

**DECISION OF THE DISCIPLINARY COMMISSION OF THE  
GYMNASTICS ETHICS FOUNDATION**

**IN THE MATTER OF**

Gymnastics Ethics Foundation

v.

Oceania Gymnastics Union,  
Gymnastics Australia,  
Ms Kitty Chiller (AUS),  
Ms Virginia Elliott (AUS) and  
Ms Erin Pankoke (AUS)

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## A. Parties to the Procedure and Alleged Violations

1. On 2 March 2022, the Gymnastics Ethics Foundation (GEF) opened disciplinary proceedings and issued a Notification of Charges against the Oceania Gymnastics Union (OGU), Gymnastics Australia (GA), Ms Kitty Chiller (AUS), President of the OGU and at the time of the facts also CEO of GA, Ms Virginia Elliott (AUS), at that time a GA National Technical Director, and Ms Erin Pankoke (AUS), FIG Brevet RGI Judge Category 4 (herewith referred to as “the Respondents”; together with the GEF referred to as “the Parties”). The GEF opened disciplinary proceedings following a complaint submitted by Ms Alexandra Kiroi-Bogatyreva, an elite Australian gymnast, and upon the request of the International Gymnastics Federation (FIG), regarding an incident that occurred at the 2021 Oceania Continental Championships (2021 OC Championships), which were held in Carrara (Gold Coast), Australia on 13-21 May 2021 (“the Score Change Incident”).
2. In her complaint, Ms Kiroi-Bogatyreva alleged that multiple violations of FIG Technical Rules and judging misconduct occurred during the 2021 OC Championships. In particular, she asserted that two individuals perceived to be acting as Superior Jury for the Seniors Rhythmic Gymnastics (RG) individuals competition were not qualified to carry out this role. She further alleged that potential match-fixing and further violations of FIG rules occurred during the second day of the competition, which directly impacted her and resulted in her placing second and thus not qualifying for the Olympic spot.

## B. Factual Background

3. The 2021 OC Championships rhythmic gymnastics competitions were held on 13-14 May 2021 in Carrara, Australia. The competition, a Group 2 FIG event, was a qualifying event for the 2020 Tokyo Summer Olympic Games to be held in July 2021. Despite the fact that an insufficient number of qualified judges was available due to the impact of Covid-19 travel limitations, the competition was still held. In light of the Covid-19 related travel restrictions, Ms Chiller got prior approval from the FIG to appoint all-Australian panels.
4. Ms Kiroi-Bogatyreva participated in the seniors Individual All Around discipline of Rhythmic Gymnastics (“RG”) at the 2021 OC Championships. She was competing against two other gymnasts with the aim of securing the Oceania Continental Union Olympic nominative quota place.
5. It is in dispute whether the role of the Superior Jury for this event was carried out only by Ms Erin Pankoke, FIG Brevet RGI Judge Category 4, or also by Ms Virginia Elliott, GA National Technical Director, not a breveted judge at the time, but now in possession of a judging brevet. The Panel’s findings in that regard are discussed in Section G a) below. It is undisputed that neither Ms Elliott nor Ms Pankoke (who acted as President of the Superior Jury) were qualified to act as Superior Jury for this competition since, according to Article 5 of the FIG 2017-2020 General Judges’ Rules, only FIG brevet Category 2 judges or higher may serve in this function.

6. The allocation of the available judges to the panels and Superior Jury was done by Ms Elliott and Ms Pankoke, who appointed the higher-ranking judges as original judges, including Ms Delia Halmu, Australian FIG Brevet RGI Judge Category 2, and Ms Marnie Sterner, New Zealand FIG Brevet RGI Judge Category 3. No FIG approval was sought for the composition of the panels and Superior Jury. However, Ms Elliott assured Ms Pankoke and Ms Halmu that the FIG had approved the panels. Ms Elliott testified that she received this information from someone else within GA.
7. On 14 May 2021, a score was posted for competitor Lidiia Iakovleva for her ribbon apparatus routine: Ms Iakovleva's Difficulty Apparatus (DA) score was 6.0 and her Difficulty of Body (DB) score was 4.0 (Original Score). Ms Iakovleva's coach submitted an inquiry regarding the DA and DB score components of the Original Score, and pursuant to Article 8.4 of the FIG Technical Regulations, Ms Iakovleva's routine was referred to the Superior Jury to re-judge the DA and DB scores.
8. During a break, the Superior Jury reviewed the footage of Ms Iakovleva's ribbon routine and posted a revised score in which Ms Iakovleva's DA score was increased by 1.7 points and her DB score by 0.2 points (Jury Score) for a total increase of 1.9 points. The issue of whether the Superior Jury should have consulted with the Difficulty Judges is discussed in Section G b) below.
9. As a result of the Superior Jury's score change, Ms Lidiia Iakovleva placed first (with a score of 77.55, followed by Ms Kiroi-Bogatyreva with a total score of 76.5, i.e. 1.05 less than Ms Iakovleva) and was declared the winner at the end of the second day. It is in dispute what exactly was said about Ms Iakovleva's qualification for the Olympics during the announcement at the ceremony, as discussed in Section G e) below.
10. It is undisputed that the two judges who judged the original difficulty score, Ms Delia Halmu and Ms Marnie Sterner, were not consulted nor informed of the score change and its reasons, nor did either judge receive any warning from the President of the Superior Jury, Ms Pankoke, prior to the release of their scores. Neither Ms Halmu nor Ms Sterner were reprimanded or sanctioned after the event, although a score change of the order of magnitude of 1.9 points would suggest a serious mistake by the original judges.
11. On 15 May 2021 Ms Kiroi-Bogatyreva appealed the results of the competition to Gymnastics Australia, the Australian National Olympic Committee and the FIG, which then launched an investigation. The appeal was based on the fact that the Superior Jury at the Continental Championships was unqualified for this position and included the following:
  - (a) *"While it is clearly acknowledged there has been challenges to staging selection events for the Olympic Games in a Covid-19 impacted world, there was certainly opportunity to have senior international FIG Brevet judges included as part of makeup of the Superior Jury, viewing the 2021 Continental Championships via livestream technology, to further strengthen the judging expertise and process at this key selection event. There is no reason why a*

*Category 1 or 2 judge from FIG cannot review the video (the same video upon which the Category 4 judge and non-qualified judge amended the total score by 1.9)."; and*

*(b) "It is requested that the 8 routines of the top two competitors, Lidia IAKOVLEVA and Alexandra KIROI-BOGATYREVA, be submitted for independent review by qualified Category 1 and 2 FIG representatives for rejudging to FIG as part of this formal appeal."*

12. On 14 June 2021 the FIG issued a Summary Report on the 2021 OC Championships noting that, in accordance with the FIG Rules for Sanctioning International Events, the rhythmic competitions should be removed from the FIG events calendar and outlining an FIG recommendation for resolving the question of the pending Olympic qualification.
13. Following consultations with the IOC and the agreement of the involved parties – including Ms Kiroi-Bogatyreva – it was decided that the routines would be rejudged by the FIG RG Technical Committee. Prior to the rejudging, the gymnasts were asked to sign a declaration that they agreed for the routines to be rejudged from videos of the event. Upon a request by Ms Kiroi-Bogatyreva, the re-judging proposal was explained first to her lawyer, Paul Horvath, at a meeting on 11 June 2021. The proposal was subsequently explained again to Ms Kiroi-Bogatyreva personally at a videoconference meeting on 13 June 2021, in the presence of the President of her Rhythmic Gymnastics Club, Jeremy Walker, whom she had requested to attend the meeting as a support person. The evidence suggests that the gymnasts did not see the videos of the event before agreeing to the re-judging.
14. The declaration read as follows:  
  
*"The 2021 Oceania Rhythmic Continental Championships (Individual and Group) was conducted with a President of the Superior Jury that was unqualified for the position based on the FIG General Judges' Rules. Therefore, the results from these competitions will be annulled by the FIG and the Rhythmic competitions will be removed from the official calendar (event code Rhythmic 16699). In light of the above, I hereby give my approval for the results and ranking of a new competition to be determined by the FIG Rhythmic Technical Committee through the use of video judging of the routines from the previously annulled event. My coach will be given 24 hours after the results have been distributed to file any inquiries. I understand that once any inquiries are resolved and the results have been signed by the Rhythmic Technical Committee President, all scores and the ranking are final and the competition will be added to the FIG calendar and results page."*
15. The videos used by the Technical Committee for the rejudging were from an iPad that filmed the respective competitions. It is disputed whether they were of the standard and quality required, under the applicable rules, for such an event. This issue is discussed in Section G d) below.

