TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

COURT OF ARBITRATION FOR SPORT (CAS)
Ad Hoc Division – Games of the XXXIII Olympiad in Paris

CAS OG 24/09 Canadian Olympic Committee & Canada Soccer v. Fédération Internationale de Football Association & New Zealand Football & New Zealand Olympic Committee Inc. & Fédération Française de Football & Comité National Olympique et Sportif Français & Federación Colombiana de Fútbol & Comité Olímpico Colombiano

sitting in the following composition:

President of the Panel: Mr Roberto Moreno, Paraguay
Arbitrators: Prof. Philippe Sands KC, United Kingdom
Ms Laila El Shentenawi, Egypt

AWARD

in the arbitration between

Canadian Olympic Committee
Canada Soccer **("Applicants")**

and

Fédération Internationale de Football Association (FIFA)
New Zealand Football
New Zealand Olympic Committee Inc.
Fédération Française de Football (FFF)
Comité National Olympique et Sportif Français
Federación Colombiana de Fútbol (FCF)
Comité Olímpico Colombiano **("Respondents")**

and

International Olympic Committee (IOC)

("Interested Party")

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I. PARTIES

1. The Applicants are:

   a. Canadian Olympic Committee
   b. Canada Soccer

2. The Respondents are

   a. Fédération Internationale de Football Association
   b. New Zealand Football
   c. New Zealand Olympic Committee Inc.
   d. Fédération Française de Football
   e. Comité National Olympique et Sportif Français
   f. Federación Colombiana de Fútbol
   g. Comité Olímpico Colombiano

3. The Interested Party:

   a. International Olympic Committee (IOC)

II. FACTS

A. Background Facts

4. The facts as set out in this section are intended to provide a summary of the main relevant facts as established by the Panel, on the basis of the evidence and submissions of the Parties. Additional facts not mentioned here may be set out, where relevant, in the considerations of the merits below.

5. On 24 July 2024, a representative of New Zealand Football wrote to FIFA reporting an incident which occurred in the team's training session of 22 July 2024.

6. According to this communication, after about one hour from the commencement of the training session, the team noticed a drone hovering high above the pitch. They stopped training and informed an onsite security who alerted the police. The police were able to locate the person flying the drone and took him into custody.

7. The person filming the training session with a drone turned out to be a staff member from the Canada women's football team, Mr Joseph Lombardi. Mr Lombardi was part of the Canadian delegation and his relationship with Canada Soccer is not disputed.

8. Mr Lombardi had filmed with a drone the training sessions of Canada's rival New Zealand on two occasions: on 20 and 22 July 2024.

9. Mr Lombardi pleaded guilty before the French criminal authorities and was later issued an 8-month suspended prison sentence.

10. On 24 July 2024, New Zealand Football filed a formal complaint with the FIFA Disciplinary Committee.

11. On the same date, the Canadian Olympic Committee issued two media releases which were made available in writing to the Panel regarding the incidents. The second statement stated that the following actions were undertaken and included a statement by the team's coach Ms Beverly Priestman:

"[…] 1. Joseph Lombardi, an unaccredited analyst with Canada Soccer, is being removed from the Canadian Olympic Team and will be sent home immediately. 2. Jasmine Mander, an assistant coach to whom Mr. Lombardi report sent, is being removed from the Canadian Olympic Team and will be sent home immediately. 3. COC has accepted the decision of Head Coach Bev Priestman to remove herself from coaching the match against New Zealand on July 25th . (…) Canada Soccer has been transparent and cooperative throughout the process (…) Canada Soccer's Women's National Team Head Coach Bev Priestman has made the following statement: (…) "I am ultimately responsible for conduct in our program. Accordingly, to emphasize our team's commitment to integrity, I have decided to voluntarily withdraw from coaching the match on Thursday".

12. On 24 July 2024, the FIFA Disciplinary Committee opened disciplinary proceedings against Canada Soccer, Ms Priestman, Ms Mander and Mr Lombardi for the potential breach of Article 13 of the FIFA Disciplinary Code (FIFA DC, 2023 Edition), and Article 6.1 of the Regulations Olympic Football Tournaments Games of the XXXIII Olympiad Paris 2024 Final Competition (the "ROFT Paris").

