CONCLUSION

- 9.1 In light of the foregoing, the applications filed by the Applicants are to be dismissed.

10. COSTS

- 10.1 According to Article 22 para. 2 of the CAS *ad hoc* Rules, parties to CAS *ad hoc* proceedings “shall pay their own costs of legal representation, experts, witnesses and interpreters”. *In casu*, the Panel does not see any reason to deviate from such rule.

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RENDERS THE FOLLOWING DECISION:

1. The application filed by the Alpine Canada Alpin and the Canadian Olympic Committee, and the application filed by the Slovenian Olympic Committee are dismissed.
2. Every party shall bear its own costs.

Sochi, 23 February 2014

Seat of the arbitration: Lausanne (Switzerland)

THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT



Luigi Fumagalli
President of the Panel



Patrick Lafranchi
Arbitrator



Matthew Mitten
Arbitrator