16. On 24 June 2021, the FIG RG Technical Committee undertook the rejudging of all three competitors' routines, the result of which was that Ms Kiroi-Bogatyreva remained in second position. While the total scores were overall lower than those given on 14 May 2021, the margin by which Ms Iakovleva's total score exceeded Ms Kiroi-Bogatyreva's total score increased by a further 1.45 points beyond the margin that existed after the adjustment by the Superior Jury, i.e. the margin increased from 1.05 to 2.5. This led to Ms Iakovleva being declared the winner of the Continental Championships, and her nomination to the Australian Olympic Committee (AOC) and her subsequent selection by the AOC to represent Australia at the 2020 Tokyo Olympic Games.
17. That same day, Ms Kiroi-Bogatyreva appealed against the rejudging results to both the FIG and Gymnastics Australia. The appeals were dismissed by both the FIG and Gymnastics Australia based on the signed waiver.
18. On 29 June 2021, Ms Kiroi-Bogatyreva received a notice of non-nomination from the Australian Olympic Committee (AOC) indicating that an appeal against non-nomination may be lodged following the AOC fast-track process.
19. On 2 July 2021, Ms Kiroi-Bogatyreva filed an appeal against the AOC non-nomination decision with the Court of Arbitration for Sport (CAS).
20. In the CAS proceedings, Ms Kiroi-Bogatyreva raised, amongst others, the following allegations:
  - (a) *That the superior jury was inadequately qualified to perform their role;*
  - (b) *That the quality of the video footage of the routines was inadequate, in that it did not show the routines from two separate angles; and*
  - (c) *That GA announced Ms Iakovleva as winner of the Continental Championships;*
21. Due to the urgency of the matter, the CAS Operative Award was delivered on 16 July 2021; the appeal was dismissed. The Reasoned Award was delivered on 18 October 2021.
22. During the CAS proceedings, Ms Chiller gave a sworn affidavit in which she stated that Ms Pankoke was acting as Superior Jury alone (i.e. without Ms Elliott) and that another category 2 judge (Ms Tracey Redhead) had been invited to the OC Championship but was unable to attend. It is now undisputed that Ms Redhead had in fact not been invited. This issue is discussed in Section G c) below.
23. On 31 July 2021, Ms Kiroi-Bogatyreva left Australia to train in Russia and Azerbaijan.

### C. Background to the Disciplinary Procedure and Procedural History

24. On 27 June 2021, Ms Kiroi-Bogatyreva filed a complaint with the GEF alleging multiple FIG rule violations and match-fixing with respect to the 2021 OC Championships.

25. On 1 July 2021, the FIG forwarded to the GEF a copy of its Summary Report on the 2021 OC Championships together with scanned copies of the signed declarations of the gymnasts that had their routines rejudged.
26. On 24 August 2021, GEF requested consent from Ms Kiroi-Bogatyreva to contact Sports Integrity Australia (SIA) to ascertain the status of pending SIA investigation into the matter. SIA subsequently confirmed on 27 September 2021 that it required consent from Gymnastics Australia to discuss any case details as it was essentially investigating on Gymnastics Australia's behalf. Gymnastics Australia confirmed that it had requested SIA to investigate the Score Change Incident of 14 May 2021 as a potential violation of the Gymnastics Australia Anti-Match Fixing Policy 2013.
27. On 7 December 2021, and following the conclusion of its internal review, the FIG requested the GEF to open disciplinary proceedings against Ms Pankoke and the OGU for violation of FIG rules with respect to the 2021 OC Championships.
28. After reviewing the documentation and available witnesses, the GEF Director decided to refer the matter to a panel of the Disciplinary Commission and issued a Notification of Charges on 2 March 2022.
29. The Disciplinary Commission Panel ("Panel") was constituted as follows:  
  
Dr Despina Mavromati (President),  
Dr Dorothee Schramm and  
Mr Thomas Hayn (Members).
30. Following the Notification of Charges of 2 March 2022, the Parties were requested by the Panel to file their submissions, focusing on -but not necessarily limited to -the following issues / allegations:
  - Jurisdiction of the Disciplinary Tribunal to hear the allegations on the Notification of Charges
  - The appointment of an insufficiently qualified Superior Jury
  - The failure by the Superior Jury to consult with or inform the two judges who judged the difficulty score
  - The announcement of the Olympic qualification at the end of the event
  - The violation of the FIG Integrity Rules beyond any violations of the FIG Technical Rules
  - The quality of the video that was used for the rejudging of the event
  - The allegedly false statements by Ms Kitty Chiller before the CAS regarding the role of Ms Elliott and the invitation to Ms Redhead
31. On 8 April 2022, the Parties filed their respective submissions.
32. On 21 March 2022, and following a request by the GEF, the Panel requested GA to submit the full findings of the SIA investigation by 6 April 2022 as well as an explanation as to the scope and current status of any further investigation that GA was undertaking. GA informed the Panel that it was still awaiting receipt of the "full findings" of the SIA investigation and was therefore unable to provide any detailed

document or report but attached relevant correspondence between GA and SIA regarding the background, the scope and the status of the investigation. GA considered that the complaint of 30 July 2021 was an “*open and active complaint with SIA and that it is appropriate that GA await receipt of SIA's investigation report (or alternatively, confirmation from SIA that no such report will be provided) prior to taking any further action such as referring allegations to a Disciplinary Tribunal.*” Furthermore, GA acknowledged that any violations of the Technical Regulations would not be assessed by GA but by the GEF Disciplinary Commission (as per the GA letter of 5.5.2022).

33. On 17 and 19 May 2022, counsel for the Respondents filed additional affidavits as a response to “*certain new allegations that were not apparent from the Notification of Charges previously served upon the respondents*” and an affidavit of Mr Rhys Harrison upon which they also wished to rely. These filings were accepted into the record by the Panel and the GEF during the hearing.
34. The hearing took place by way of video conference on 20 May 2022 with the following persons present:

On behalf of the GEF:

- Mr Alex McLin, GEF Director
- Ms Molly Oldridge, GEF Intern
- Ms Delia Halmu, RGI Category 2 Judge, witness
- Ms Magdalena Atcheson, RGI Category 3 Judge, witness
- Ms Marnie Sterner, New Zealand, RGI Category 3 Judge, witness
- Ms Nataliya Kuzmina, former President of the FIG Technical Committee for the terms 2013-2016 and 2017-2020, expert witness

On behalf of the Respondents :

- Mr Dominic Villa SC, Counsel for the Respondents
  - Mr Scott Traeger, Counsel for the Respondents
  - Ms Amelia Lynch, Counsel for the Respondents
  - Ms Erin Pankoke, Respondent
  - Ms Virginia Elliott, Respondent
  - Ms Kitty Chiller, Respondent
  - Mr Rhys Harrison, General Manager, Integrity of GA
35. During the hearing, the Parties confirmed that they had no objection to the Panel’s composition, nor any objection to the jurisdiction of the Panel to hear the matters raised in the GEF’s Notification of Charges. Counsel for the GEF filed a new exhibit (an email from Ms Perini aimed at establishing that there was no actual approval from the FIG of the composition of the judges by the OGU), but the Respondents objected to this late filing. The Panel considers that the issues shown in the exhibit filed late by the GEF are sufficiently established by other elements of the file so that it is not necessary to include this submission in the case file.
36. During the witness examination, the Panel heard the three fact witnesses and the expert witness called by the GEF, as well as Ms Elliott, Ms Chiller, Ms Pankoke and Mr



Harrison. All Parties had, and used, the opportunity to question the witnesses and the Respondents, as did the Panel. At the end of the hearing, all Parties confirmed that they had no procedural objections to the way the hearing was conducted.