13. On 26 July 2024, Canada Soccer filed its position in the disciplinary proceedings in FIFA.

14. Mr Lombardi made two statements, dated 24 and 25 July 2024. Relevant parts of his second statement, which was made available to the Panel in writing, are transcribed:

As confirmed by the French authorities, I filmed New Zealand on July 20th without informing or consulting with any members of the Canada Women's Olympic staff/delegation. The film on July 20th was not very good from an analysis perspective, and this was the reason why I decided to go back again on July 22nd and filmed New Zealand as I personally wanted to gather better insights to elevate my personal image amongst the technical staff of Canada. The film on July 20th was not shared as I did not feel there was any information/intelligence to provide the technical staff. There is no back up and the original version was deleted from the drone as confirmed/verified by the French authorities during the investigation. Except myself, no one else on the Canadian Women's Olympic staff/delegation were involved in the drone incidents and like I have mentioned earlier, I take full responsibility and accountability for my actions. This incident should not impact the staff and team as they were not involved, nor was any of the images that were recorded sent to staff or viewed by anyone within our delegation, so there is no competitive advantage gained from what happened because nothing was shared/sent/stored with any delegation members of Canada.

15. On 27 July 2024, the Chairperson of the FIFA Disciplinary Committee referred the matter to the FIFA Appeal Committee (the "FIFA AC") and requested for "internal information" with direct connection to the respective proceedings.

16. On 27 July 2024 Canada Soccer sent additional information to FIFA; in particular, Canada Soccer stated that they were sending an email dated March 2024 which:

shows an analyst resisting a request from Bev Priestman to engage in flying drones for scouting purposes, and thus calls into question whether this practice had been systemically embedded in the culture of the women's national team. Canada Soccer is investigating this matter fully.

17. The email chain provided by Canada Soccer included an email by Ms Priestman, coach of Canada's women team, stating that in March 2024, after a scout refused to engage in spying, she was seeking advice and input from another employee:

regarding this formal email on spying. It's something the analyst has always done and I know there is a whole operation on the Men's side with regards to it.

18. On 27 July 2024, Canada Soccer specified *inter alia* before the FIFA AC that it suspected that "the practice of using a drone stems back to [redacted] when he was the head coach of the women's national team. In other words, this was a practice started by one person - [redacted] - and continued by Bev Priestman. It was not facilitated by the federation".

19. On 27 July 2024, the FIFA AC issued its decision in the case, sanctioning Canada Soccer, Ms Priestman, Ms Mander and Mr Lombardi. The sanction relevant for these proceedings is the sanction imposed on Canada Soccer (the FIFA AC Decision):

The following disciplinary measures are imposed on The Canadian Soccer Association:

a) The Canadian Soccer Association is ordered to pay a fine to the amount of CHF 200,000. The fine is to be paid within 30 days of notification of the present decision.

b) Six (6) points are automatically deducted by FIFA from The Canadian Soccer Association's Women's representative team's standing in Group A of the OFT.

20. The grounds were issued and notified to Canada Soccer on 28 July 2024. The grounds will be further discussed below (*infra*, paras. 59-65).

III. CAS PROCEEDINGS

21. On 29 July 2024, at 10h00 (Paris time), the Applicants filed an application with the CAS Ad Hoc Division with respect to the FIFA AC Decision of 27 July 2024 (the "Application").

22. On 29 July 2024 at 12h05 (Paris time), the CAS Ad Hoc Division notified the Application to the Respondents and, at 15h07 (Paris time), invited the latter to file their Answers by 30 July 2024, 09h00 (Paris time) and summoned the parties to a hearing to be held on 30 July 2024 at 15h00 (Paris time).

23. On 29 July 2014 at 14h35 (Paris time), the CAS Ad Hoc Division notified the Parties of the composition of the Arbitral Tribunal with the following members:

TRIBUNAL ARBITRAL DU SPORT
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24. On 30 July 2024 at 00h27 (Paris time), FIFA filed its Answer.