## D. Jurisdiction

37. Under Art. 19 of the FIG 2019 Statutes, the GEF has jurisdiction for conducting disciplinary proceedings under the FIG Code of Discipline that are subject to FIG rules. The jurisdiction of this Panel to rule on the present matter derives from Art. 35.1 of the FIG 2019 Statutes, according to which *“All international competitions organised by the Continental Unions, the Groups, the Member Federations or other organisations on their territory, are under the authority of the FIG and require collaboration and coordination with the FIG”*. To this effect, the FIG Rules for Sanctioning of International Events set forth specific rules for the approval of such competitions. Pursuant to Article 4 of the FIG 2017-2020 General Judges’ Rules, continental senior championships are classified as a Group 2 competition. As such, the 2021 OC Championships should have been held in accordance with FIG rules and procedures. The obligation to ensure FIG rules are complied with was also clearly stated in the Directives of the 2021 OC Championships.
38. Oceania Gymnastics Union (OGU), represented by its President, Ms Kitty Chiller, was the Continental Union in charge of organizing the 2021 OC Championships. As such, OGU must ensure compliance with, and is subject to, FIG rules (Article 3.1 of the FIG 2020 Technical Regulations and Articles 2 and 4 of the FIG Rules for Sanctioning of International Events).
39. Gymnastics Australia (GA), a Member Federation of the FIG and Member Federation of the OGU, served as the host and Local Organizing Committee of the 2021 OC Championships. Pursuant to Article 4 of the FIG 2021 Code of Discipline, *“The [Member] Federations are also liable of the behaviour of their members, gymnasts, judges and officials as well as for any other person assigned by them to officiate during a competition. They are liable for the implementation of any sanction of the FIG imposed against those persons. [...]”*.
40. Ms Erin Pankoke, an Australian FIG Brevet Rhythmic Gymnastics Individual (RGI) Judge Category 4, had been serving as President of the Superior Jury for the seniors category of the 2021 OC Championships when the Score Change Incident occurred on 14 May 2021 as confirmed in her written statement to the FIG of 22 May 2021.
41. Ms Virginia Elliott was, at the time of the 2021 OC Championships, the GA National Technical Director. At the time of the event, Ms Elliott was not a licensed FIG official but was operating as such and was therefore subject to the relevant FIG rules by virtue of her actions. Since she is now a Category 4 FIG licensed judge in Rhythmic Gymnastics Individual, the FIG rules are now directly applicable to Ms Elliott.
42. Ms Kitty Chiller was, until March 2022, the CEO of Gymnastics Australia and also is still the President of the OGU. In addition to these functions, Ms Chiller is ex officio a

member of the FIG Executive Committee (see Art. 14.2c) of the FIG 2019 Statutes) and thereby also an FIG Authority. As such, Ms Chiller is fully subject to FIG rules and regulations.

43. During the hearing, all parties have explicitly accepted the jurisdiction of the Panel to decide on the case and all matters raised in the Notification of Charges.
44. It is also worth noting that the present proceedings are unrelated to the proceedings that led to the CAS award, to the extent that the prayers for relief and the parties were different in both cases. As a consequence, and notwithstanding the fact that the CAS Award forms part of the file, the current Panel is not bound by the findings of the CAS Award and there is no issue of *res judicata* linked thereto. The same applies to the allegedly pending investigations requested by GA to Sports Integrity Australia (SIA), which is not connected to - or overlapping with - the current Panel's jurisdiction to rule on the present matter.

## E. The GEF's Submissions

45. The GEF made the following main submissions:
  - **Regarding the question of an insufficiently qualified Superior Jury**, the GEF submits that Ms Erin Pankoke and Ms Virginia Elliott acted as Superior Jury at the 2021 OC Championships despite lacking the required qualifications under FIG rules, thus violating Articles 4 and 5 of the FIG General Judges' Rules and Section 1, Art. 7.4 of the FIG 2020 Technical Regulations.

The GEF further submitted that there were more qualified judges present at the 2021 OC Championships, such as RGI Category 2 judges Delia Halmu and Kirsty Le Ray, who would have been qualified to serve on the Superior Jury, so that any arguments linked to the difficulties due to the pandemic are not convincing. Likewise, Ms Redhead was not invited to officiate, despite Ms Kitty Chiller's statement to the contrary. Furthermore, the GEF submits that the Superior Jury had not been approved by the FIG, even though this is required by Art. 3 of the FIG Rules for Sanctioning International Events.

- **Regarding the failure by the Superior Jury to consult with or inform the two judges who originally judged the difficulty score**, the GEF provided witness statements showing that the two judges were not consulted nor informed of the reasons for the score change, even though it is "*customary for the Superior Jury to consult the Panel Judges when there is a significant deviation in scores.*" The former President of the FIG RG Technical Committee, Ms Natalya Kuzmina, also provided an expert statement, according to which the score change process that was followed in this case was through the inquiry of the gymnast's coach (Article 2.4 of the Appendix to the 2017-2020 Code of Points). In this case, the President of the Superior Jury must inform the Difficulty judges of the score change. Furthermore, the GEF submitted that the actions by Ms Elliott and Ms Pankoke violated the FIG 2019 Code of Conduct, Part 6, which

provides that judges must understand and comply with all applicable rules and regulations set out for the sport of gymnastics.

- **Regarding the alleged violation of the FIG rules due to the announcement of the allocation of the Olympic quota space at the end of the event**, the GEF submits that this announcement occurred at the same time as the announcement of the winner of the Oceania Continental Championships in her category of Rhythmic Gymnastics. The GEF provided multiple witness statements and statutory declarations by people who attended the event. This announcement is in contradiction to the FIG Qualification System –Games of the XXXII Olympiad –Tokyo 2020, E. Confirmation Process for Quota, according to which the results may not be officially confirmed before validation by the FIG. Furthermore, the script that must be used during the award ceremony (pursuant to Art. 9 of the FIG 2019 Rules for Award Ceremony) was not respected through the mention that Ms. Iakovleva had won a “ticket to the Olympics”.
- **On the question whether the above circumstances constitute a violation of the integrity rules beyond the violation of any technical violations**, the GEF submitted statements of three judges who were judging at the event, namely Ms Halmu, Ms Sterner and Ms Atcheson. They stated that the way the score change was carried out did not respect the usual process. The GEF submitted that the magnitude of the score change (1.9) was highly irregular and that this unexplained Score Change Incident *“damaged not only the integrity of the sport of gymnastics (ie faith in fair scoring) but also more broadly the reputation of the FIG as the world governing body for gymnastics”*. The GEF further submitted that the actions of Ms Elliott and Ms Pankoke breached FIG integrity rules, i.e. the FIG 2019 Code of Conduct (A. Principles of Integrity), Art. 3 of the FIG 2021 Code of Discipline (any violation of FIG Statutes, policies, rules and regulations as well as infringements of the principles of integrity and sports fairness), Part 6 of the FIG 2019 Code of Conduct (Judge and Official Specific Principles), and Art. 1 of the 2017-2020 General Judges Rules.
- **On the alleged poor quality of the video that was used to rejudge the event**, the GEF submitted that the routines were re-judged based on footage from a single iPad, which was placed on a tripod at the end of the judges’ table. This video judging is limited in its accuracy.
- **On the statements of Ms Kitty Chiller before the CAS regarding the role of Ms Elliott and the invitation of Ms Redhead**, the GEF submitted that Ms Chiller declared in her affidavit to the CAS that Ms Pankoke acted alone as the Superior Jury and specifically stated that Virginia Elliott was not on the Superior Jury. In addition, she expressly claimed that Ms Tracey Redhead had been invited to serve as judge at the 2021 OC Championships. However, according to the GEF, Ms Virginia Elliott’s name was clearly indicated on the judging roster as the Superior Jury. Furthermore, Ms Redhead herself has confirmed in her email of 2 February 2022 that she had not been invited. According to the GEF, the false statements by Ms Chiller violate the FIG 2019 Code of Conduct, specifically Part 3, Section C, which covers the general principles concerning communication made by Athletes, Coaches and Officials. Pursuant to said article, Ms Kitty Chiller had a duty to ensure that her statements were factually correct. Likewise,

the FIG 2019 Code of Ethics Article 2 letter E provides that FIG representatives shall abstain from any false declarations. The GEF notes that Ms Kitty Chiller as an FIG official is, for these purposes, necessarily a representative of the FIG, and as such this article is directly applicable to her.

46. In its closing statements at the end of the hearing, the GEF reiterated its position and held that the Respondents were liable for all infringements of the FIG Rules violations set out in their submissions.

## F. The Respondents' Submissions

47. On 8 April 2022, the Respondents filed jointly their submissions addressing the Notification of Charges. They made additional submissions orally at the hearing.
48. In essence, the Respondents jointly denied all allegations that they have acted dishonestly or unethically, highlighting the significant challenges they were faced with in organising and running the Continental Championships during the most extraordinary circumstances due to the COVID-19 pandemic. The Respondents referred to the strict border controls imposed both by the Australian federal government and by various state governments within Australia, which made it impossible to achieve strict compliance with the FIG regulations relating to the composition of judging panels. They acknowledged that the deviations from the FIG rules, albeit necessary, should have been more properly communicated to the FIG but still submitted that all actions were taken in good faith and to maintain the fairness and integrity of the Continental Championships.
- **On the alleged putting in place of an insufficiently qualified Superior Jury**, Counsel for the Respondents admits that there was an insufficiently qualified Superior Jury but this choice was largely due to the travel restrictions in place throughout 2021; at the time of the Continental Championships, Australia had only two Category 2 brevet judges in the discipline of Rhythmic Gymnastics, namely Kirsty LeRay (Individual only) and Delia Halmu (Individual and Group).

For the above reasons, Ms Kitty Chiller wrote to FIG Sports Director & Technical Coordinator Mr Steve Butcher to enquire about FIG's attitude towards a range of different options, including the holding of a live event (but with compromised judging panels) and a virtual event (which, according to Mr Butcher, would not be allowed by the IOC). On 28 March 2021, Ms Chiller wrote to the FIG President to seek FIG Executive Committee approval for the judging arrangements. The FIG granted approval to the conditions sought on 16 April 2021. Counsel for the Respondents considers that, by approving the plan, FIG implied its permission for some of the D-judges and/or jury members to have a lower qualification than that which was required by the General Judges Rules: that was the only way in which the event could have proceeded with Australian judges, as the FIG was aware of the insufficient number of Category 2 brevet judges in Australia.

The Respondents decided to proceed by allocating the two highest qualified judges to the primary judging panel in order to ensure the quality of the judging at the overall competition was at the highest possible level. Whilst the Respondents would have ideally invited a FIG Technical Delegate to the Continental Championships, they submit that this was not possible due to the strict border restrictions at the time.

- **On the alleged failure by the Superior Jury to consult the two judges who judged the difficulty score**, Counsel for Respondents admits that it did not “occur” to Ms Pankoke to consult with the two judges who judged the Original Score. Article 8.4 of the FIG Technical Regulations 2020 does not require the Superior Jury to consult with the original judges prior to changing a score upon receipt of an inquiry. Therefore, it is not possible to criticize or sanction an official in the absence of a relevant rule requiring such consultation, all the more since such consultation would arguably expose the juror to the being influenced by the original judges, thereby reducing the jury's impartiality.
- **On the alleged announcement of the results at the end of the event**, Counsel for the Respondents submits that there is no recording of the public announcement that was made at the end of the event, nor is there other specific evidence of precisely what was said by the announcer. Ms Chiller and Ms Perini have given evidence that at the conclusion of the Continental Championships, care was taken to ensure that the wording of the announcement made was accurate. Further, the announcements made by GA via its website used the correct wording. Subsequently, Counsel for the Respondents submits that GEF failed to satisfy its burden of proof that the wording used infringed any rules of the FIG. Even if inappropriate words had been used, these would have been caused by the venue announcer and not by the conduct of the Respondents.
- **On the question whether the above circumstances constitute a violation of the integrity rules beyond the violation of any technical violations**, Counsel for the Respondents submits that all officials' decisions were made in good faith, with the athletes in mind and having regard to the extraordinary circumstances due to the COVID-19 pandemic. Even though there was no strict compliance with the General Judges' Rules, the choice to include a category 2 brevet judges on each panel was made in order to achieve consistency and fairness in the overall scoring. Further, when the concerns about the qualification of the Superior Jury were raised by Ms Kiroi-Bogatyreva following the conclusion of the event, GA and the OGU worked with the FIG to come up with a solution (namely the video re-judging of the event) that showed co-operation and fairness to all athletes. The Respondents also consider that the rejudging of the case by the FIG RG Technical Committee showed that the result was correct. An independent assessment of the facts indicates that if any judgment were to be classified as an 'incorrect' judgment, it would be that of the original judging panel.
- **On the decision to rejudge the event based on the video materials that were not of the recommended standard**, GA submits that the video footage was sufficient to allow the Superior Jury and the FIG RG Technical Committee to review the routines of

each gymnast adequately and appropriately. Ms Kuzmina also confirmed that *“the video quality was good and to the same standard as some other international competitions.”* Furthermore, and pursuant to Art. 4.10.4.1(B) of the FIG Technical Regulations 2020, there are no mandatory technical requirements for the Continental Championships (they are merely “strongly recommended”) and there is no express requirement in the FIG Technical Regulations that the routines must be filmed from two angles.

- **On the statements made by Ms Kitty Chiller before the CAS regarding the role of Ms Elliott and the invitation to Ms Redhead**, Counsel for the Respondents stated that they reflected Ms Chiller's true belief at the time they were made and remain true and correct as regards Ms Elliott's role. As explained by Ms Chiller, and corroborated by Ms Renata Perini, in the course of preparing her affidavit for the CAS proceedings Ms Chiller was informed by Ms Perini that Ms Redhead had been asked to judge the Continental Championships but was unavailable. This statement reflected her genuine belief, both at the time of swearing her affidavit, at the CAS hearing, and subsequently.
49. Counsel for the Respondents concluded by denying the accusations of Ms Kiroi-Bogatyрева that the Respondents engaged in a deliberate and dishonest attempt to prevent her from competing at the 2020 Tokyo Olympic Games. Both GA and the OGU faced a difficult choice to conduct the Championships as faithfully as possible to the spirit, if not the letter, of the FIG regulations. According to the Respondents, deficiencies in the administration do not equate to deficiencies in ethics, whereas all review processes (within GA, the FIG and the CAS) have found that Ms Iakovleva was the correct gymnast to be nominated for the Olympics.

## G. Findings

50. The Panel has carefully considered all submissions filed by the Parties and made orally during the hearing and the witnesses that were heard during the hearing. For reasons of procedural economy, the Panel will only refer to those submissions and arguments that it deems relevant to substantiate its decision.

### a) The Appointment of an Insufficiently Qualified Superior Jury

#### **The appointment of an insufficiently qualified Superior Jury for the Disputed Event – and the consequences thereof.**

51. Article 5 of the FIG General Judges' Rules outlines the qualification requirement of the Superior Jury based on the Groupings of International Competitions. Pursuant to Article 4 of the FIG General Judges' Rules, continental senior championships are classified as a Group 2 competition. As such, only FIG brevet category 2 judges or higher could serve on the Superior Jury at the 2021 OC Championships (Art. 5 of the FIG 2017-2020 General Judges' Rules).
52. It is clear from the file – and is further accepted by the Respondents – that there was an irregularity with respect to the Superior Jury composition, which constitutes a

violation of Art. 5 of the FIG 2017- 2020 General Judges’ Rules. This is also explicitly acknowledged in the waiver that the gymnast had to sign following the cancellation of the disputed competition. Furthermore, acting in a judging capacity without the appropriate classification directly violates Section 1, Art. 7.4 of the FIG 2020 Technical Regulations.

53. As a next step, the Panel needs to establish whether these violations could have been avoided by certain actions by the Respondents or justified by the circumstances.