25. On 30 July 2024 at 07h48 (Paris time), the New Zealand Olympic Committee and New Zealand Football filed a joint Answer.

26. On 30 July 2024 at 09h15 (Paris time), the Comité Olímpico Colombiano filed its Answer.

27. On 30 July 2024 at 11h50 (Paris time), the IOC informed the CAS Ad Hoc division that it will attend the hearing primarily as an observer.

28. On 30 July 2024 at 13h34 (Paris time), the Federación Colombiana de Fútbol filed its Answer.

29. On 30 July 2024 at 15h00 (Paris time) an in-person hearing was held with the participation – in addition to the Panel, and Mr Antonio Quesada, CAS Head of Arbitration Services— of the following persons:

For the Applicants:

- Mr Adam Taylor and Nicolas Zbinden (counsel)
- Ms Marianne Bolhuis - Canadian Olympic Committee
- Mr Kevin Blue - Canada Soccer

For FIFA:

- Mr Miguel Liétard – Director of Litigation
- Mr Alexander Jacobs

For the New Zealand Olympic Committee and New Zealand Football

- Ms Tara Pryor (remotely)

For the Comité National Olympique et Sportif Français

- Mrs Constance Popineau

For Comité Olímpico Colombiano and Federación Colombiana de Fútbol

- Mr Félix Andrés Burgos Méndez
- Mr Andrés Tamayo (remotely)
- Ms Ana María Lasprilla (remotely)

For the International Olympic Committee (IOC):

- Mr Antonio Rigozzi
- Mr Patrick Pithon (remotely)

30. Two witnesses gave testimony during the hearing: Ms Janine Beckie (called by the Applicants) and Mr Joseph Lombardi (called by FIFA).

31. At the beginning of the hearing, the parties declared that they had no objections to the composition of the Panel. At the conclusion of the hearing the parties expressly stated that they did not have any objection to the procedure adopted by the Panel and confirmed that their right to be heard and to be treated equally was respected.

32. In the course of the hearing, the Parties agreed that the Panel should first issue an operative part of the Award on the next day (31 July 2024) by 12h00 (Paris time), in order to allow all teams involved in the group to prepare for their matches.

33. Towards the conclusion of the hearing, on 30 July 2024 (17h54 Paris time), a request was received from the Brazilian Olympic Committee seeking access to the case file and to be granted a deadline until 31 July 2024 at 10h00 (Paris time), to file a third-party brief. The Brazilian Olympic Committee was notified on 30 July 2024, at 19h33 (Paris time), that the Panel (following receipt of the parties' comments during the hearing) rejected the joinder request on the basis that it was extemporaneous and would occasion unacceptable delays in the rendering of the operative part of the Award.

34. On 31 July 2024, the Panel issued the operative part of the Award which was notified by the Parties by the CAS Ad Hoc Division at 11h53 (Paris time).

IV. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

A. The Parties' submissions

35. The Panel has carefully considered all the written and oral submissions of the parties but addresses only those submissions that are necessary to explain its reasons for making the Award, particularly in paras. 54-87, below.

B. The Applicants' requests for relief

36. In their Application, the Applicants sought the following relief:

> The Appealed Decision (i.e. the decision of the FIFA Appeal Committee dated 27 July 2024 number FDD-18967, and/or the grounds of the decision dated 28 July 2024, in which it imposed an automatic deduction of six points upon the Canadian Soccer Association's Women's representative team's standing in Group A of the Olympic Football Tournaments - Games of the XXXIII Olympiad Paris 2024 – Final Competition) is partially set aside, in that no points deduction is imposed, or in the alternative a reduced points deduction is imposed.

C. The Respondent's requests for relief

37. FIFA requested an award:

> (a) Rejecting the requests for relief sought by the Applicants; (b) Confirming the Appealed Decision; (c) Ordering the Applicants to bear the full costs of these arbitration proceedings (if any).

38. The Comité Olympique et Sportif Français and the FFF did not file written submissions, but the representative of the French Olympic Committee in attendance at the hearing asked that the Appealed Decision be confirmed.