**The difficulties due to the travel restrictions imposed by the Australian authorities due to the Covid-19 pandemic and the existence of alternative solutions**

54. As a justification, the Respondents invoke the difficult situation the OGU and GA were faced with due to the travel restrictions imposed by the Australian authorities due to the Covid-19 pandemic. To fully comply with the General Judges’ Rules, a total of 5 Category 1 or 2 brevet judges would have been required (ie four D-judges and one member of the Superior Jury), but there was an insufficient number of those judges in Australia and New Zealand that were allowed to travel to the Gold Coast. The Panel is mindful of the difficulties caused by the Covid-19 pandemic and the numerous adjustments needed to allow the OC Championship to take place. However, the Panel is not ready to accept that the action taken was the only alternative to having the OC Championship cancelled altogether.
55. It is undisputed that there were some sufficiently qualified judges present at the 2021 OC Championships, such as RGI Category 2 judges Delia Halmu and Kirsty Le Ray, who would have been qualified to serve on the Superior Jury. Similarly, notwithstanding Ms Chiller’s statement before the CAS that another Category 2 judge from NZL (Ms Tracey Redhead) had been invited to officiate but refused, this was not the case; Ms Redhead confirmed that she was not invited, and this was accepted during the hearing. If Ms Redhead had been invited, she could have formed the Superior Jury and replaced Ms Pankoke as the President of the Superior Jury.
56. In addition, the Respondents could have appointed one of the participating Category 2 judges to form the Superior Jury. Instead, as submitted by the Respondents – and confirmed by the Respondents during the hearing – Ms Pankoke and Ms Elliott decided, with knowledge of Ms Chiller, to proceed by allocating the two highest qualified judges to the primary judging panel in order to ensure that their expertise had the broadest and most consistent impact across competitors within the relevant disciplines; in other words, this aimed at ensuring that the quality of the judging at the overall competition was at the highest possible level.
57. The Panel is not convinced by this justification. The clear wording of the Article 5 of the FIG General Judges’ Rules requires a Category 2 judge or higher to be part of the Superior Jury. This requirement is fully justified in view of the extensive powers granted to such Superior Jury, which can simply overturn a decision rendered by the difficulty score judges, as happened in the present case. Putting in place a system whereby a Category 4 judge can reverse a decision of a Category 2 judge would in fact endanger the trust of the gymnasts and the audience in the ranking system. Against

this background, the Panel found the testimony of the expert witness Ms Kuzmina convincing that it was a grave mistake to appoint a Category 4 judge as President of the Superior Jury. According to Ms Kuzmina, the President of the Superior Jury is not a simple manager but needs experience and knowledge to lead the competition and review the scores of the original judges in case of an inquiry. The Panel finds this explanation convincing.

58. Therefore, the Panel finds that there were at least two alternative solutions that could -and should - have been undertaken by the organizers, namely, to invite Ms Redhead as additional Category 2 judge to form the Superior Jury, or to appoint one of the participating Category 2 judges as Superior Jury.

**Did the OGU request and receive approval for the irregular composition of its judging panels?**

59. The Panel is mindful of the Respondents' position that they made a judgment call in a difficult situation at the time of appointing the Superior Jury. However, while the Panel acknowledges the difficulty of the situation, this was not the Respondents' judgment call to make. In this context, it is important to stress that Ms Kitty Chiller, who was at the time both the President of the Oceania Gymnastics Union (OGU) and the CEO of GA, wrote to FIG Sports Director & Technical Coordinator Mr Steve Butcher on 28 March 2021 to seek FIG Executive Committee approval for holding the 2021 OC Championships in the presence of all-Australian judges, due to the difficulties caused by the pandemic. During the hearing, Ms Chiller acknowledged that she did not request explicit approval for the composition of the Superior Jury or the appointment of inferior category judges for the OC Championships. This is also obvious from the content of the letter that was sent to Mr Butcher and which forms part of the file. According to Respondents, by granting the requested approval, the FIG would have understood that the OGU would appoint compromised judging panels and had given its implicit approval for such panels.
60. The Panel is not convinced that Ms Chiller's request equals a request for approval of the judges' composition in deviation of the applicable rules nor that the approval by the FIG implied an approval of inferior category judges appointed as Superior Jury. Even if the FIG was positively aware of the insufficient number of Category 2 judges in Australia, this would not equal any approval of how the available Category 2 judges would be allocated to the panels and the Superior Jury. If Ms Chiller had requested the approval of the solution adopted by Ms Elliott and Ms Pankoke, the Panel considers it very likely, in light of Ms Kuzmina's expert testimony, that the FIG would have insisted on appointing a Category 2 judge as Superior Jury. This judgment call was for the FIG to make, not for the Respondents.
61. Indeed, Ms Chiller's request for approval implicitly acknowledges this, by considering that her letter of 28 March 2021 expressly requested FIG approval of how the D and E panels were composed for Men's and Women's Artistic Gymnastics in terms of category levels of the available judges. Ms Chiller could - and should - have made the same request for the D panel and Superior Jury for Rhythmic Gymnastics. The Respondents were well aware of the fact that it was for the FIG to give such approval



and this is also confirmed by the fact that Ms Elliott reassured Ms Pankoke that such approval was received. Given the importance of the 2021 OC Championship for the Olympic qualification, and the optics of giving a Category 4 judge the position as President of the Superior Jury with the power to overturn the scores of higher qualified judges, the Panel finds it incomprehensible that no approval from the FIG was requested.

62. From the above analysis, it follows that the violation of Art. 5 of the FIG General Judges' Rules and Section 1, and Art. 7.4 of the FIG 2020 Technical Regulations is not justified by the circumstances.

**Does it change the assessment that the Superior Jury's ranking order was later upheld?**

63. Counsel for the Respondents argued that, even though the score was significantly changed by the Superior Jury, the result was correct, as the ranking of Ms Kiroi-Bogatyreva and Ms Iakovleva was subsequently confirmed by the FIG during the reassessment of the video material. The Panel cannot accept this as a justification or as a mitigating circumstance, as the two Difficulty Judges that decided the initial score (which was subsequently overturned) were never alleged to have committed an error in their judgment, nor has there been a disciplinary procedure opened against them. This was also confirmed during the hearing.
64. On the contrary, one may consider that the massive increase of the difficulty score by the Superior Jury could be linked to the fact that such Superior Jury was irregularly constituted and therefore lacked the necessary qualifications to act as such. Be that as it may, the FIG rules in question are about more than just the end result – they are also about the acceptance of the end result by the competing gymnasts and the public. Justice must be perceived to be effectively delivered. Having a Category 4 judge and an individual who has no judging brevet (as discussed in the following) overrule the scores of higher qualified judges, including a Category 2 judge, cannot be perceived as delivering justice by a gymnast whose Olympics qualification is affected by such score change.

**Has Ms Pankoke acted as a sole member of the Superior Jury or was she acting together with Ms Elliott?**

65. According to the program of the Australian Gymnastics Championships 2021 and the pertinent session of the Disputed Event, both Ms Elliott and Ms Pankoke were appointed as Superior Jury for the selected session. The Panel agrees that the official program indicated that Ms Elliott was appointed as Superior Jury for Junior Competitions and Ms Pankoke for Senior Competitions in the Qualifications Group B (Session 03, see the table below). However, it becomes clear from the various elements of the file, the witness statements and the witness testimony during the hearing that Ms Virginia Elliott *de facto* served alongside Ms Pankoke as the second member of the Superior Jury for the Disputed Event, despite lacking any FIG judge qualifications at the time of the event.