39. The New Zealand Olympic Committee and New Zealand Football stated that:

> The NZOC and NZF recognise the sanctions imposed reflect the seriousness of the integrity breach while reiterating the impacted party NZF, has had no direct recompense. We acknowledge FIFA's position and are supportive of the commitment to eliminate such practices from the game, to preserve the integrity of sport.

40. The Federación Colombiana de Fútbol requested that:

> the Decision issued by the FIFA Appeal Committee on July 28, 2024, be upheld in its entirety, thus maintaining the automatic deduction of six (6) points from the CSA.

41. The Comité Olímpico Colombiano asked CAS that:

> The Appealed Decision be confirmed in its entirety, both the deduction of points and the financial fine.

D. The Interested Party

42. On 30 July 2024, the IOC submitted an email stating that given "the limited nature of the request to set aside the decision of the FIFA Appeal Committee of 27 July 2024, the IOC does not intend to make any substantive submission with respect to the Application" and that "as an interested party, and subject to new developments at the hearing, the IOC will thus attend primarily as an observer".

V. JURISDICTION

43. Rule 61.2 of the Olympic Charter relevantly 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".*

44. In turn, Article 1 of the CAS Arbitration Rules for the Olympic Games (hereinafter referred to as the "CAS Ad Hoc Rules") establishes that:

> *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.

45. Thus, Article 1 of the CAS Ad Hoc Rules establishes that the following requirements must be met for CAS to have jurisdiction: (i) the dispute must be covered by Rule 61 of the Olympic Charter; (ii) the dispute must arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games; and (iii) in relation to appeal cases, the applicant must have exhausted any internal remedies available to it.

46. In the present case it is evident that all three requirements are met.

47. With regard to (i), this dispute is about a sanction imposed by FIFA on Canada Soccer during the football tournament in the Olympic Games. A dispute has arisen in connection with the Olympic Games and there is a dispute covered by Rule 61(2) of the Olympic Charter (*ex multis*, CAS OG 06/01; CAS OG 06/02; CAS OG 22/02). With regard to (ii), the Application has been filed within the 10-day period, as the FIFA AC Decision was issued on 27 July 2024, during the OG. Finally, (iii) the FIFA AC Decision is a final decision within the internal normative framework of FIFA: no further action is possible (*vide*: Article 47(3) and 49 of the FIFA Statutes in conjunction with Art. 52 of the FIFA DC).

48. None of the parties to this arbitration contested the jurisdiction of the Panel and in fact they expressly accepted it.

49. Accordingly, the Panel concludes that it has jurisdiction to hear the Application.

VI. APPLICABLE LAW

50. Under Art. 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*".

51. In the present case the "applicable regulations" are those of FIFA, namely: the FIFA DC, the ROFT Paris and Circulars sent by FIFA.

VII. DISCUSSION

A. Basic legal framework

52. These proceedings are governed by the CAS Ad Hoc Rules enacted by the International Council of Arbitration for Sport ("ICAS") on 14 October 2003 (amended on 8 July 2021). They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 ("PILA"). PILA applies to this arbitration as a result of the express choice of law contained in art. 17 of the Ad

Hoc Rules and the choice of Lausanne, Switzerland as the seat of the ad hoc Division and of its panels of Arbitrators, pursuant to art. 7 of the CAS Ad Hoc Rules.

53. According to art. 16 of the CAS Ad Hoc Rules, the Panel has *"full power to establish the facts on which the application is based"*.

B. Merits

1. Introductory observations

54. The Applicants have asked the Panel to address one aspect of the FIFA AC Decision of 27 July 2024. That decision addressed the use of a drone to carry out a surveillance of the preparations by the New Zealand football team, in advance of a group game between the two teams, in the Women Olympic Football Tournament of the XXXIII Olympiad Paris 2024. The details are set out below (paras. 59-65).

55. The Applicants seek to challenge the deduction of six points, in respect of the Canadian team's performance in the Group stage of the competition. In these proceedings the Applicants do not seek to appeal the other sanctions imposed (inter alia, the fine of CHF 200'000).

56. Accordingly, the issue to be addressed by the Panel in these proceedings is discrete: is the six-point deduction sanction proportionate to the violation of the rules that has occurred, and if not, should the points deduction be reduced or eliminated?

57. The Applicants accept that violations of the FIFA DC and the ROFT Paris occurred, for which they are responsible. They have not sought to deny the gravity of the infringements and their full responsibility (see para. 2 of the Application). The Applicants have "wholeheartedly" apologized in the course of the hearing, to their rivals, to FIFA and to the Olympic community in general. They claim that the only intervening person was Mr Joseph Lombardi, who they describe as an "unaccredited analyst present at the Games as a part of the Canadian delegation" (para. 10). They insist that the points deduction was "grossly disproportionate" (e.g. pp. 3, 25) and that the players had no role in the act of wrongdoing, or any knowledge prior to it becoming public, and that they should not be "scapegoated" (e.g. para. 25; also para. 3, "a scapegoating exercise").

58. Accordingly, the Panel proceeds on the basis that the violations are recognised to be grave and reprehensible, they have no place in a sporting competition and they undermine the basic values of sports and the fundamental spirit of Olympic competition, namely "the value of good example" and principles of "friendship, solidarity and fair play" (Olympic Charter – Fundamental Principles of Olympism, 1 and 4). The only issue is whether the sanction is grossly disproportionate and should not be maintained. In this regard, the Panel notes that the case appears to be "unprecedented" in the technical sense: it is not aware of any precedent involving spying with drones during the Olympic Games nor any such specific type of case before CAS, and no such precedent was presented by any party in these proceedings.

2. The FIFA AC Decision and its grounds

59. The FIFA AC Decision found that Canada Soccer breached Article 13 of the FIFA DC and Article 6.1 of the ROFT Paris. These provisions respectively establish that:

FIFA DC: 13. Offensive behaviour and violations of the principles of fair play

1. Associations and clubs, as well as their players, officials and any other member and/or person carrying out a function on their behalf, must respect the Laws of the Game, as well as the FIFA Statutes and FIFA's regulations, directives, guidelines, circulars and decisions, and comply with the principles of fair play, loyalty and integrity.

2. For example, anyone who acts in any of the following ways may be subject to disciplinary measures: a) violating the basic rules of decent conduct; b) insulting a natural or legal person in any way, especially by using offensive gestures, signs or language; c) using a sports event for demonstrations of a non-sporting nature; d) behaving in a way that brings the sport of football and/or FIFA into disrepute; e) actively altering the age of players shown on the identity cards they produce at competitions that are subject to age limits.

ROFT Paris 6.1:

The member associations that qualify for the Tournaments (the "Participating Member Associations") agree, in collaboration with the respective NOC, to comply with and ensure that every player, coach, manager, official, media officer, representative, guest and any other person carrying out duties throughout the final competition, and for the entire stay in the host countries, on behalf of a Participating Member Association (hereinafter "Delegation Member") complies with these Regulations, the Laws of the Game, the FIFA Statutes and FIFA's other regulations, in particular the FIFA Disciplinary Code, the FIFA AntiDoping Regulations, the FIFA Code of Ethics and the FIFA Equipment Regulations, as well as with any other FIFA circular letters, regulations, guidelines, directives and/or decisions

60. According to the FIFA AC Decision, the breach in question – the deployment of a drone used to spy on another team — is inconsistent with principles of: i) fair play, ii) security and safety, and iii) reputation.

61. The FIFA AC Decision found that the Canada Soccer breached these regulations. Among other matters, the Decision stated that:

- Canada Soccer was informed in at least three instances of the prohibitions of the use of drones;
- public available press reports indicate that this is not the first instance of use of drones by Canada Soccer;
- Mr Lombardi confessed the use of a drone in two instances and that he was a member of the Canadian team delegation;
- Ms Priestman, the coach, has publicly acknowledged her responsibility for the actions of her team and chose to step aside of the opening match of the Olympic Games football competition;
- Ms Priestman had previously asked a performance analyst (who was identified by name) to conduct spying, which he refused to do due to moral reasons and to maintain her reputation in the field of performance analysis;

- Subsequently Ms Priestman sent an email to a Canada Soccer employee (who was identified by name) admitting that spying is something the Canada team has "always done" and it was "difference between winning and losing"; the email was forwarded by e-mail to Canada Soccer's [redacted];

- Ms Mander knew the whereabouts of Mr Lombardi when the drone incident took place and has not denied her involvement in such spy practices; and

- Ms Priestman, Ms Mander and Mr Lombardi were ousted from the OG and suspended indefinitely pending the completion of the investigation.