Session 03 Junior & Senior Qualifications Group B			SELECTED PANEL		
JURY: Virginia Elliott PANEL A Junior			JURY: Erin Pankoke PANEL B Senior		
Judge No.	State/Country	Name of Judge	Judge No.	State/Country	Name of Judge
D1	NSW	Kirsty LeRay*	D1	NSW	Kirsty LeRay
D2	VIC	Kateryna Logachova*	D2	VIC	Kateryna Logachova
D3	NSW	Catherine Western	D3	NSW	Delia Halmu
D4	QLD	Kerrie Mancini	D4	NZL	Marnie Sterner

Chart: excerpt from the Australian Gymnastics Championships 2021 -Judging Panels

66. The Panel gives particular weight to Ms Pankoke’s initial Statutory Declaration to the FIG dated 22 May 2021 in relation to the Disputed Event, in which Ms Pankoke explicitly stated that “*myself and the National Technical Director judged the routine in accordance with the rules (...)*” (emphasis added). It is noteworthy that her declaration relates to the Score Change Incident rather than the entire competition that day (which included both Junior and Senior qualifications). This was further corroborated by the various statements of judges present at the Disputed Event as well as by their testimony provided during the hearing, according to which Ms Elliott was perceived as acting alongside Ms Pankoke as the Superior Jury for the Senior Competition.
67. The Panel was not convinced by Ms Pankoke’s response during the hearing, that she was confused when she was writing the aforementioned declaration; it is further not convinced by the answer given by Ms Elliott when asked to comment on this statement, saying that Ms Pankoke referred to their appointments as Superior Jury but for different competitions. The Panel is rather convinced that – even though not officially designated as such – both Ms Pankoke and Ms Elliott *de facto* acted as Superior Jury for the Disputed Event: indeed, they both went into a different area in order to proceed to the rejudging of the event, with Ms Pankoke admittedly commenting the performance of the gymnast while watching the video and Ms Elliott confirming Ms Pankoke’s comments. It is irrelevant whether Ms Elliott meant to do so only by way of reassurance, and whether Ms Pankoke was actually influenced by Ms Elliott’s agreement, which seems likely especially against the background of Ms Elliott’s and Ms Pankoke’s admitted history of judging together. In any event, their way of proceeding gave at least the perception of a *de facto* collaboration on the Superior Jury for the Senior qualifications. To avoid such external appearance, Ms Elliott and Ms Pankoke should have simply appointed a member of the administrative staff to hold the iPad for them individually, rather than looking at the screen and commenting on the performance together.
68. As a consequence, Ms Pankoke and Ms Elliott have both violated the pertinent regulations as will be further examined below.

### Who is to be held liable for the aforementioned violation of the FIG rules?

69. As shown above, the Panel is convinced that both Ms Pankoke and Ms Elliott decided together on the composition of the Superior Jury and also appeared to be acting as Superior Jury at the 2021 OC Championships despite lacking the required qualifications under the FIG rules. By doing so, they violated Art. 5 of the FIG General

Judges' Rules and Section 1, Art. 7.4 of the FIG 2020 Technical Regulations. The latter provides that *"In order to act in any of the judging capacities listed in Art. 7.8 below, it is necessary (...) to possess the FIG judges' brevet currently in effect and, where so required, the classification appropriate to the judging function in question. (...)"*.

70. The fact that Ms Pankoke was reassured by Ms Elliott that FIG approval of the Superior Jury composition was received does not change her responsibility to review the written FIG approval and confirm that her decision on the composition of the Superior Jury was fully in line with such approval. The same applies even more to Ms Elliott, given the fact that she actively gave reassurances to a more junior colleague and would have had a special responsibility to ensure that these reassurances were correct.
71. Ms Kitty Chiller (AUS), at that time CEO of GA and President of the OGU, knew of the composition of the Superior Jury and failed to include this composition in her request for FIG approval, or to submit a separate request for FIG approval in that regard. By not seeking FIG approval for the deviation from Art. 5 of the FIG General Judges' Rules, she bears responsibility for the infringement of this provision, and infringed Art. 3.1 of the FIG 2020 Technical Regulations and Art. 3 of the FIG Rules for Sanctioning International Events.
72. Finally, the OGU as the organizer of the 2021 OC Championships and GA as the host and Local Organizing Committee are liable for the above-mentioned violations of the FIG Rules and the decisions and acts by Ms Chiller, Ms Elliott and Ms Pankoke (Article 4 of the FIG 2021 Code of Discipline). In particular, according to Art. 2 and 3 of the FIG Rules for Sanctioning International Events, the organizing member federation must respect the FIG Rules and Regulations and seek FIG approval.

#### b) *The Failure by the Superior Jury to Consult with or Inform the Difficulty Judges*

73. The second issue that the Panel has to determine is **whether the Superior Jury was obliged to consult with or inform the difficulty judges of the significant deviation in the score.**
74. The GEF provided various witness statements of individuals who stated, among others, that it is *"customary for the Superior Jury to consult the Panel Judges when there is a significant deviation in scores."* However, during the hearing it was clarified that many of these statements concerned the procedure prior to the release of the original results, rather than the inquiry procedure after the original results have been released.
75. Article 8.4 of the FIG Technical Regulations 2020, entitled "Inquiries of the Score", provides as follows: *"Inquiries for the Difficulty score\* are allowed (...). The inquiries must be examined by the Superior Jury and a final decision (which may not be appealed) must be taken at the very latest: (...) After review of the routine the score is changed (risen or lowered) or unchanged (...)"*. As pointed out by Ms Natalyia Kuzmina,

the inquiry procedure is further provided in Article 2.4 of the Appendix to the 2017-2020 Code of Points. According to Article 2.4.6, “*In the case the score is changed, the President of the Superior Jury informs the Supervisor and the D[ifficulty]-Judges concerned*”. Consequently, as confirmed by Ms Kuzmina, the failure to inform the Difficulty judges constitutes a violation of the aforementioned provision. By contrast, none of the rules requires a discussion with, as opposed to a mere information to, the difficulty judges.

76. Counsel for the Respondents acknowledged that Ms Pankoke did not consult with the difficulty judges because it did not “occur” to her to do so. Ms Pankoke also testified that she acted alone because she did not want to be influenced by the difficulty judges but form her opinion on her own. Since Ms Pankoke and Ms Elliott were (knowingly) lacking the qualifications to act as Superior Jury members, and in view of the magnitude of the score change, it seems odd to the Panel that they decided not to consult with the difficulty judges, all the more since they knew that these judges were higher qualified than themselves. In any event, the failure to discuss the score change with the difficulty judges does not constitute a violation of any FIG rule. This does not, however, change the fact that the failure to inform the difficulty judges of the score change constitutes a violation of Article 2.4.6 of the Appendix to the 2017-2020 Code of Points.

#### c) The False Statements of Ms Chiller in Her CAS Affidavit

77. The third issue that the Panel has to determine is whether **the false statements of Ms Chiller in her affidavit to the CAS violated FIG Rules.**
78. According to the Notification of Charges, Ms Kitty Chiller made false statements relating to the Score Change Incident of 14 May 2021, both in relation to the role of Ms Virginia Elliott at the 2021 OC Championships (in that she explicitly stated that Ms Elliott did not act as Superior Jury in the competition) and with respect to Ms Tracey Redhead (in that she was invited to serve as judge at the 2021 OC Championships). While the statement regarding Ms Elliott may be in line with the official program, the alleged invitation of Ms Redhead was explicitly denied by the latter through her written statements and it seems now accepted by Ms Chiller that Ms Redhead was not in fact invited. The Panel is therefore convinced that the content of this particular statement was false.
79. Following her testimony and based on the various elements of the file, the Panel is not convinced that Ms Chiller gave her testimony knowing that it was false. There is no evidence on record that Ms Chiller observed Ms Elliott’s *de facto* activity on the Superior Jury, and also the GEF accepted at the hearing that Ms Chiller’s testimony was not willfully false. However, regarding the invitation to Ms Redhead, as a highly ranked official in charge of the organization of the OC Championship (currently CEO of the OGU and at the time of the relevant facts also CEO of GA), Ms Chiller should have acted with far more diligence in double-checking the content of her statements. In particular, she should have asked to see the invitation instead of solely relying on hearsay, all the more for the purposes of providing a sworn affidavit produced in an

arbitral proceeding. Indeed, Art. 2e of the FIG 2019 Code of Ethics (reiterated in Part 2, Art. 2e of the FIG 2019 Code of Conduct) provides that *“The FIG representatives are to handle their responsibilities with diligence and care. They shall abstain from any false declarations and shall behave in a dignified and respectful manner. They demonstrate fairness in sport activities and decisions which might affect the reputation of the FIG”* (emphasis added). Ms Chiller agreed to abide by the Code of Ethics by taking the oath set out in Art. 11.14.10 of the FIG 2019 Statutes.

80. The Panel thus considers that her conduct was in violation of the diligence and care obligation enshrined in Art. 2e of the FIG 2019 Code of Ethics and Art. 11.14.10 of the FIG 2019 Statutes.