62. The Sole Arbitrator of the FIFA AC concluded that he was "comfortably satisfied that there existed a breach of Article 13 of the FIFA DC and 6.1 of the ROFT Paris".

63. The FIFA AC Decision noted that Canada Soccer being a legal person, the sanctions prescribed in Article 6(1) and (3) of the FIFA DC were applicable. It indicated that the breach of Articles 13 and 6.1 do not provide for specific sanctions and thus different disciplinary measures pronounced under Article 6 of the FIFA DC could be imposed.

64. Citing Article 25.1 of the FIFA DC, the decision noted that the disciplinary measures to be imposed had to accord to objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances. In this sense, the FIFA AC Decision identified the following considerations:

- given FIFA's zero tolerance policy towards the use of prohibited technology for illicit purposes and spying on an opponent (which Canada Soccer did), the incident had to be condemned in the strongest possible terms with sanctions that reflected the gravity of the offence in order to uphold fairness, respect and safety;

- the actions were inexcusable and unacceptable, even more so since the incident took place in the Olympic Games, the most prestigious multi-sport event in the world, watched by millions, violating values of the Olympic Charter;

- the actions tarnished the reputation of football because they occurred in the Olympic Games;

- The actions violated the integrity of sports, and constituted conduct that presented a threat to equality of arms and damaged the integrity of the competition, offering an unfair advantage in preparation for a match; and

- Canada Soccer carried a high responsibility to act correctly, uphold the principles of fair play, integrity in the game and not disrepute FIFA and the game. This was heightened by the fact that Canada was the reigning champion of football for the Olympic Games, having won gold in Tokyo 2020.

65. The FIFA AC thus imposed on Canada Soccer a deduction of 6 points for the Olympic Games football competition and a fine of CHF 200'000, which it considered appropriate and proportionate to the infringement. The sanctions were based on the "unprecedented and egregious conduct" and by the circumstances of the "global setting in which they took place". Canada Soccer failed to ensure its

official abide by the fundamental principles of sport, for cheating and spying "are conducts that cannot be tolerated under any circumstances".

3. The Applicants' arguments against the FIFA AC Decision

66. As mentioned, the Application recognizes the seriousness of Mr Lombardi's conduct "and does not seek to challenge liability". It insists, however, that it "cannot be right that the players be punished by mere association". The Applicants' position is that the six-point deduction is "grossly disproportionate", and that the Decision is a "poorly reasoned scapegoating exercise, that lacks any nuance".

67. The Applicants construct a case for supporting their claim that the six-point deduction was "grossly disproportionate". The following is a summary of the arguments deployed by the Applicants:

- Approach to point deduction: it is not normal or usual for the FIFA DC to impose a points deduction. This sanction is the most extreme sanction available under the Code to be imposed against a legal (nonpersonal) entity. From 1,005 cases resolved by FIFA in 2023, 545 cases resulted in a fine being imposed. However, a points deduction was apparently only imposed in 4 cases. Points deductions are a sanction of last resort, as seen in cases in which smaller points deductions have been made for grievous conduct (CAS 2022/A/9175 and 9176 and CAS 2015/A/3875).

- Approach to disciplinary violations during competitions: the Applicants cite three FIFA decisions in which players were involved in the misconduct and no points deduction "was even close to being awarded".

- Historic approach to espionage cases: the Applicants mention that the Canada players have been treated "more harshly than those involved in previous incidents of espionage and surveillance", citing the Bielsa case and Liverpool FC's alleged spying on Manchester City FC, which had comparatively lower (if any) sanctions.