#### d) The Video Quality

81. The fourth issue that the Panel has to determine is whether **the quality of the video used to rejudge the Score Change Incident was of insufficient quality.**
82. The Panel carefully considered the submissions by GEF and heard various witnesses during the hearing. According to GEF, the routines were re-judged based on footage from an iPad, which was placed on a tripod at the end of the judges’ table. According to the GEF, this video judging is limited in its accuracy. The Panel is convinced that, even though this video did not meet the recommended standards, it was still sufficient for the rejudging purposes and its use did not violate the applicable rules and more specifically Article 4.10.4.1 (B) of the FIG 2020 Technical Regulations, which strongly recommends, *but expressly does not impose*, the use of a Full HD video system for continental championships.
83. More particularly, even though the video cannot capture the full height of the apparatus throw, the various witnesses explained convincingly how they are trained and instructed to determine when there is a “large throw” that would justify a point increase. In particular the expert witness, Ms Kuzmina, explained that *“[t]he video was good. It is important to understand that a video is never as good as being at the event, but the video quality was sufficient to re-assess all elements and mistakes. With regards to the height of the throws, there is an agreement that if the apparatus leaves the screen, then the throw is high. This is normal procedure for all competitions and for judges’ exams.”* The Panel also understands that the point increase does not depend on how high the throw exactly is, as long as the throw is two times the height of the gymnast.
84. It follows that this particular element does not constitute a violation of FIG Rules and cannot lead to a sanction for any of the Respondents.

#### e) The Announcement at the Ceremony

85. The fifth issue that the Panel has to determine is whether **an announcement was made about Ms Iakovleva’s qualification for the Olympics in violation of the FIG Rules.**

86. On the afternoon of Friday 14 May 2021, Ms Lidiia Iakovleva was announced to be the winner of the Oceania Continental Championships in her category of Rhythmic Gymnastics. According to the GEF, at the same ceremony, it was also announced that Ms Iakovleva was the successful Olympic representative for that category. The GEF provided several witness statements as well as statutory declarations by people who attended the event (which were almost identical in the way they were drafted and formulated) confirming that the announcement not only indicated the winner of the event but also the “Olympic qualifier”. This would be a violation of the FIG rules (FIG Qualification System – Games of the XXXII Olympiad –Tokyo 2020, E. Confirmation Process for Quota), since the results may not be officially confirmed before validation by the FIG. Furthermore, the script used was allegedly not in line with the applicable rules for the award ceremony (Art. 9 of the FIG 2019 Rules for Award Ceremony).
87. During the hearing, the Panel heard the witnesses and was not convinced by their testimonies that the announcer actually announced that the winner had also been qualified for the Tokyo Olympics. According to the Respondents, the announcer only said that Ms Iakovleva earned the right to be nominated for an Olympic quota place (which the Panel understands would not violate FIG rules), not that she had won that place. When asked about these subtle differences, Ms Atcheson and Ms Halmu testified that they could not exactly remember the precise wording that the announcer had used.
88. As there was no recording of the public announcement that was made at the end of the event, and the witnesses’ recollection about what was precisely said by the announcer was vague, the Panel considers that the GEF has not met its burden of proof regarding the exact content of the announcement. As a consequence, a violation of FIG rules is not established and no sanctions are imposed based on this circumstance.

#### f) Violation of Integrity Rules

89. The final issue that the Panel has to determine is **whether the Respondents violated the integrity rules of the FIG beyond the violation of any technical regulations**. Such a violation comes into consideration in particular for the Score Change Incident.
90. Art. 3 of the FIG 2021 Code of Discipline provides that the principles of integrity and sports fairness are infringed should someone, *inter alia*, damage the image of gymnastics, the FIG or its members through their behaviour, their words or their deeds.
91. Overall, and notwithstanding the irregularity in the appointment of the Superior Jury and the issues examined above (including the unprecedented magnitude of the score change), the Panel is not convinced that these actions were undertaken in a willful and deceitful manner, with a view to breaching the integrity rules of the FIG or the FIG 2019 Statutes (including Article 2.1 related to competition manipulation). However, the Panel does agree with the GEF that the totality of circumstances did damage – or

were likely to damage - the reputation of the FIG as the world governing body for gymnastics.

92. Indeed, it is of utmost importance that the gymnasts and public can trust that a competition that decides on an Olympic qualification is in line with important FIG rules on how to judge such a competition. The perception by the public and gymnasts that a Category 4 judge and an individual with no judging brevet can overturn, by an unprecedented margin, the scores given by higher qualified judges does serious harm to the reputation of the competition and of the FIG. Losing an Olympic qualification due to these circumstances can also be traumatic for the gymnast concerned. The seriousness of the situation goes far beyond a mere technical violation.
93. Furthermore, the Panel does not consider decisive for the imposition of sanctions that all officials' decisions were made in good faith, as stated by Counsel for the Respondents. The Panel is mindful of the difficulties due to the Covid-19 pandemic, which could possibly serve as an indication of good faith. However, these difficulties cannot exonerate the Respondents from the overall responsibility for their unilateral actions. The Respondents were well aware of the importance of the 2021 OC Championships for the Olympic qualification of the gymnasts. Had the Respondents acted accordingly, they would have simply requested FIG approval for the panel compositions, as they had done for other questions. This would likely have resulted in having a Category 2 judge as President of the Superior Jury, which would have legitimized the outcome of the competition. Instead, the results of that competition had to be cancelled altogether and replaced with video judgments, which cannot fully restore the trust lost through the Score Change Incident. By taking unilateral decisions on which FIG rules to "sacrifice" in a difficult situation, the Respondents seem to have ignored the importance of perception in all matters linked to the reputation of their international federation; it is also important to acknowledge the harm suffered – directly or indirectly, through their actions and decisions – not only by Ms Kiroi-Bogatyreva but also the other participants at the competition, and not least the public perception of integrity of the sport and the FIG.
94. The decisions forming the violation of integrity were taken by Ms Chiller, Ms Elliott and Ms Pankoke. Furthermore, the OGU as the organizer of the 2021 OC Championships and GA as the host and Local Organizing Committee are liable for the decisions and acts by Ms Chiller, Ms Elliott and Ms Pankoke (Article 4 of the FIG 2021 Code of Discipline).
95. The specific sanctions to be imposed to each of the Respondents are further examined in the next section.

## H. Applicable sanctions

96. Art. 3 of the FIG 2021 Code of Discipline provides that "[a]ny infringement of the Statutes, Rules and Regulations, Policies and/or Procedures, as well as of the principles of integrity and sports fairness by the FIG member Federations, gymnasts, officials (judges, coaches, medical staff or others) or by members of the FIG Authorities is liable

*to sanctions provided for by the Statutes and this Code.”* Art. 43.3 (a) to (q) of the FIG 2019 Statutes provides for a wide range of disciplinary measures which can be imposed amongst others on a Federation or an individual, while Art. 43.3 (r) allows the Panel to impose *“any other sanction which could be proposed by the Disciplinary Commission of the Gymnastics Ethics Foundation”*.

97. In determining the sanctions to be imposed on the Respondents, the Panel carefully considered all the circumstances of the case, including the individuals' experience, the effect of their actions / omissions on other individuals and / or the FIG, but also the principle of proportionality.