- The sanction approaches disqualification: the sanction is so severe as to have the potential to end the chances of the Canadian team to progress in the competition, within a three-match group stage. It also goes beyond the scope of the misconduct, which only arose in the context of the New Zealand game.

- Inappropriate use of sanctioning options: the Applicants contend that if FIFA wanted to punish the organization and not the players, they could have focused on a fine as the most effective deterrent; the amount of the fine, they note, is only one-fifth of the available sanctioning power. FIFA could have also considered a more targeted options, such as the implementation of a prevention plan, restitution to New Zealand, without the need to go for a "nuclear sanctioning option" that failed to address the effect on the players.

- Failure to consider mitigating factors: according to the Applicants, FIFA failed to consider whether any mitigating factors existed and whether cooperation was shown by the Applicants. This appears to be an unfortunate consequence of the "nuclear" approach and cite various actions taken (suspension of Mr Lombardi and Ms Mander; agreement that Ms Priestman would not coach the

New Zealand match; suspension of Ms Priestman as soon as it became aware of the March 2024 correspondence; voluntarily disclosure of a piece of evidence adverse to it; commencement of an ongoing investigation; not contesting any element of any violation with which it was charged before the FIFA DC; and failure of the drone surveillance to actually lead to any unfair advantage; etc.).

- No sanctioning with respect to wider conduct: the Applicants mention that the players for these Games should not and legally cannot be disadvantaged by the fact that an ongoing investigation was taking place in Canada Soccer as to whether it is a wider issue within the organization. They argue that the FIFA AC accepted that the sanctions must only relate to the actions of Mr Lombardi at these Games, that the email does not refer or involve Mr Lombardi and that it cannot be assumed for the purposes of these proceedings there was any systemic issue of spying in Canada Soccer.

68. In sum, the Applicants contend that the Decision came "as a horrible shock", especially to the players, who, they argue, had no involvement in or awareness of the actions of Mr Lombardi, with their dream of defending their championship in Tokyo being "thrown into jeopardy" which was "extremely unfair" and "without justification". This is also an "unprecedented sanction with no reference to any other case law" and "without considering mitigating factors", concluding that the players should retain the chance "to play for one of the highest and most unique honours in sport".

4. Summary of the Panel's view of the merits

69. Having regard to all of these arguments, the Panel has concluded that the Application should be dismissed.

70. In the view of the Panel, it cannot be said that the sanction of a points deduction imposed by the Appealed Decision is "grossly disproportionate" to the violation of the rules that has occurred.

71. In the following sections the Panel explains its reasoning.

5. The applicable standard of assessment

72. The Applicants claim that the Decision should be set aside because the sanction is "grossly disproportionate" and disagree with the reasoning therein (see e.g., Application paras. 3, 25).

73. From the earliest stage of development of the case law, CAS panels have followed the position of Swiss law according to which a decision made within an association's discretionary power is presumed to be valid and effective unless a threshold has been crossed; a CAS Panel can only interfere with the discretionary decision of an association in case of misuse of its discretion (e.g., TAS 2001/A/330). This was subsequently refined and confirmed in other rulings: "only if the sanction is evidently and grossly disproportionate in comparison with the proved rule violation and if it is considered as a violation of fundamental justice and fairness, would the panel regard such a sanction as abusive and, thus, contrary to mandatory Swiss law" (CAS 2005/A/1001, citing CAS 2005/C/976 & 986

approvingly; see also CAS 2014/A/3467). In a more recent case, which cites other precedents, it was said that "the Panel should only review the applied sanction if the latter is considered 'evidently and grossly disproportionate' to the offence (see e.g. CAS 2014/A/3467; CAS 2016/A/4840; CAS 2018/A/5800, paras. 72ff). When reviewing such sanction, the Panel should always have regard and deference to the expertise of the association which imposed the sanction" (CAS 2022/A/8651). Finally, other recent cases have fully confirmed this jurisprudential tendency (e.g., CAS 2022/A/8731 or CAS 2022/A/8692).