### **Ms Virginia Elliott and Ms Erin Pankoke**

98. In line with Part 6 of the FIG 2019 Code of Conduct (Judge and Official Specific Principles), judges must understand and comply with all applicable rules and regulations set out for the sport of gymnastics. Furthermore, Art. 5 of the FIG 2017-2020 General Judges' Rules clearly outlines the qualification requirements (i.e. the category of brevet required) of FIG judges to serve in the function as Superior Jury for competitions. As it was shown by the evidence and the various elements of the file, both Ms Elliott and Ms Pankoke decided to put an insufficiently qualified Superior Jury in place, and knowingly sat as the Superior Jury even though they were not qualified to do so, which resulted in a breach of Art. 5 of the FIG General Judges' Rules, Section 1, Art. 7.4 of the FIG 2020 Technical and Art. 3 of the FIG 2021 Code of Discipline.
99. The Panel considers the infringement of the FIG rules by Ms Elliott is even more reproachable than the infringement by Ms Pankoke. This is because (1) Ms Elliott was acting as Superior Jury despite having no brevet at all at the time, and (2) she had assured Ms Pankoke that FIG had given its approval to the panel compositions. While Ms Elliott testified that she had received this information from someone else, it is her responsibility as Technical Director to ensure she has accurate information, especially when giving reassurances to a less senior colleague who would have a more difficult position to question the information received from a person of Ms Elliott's status. In this regard, it was Ms Elliott's responsibility under Part 3, Section C of the FIG 2019 Code of Conduct to *“ensure that athletes, coaches, officials and others are appropriately informed and have accurate information for decisions”*. The Panel has no doubt that Ms Pankoke would never have agreed to act as Superior Jury if she had known that the FIG had not approved this. While Ms Pankoke should have verified the information provided by Ms Elliott, the Panel's decision on sanctions takes into account the difficult position she was in.
100. As a result, the Panel has determined, pursuant to Art. 43.3 of the FIG 2019 Statutes that Ms Elliott's brevet shall be suspended and she shall be excluded from participating as judge in any FIG activities and other international events for one year and six months. To avoid misunderstanding, during this period, Ms Elliott shall also not sit on any Superior Jury in any other capacity she may hold and regardless of whether this practice is admissible at all, which the Panel doubts. Ms Pankoke's brevet



shall be suspended and she shall be excluded from participating as judge in any FIG activities and other international events for one year.

### **Ms Kitty Chiller**

101. Ms Kitty Chiller was, at the time of the relevant facts, a GA, OGU and FIG official pursuant to Art. 3 of the FIG 2021 Code of Discipline. Ms Chiller, in her capacity of President of the OGU and CEO of GA, breached Art. 5 of the FIG 2017-2020 General Judges' Rules on the qualification requirements (i.e. the category of brevet required) of FIG judges to serve in the function as Superior Jury for competitions and the integrity obligation in Art. 3 of the FIG 2021 Code of Discipline. She further breached her general duty of diligence and care enshrined in Art. 2e of the FIG 2019 Code of Ethics (reiterated in Part 2, Art. 2e of the FIG 2019 Code of Conduct) and Art. 11.14.10 of the FIG 2019 Statutes as described above.
102. As a result, Ms Chiller shall be prohibited to formally representing the FIG or the OGU (i.e. making speeches, awarding prizes or any other act of ceremonial representation) in connection with any gymnastics competition on the FIG calendar for a period of 2 years in line with Art. 43.3 of the FIG 2019 Statutes, starting from the date of the notification of this decision. To avoid misunderstanding, this prohibition does not encompass representing the OGU in correspondence aimed at organizing events, such as requests for FIG approval etc.

### **The Oceania Gymnastics Union**

103. To the extent that, under Art. 35.1 of the FIG 2019 Statutes, competitions organised by the Continental Unions "are under the authority of the FIG", the OGU must comply with Art. 3.1 of the FIG 2020 Technical Regulations and Arts. 2 and 3 of the FIG Rules for Sanctioning of International Events. These regulations set forth specific rules for the approval of such competitions. The obligation to ensure FIG rules are complied with was also clearly stated in the Directives of the 2021 OC Championships (Appendix 4). As such, the OGU - both individually and through its President at that time, namely Ms Chiller – breached Art. 5 of the FIG 2017-2020 General Judges' Rules, which clearly outlines the qualification requirements (i.e. the category of brevet required) of FIG judges to serve in the function as Superior Jury for competitions, while it failed to request the approval of the FIG for the non-compliance with the FIG Rules for the organization of the OC Championship.
104. It follows that the OGU shall pay a fine of CHF 5,000 in line with Art. 43.3 of the FIG Statutes.

### **Gymnastics Australia**

105. GA falls within the scope of Art. 4 of the FIG 2021 Code of Discipline, according to which it is also liable for the behaviour of its members, judges and officials. As such, GA is also liable for the breach of Art. 5 of the FIG 2017-2020 General Judges' Rules – which clearly outlines the qualification requirements (i.e. the category of brevet required) of FIG judges to serve in the function as Superior Jury for competitions and

its applicability to continental championships as provided for under Art. 7.14 of the FIG 2020 Technical Regulations.

106. It follows that GA shall pay a fine of CHF 5,000 in line with Art. 43.3 of the FIG 2019 Statutes.

## I. Decision

In view of the above reasons, the Panel decides as follows:

- 1) Ms Virginia Elliott's brevet shall be suspended and she shall be excluded from participating as judge in any FIG activities and other international events for one year and six months, starting from the date of the notification of this decision.
- 2) Ms Erin Pankoke's brevet shall be suspended and she shall be excluded from participating as judge in any FIG activities and other international events for one year, starting from the date of the notification of this decision.
- 3) Ms Kitty Chiller shall be prohibited from formally representing the FIG or the OGU (i.e. making speeches, awarding prizes or any other act of ceremonial representation) in connection with any gymnastics competition on the FIG calendar for a period of 2 years in line with Art. 43.3 of the FIG 2019 Statutes, starting from the date of the notification of this decision.
- 4) The OGU shall pay a fine of CHF 5,000 in line with Art. 43.3 of the FIG 2019 Statutes.
- 5) The GA shall pay a fine of CHF 5,000 in line with Art. 43.3 of the FIG 2019 Statutes.
- 6) The Respondents shall each pay a contribution to the costs of these proceedings in the amount of CHF 500.
- 7) Each Party shall bear its own legal costs and expenses incurred with respect to these proceedings.
- 8) This decision is to be published.

Lausanne, 13 June 2022

The GEF Disciplinary Commission Panel

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Dr Despina Mavromati  
President

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Dr Dorothee Schramm  
Member

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Mr Thomas Hayn  
Member

## J. Right of Appeal

The Respondents have a right to appeal against this decision to the GEF Appeal Tribunal by lodging an appeal in writing within 21 days of notification of this decision, in accordance with Art 30 of the FIG Code of Discipline.

### **Appeal proceedings before the GEF Appeal Tribunal**

Unless provided otherwise in specific provisions, only the decisions rendered by the Disciplinary Commission may be appealed to the Gymnastics Ethics Foundation (GEF) Appeal Tribunal.

Only the Parties directly involved in the proceedings and showing proof of a legal interest to act shall be eligible to lodge an appeal to the Appeal Tribunal.

Upon request of a majority of the Executive Committee or of the FIG President, the FIG shall in all cases be eligible to lodge an appeal. The appeal shall be lodged by the FIG Secretary General.

In order to be admissible, the appeal shall be lodged in writing and contain:

- the factual argument
- the reasons for the appeal
- the submission of any and all means of proof relied upon by the Appellant or an offer to submit any and all means of proof (such as the request for the hearing of witnesses or the request for an independent expert)
- the request of a hearing if wished so by the Appellant
- the conclusions of the Appellant

If the Appellant wishes to call witnesses or experts a hearing shall be held.

Once his/her statement of the case is submitted, the Appellant shall not be authorized to produce new means of proof unless he/she justifies that he/she has not been able to do so for reasons beyond his/her control or his/her behest. The Appeal Tribunal may automatically conduct the necessary investigations.

The appeal shall be signed by the Appellant and sent in writing to the Director of the GEF to the attention of the GEF Appeal Tribunal within 21 days from the notification of the decision. Should the appeal be submitted by email it shall be admissible provided that it contains an electronic signature officially certified and dated via a secure server.

Should the appeal be sent by mail it shall be delivered to a Swiss post office at the latest by midnight of the last day of the time limit or be delivered to the GEF office to the attention of the Appeal Tribunal during its usual opening hours not later than the last day of the time limit. The Appellant is responsible for showing proof, within a time limit to be determined by the president of the Appeal Tribunal, that his/her appeal has been lodged in due time, otherwise, the appeal shall be considered inadmissible.

In order for the appeal to be admissible, the Appellant shall transfer in advance the expenses of CHF 5,000 onto the GEF account at the same time the appeal is lodged or at the latest by the end of the appeal deadline. This amount shall be refunded to the Appellant if his/her appeal is granted. It shall be kept by the GEF if the appeal is considered inadmissible or is fully or partly rejected. The GEF is exempt from the obligation to pay the expenses in advance for its appeal.