74. The Panel is aware of a minority line of reasoning in the case law which appears to take a lower stringency standard. Thus, whilst mentioning the "well-recognized CAS jurisprudence" according to which CAS must regard the association's expertise, a CAS Panel has held that if it is found nonetheless that the sanction is disproportionate, "it must, given its de novo powers of review, be free to say so and apply the appropriate sanction (see CAS 2015/A/4338, at para. 51) (see CAS 2017/A/5003; CAS 2020/A/7596, para 251)" (as quoted in CAS 2022/A/8651).

75. However, even if this line of reasoning actually supposes a break from the main jurisprudence, something which need not be pursued here, the Panel has decided that that the applicable standard is, as the main jurisprudential line holds, one of "evidently and grossly" disproportionate.

6. The sanction imposed by the FIFA AC Decision is not "grossly" disproportionate

76. The question to be answered by the Panel is thus the following: is the sanction of six-points deduction imposed by the FIFA AC Decision "evidently and grossly" disproportionate, as the principal line of the jurisprudence requires?

77. The Applicants argue that the Decision is "grossly" disproportionate and, although they did not directly address the issue of it being "evidently" disproportionate, they did aver that it is a "poorly reasoned scapegoating exercise, that lacks any nuance".

78. The Panel considers that, in relation to points deduction, the Appealed Decision may be said to be harsh (but perhaps less so when the fine is taken into account in considering the totality of the sanction). The fact that the points deduction is harsh, however, does not necessarily mean that it may be said to be grossly disproportionate. This is all the more so where it is not disputed that the actions were serious and of great gravity, unprecedented, and took place in what is the most important international multi-sports event in the world, that is, the Olympic Games (*supra* paras. 57-58). The Applicants express their strong disagreement with the sanction; but disagreement cannot be equated with arbitrariness, as another precedent has noted: arbitrariness is not found where there is a mere disagreement with a specific sanction, "but only if the sanction concerned is to be considered as evidently and grossly disproportionate to the offence" (CAS 2014/A/3562, cited approvingly in CAS 2022/A/8731). Given the gravity and characteristics of the offence in this case, the affirmation that the sanction was "grossly disproportionate" must be based on a clear arbitrariness –i.e., absence of reasoning— which is not found in this decision.

79. The FIFA AC Decision addresses in detail the values and principles which are at stake in this case, along with the regulations that have been violated (paras. 52-

54) and contains detailed exposition of the general and aggravating circumstances which led to the sanction (paras. 64-68). In the view of the Panel, the reasoning cannot be said to be arbitrary, "poorly reasoned" or lacking "any nuance". To the contrary, it sets out supporting arguments and contextualizes the violations which took place and framed them in the value structure of sports and the Olympic Games. The Decision carefully considered the relevant factual background, and while one may perhaps not agree with all the arguments exposed, it is plain that the thought and exposition adopted has a clear logic. The decision cannot be said to be arbitrary, i.e., based on mere whim or fiat instead of reasons.

80. Further, it is appropriate to have regard to other sanctions available under Article 6 of the FIFA DC, which indicates a broad range of discretion given to the sanctioning body. The Decision could have imposed a greater sanction, such as expulsion from the competition (section 3.i) or a forfeiting of games already played (section 3.j), which would have directly precluded Canada from continuing in the competition. Instead, the position adopted allowed Canada the possibility of continuing to play in the competition and even to proceed to the next stage was actually quite nuanced given the circumstances. Allegations by the Applicants that the harshest sanction was imposed ("the nuclear option") simply does not cohere with the existing disciplinary normative framework. The sanction is thus not deemed as "grossly" disproportionate.

81. Finally, for the avoidance of doubt, the Panel briefly mentions the other arguments set forth by the Applicants and adds further countervailing considerations which indicate that the decision cannot be characterized as "grossly" disproportionate:

- Approach to point deduction: the FIFA AC has not imposed points deduction for a spying case before this one because this is the first spying case on record in the institution. The idea of abnormality or unusuality is inapposite. The 4 cases in which it did impose sanctions are for non-payment of monetary awards, which seem less grievous than spying. The two CAS cases mentioned also deducted points but have different factual backgrounds and, in any event, show that there is a margin of discretion for applying points deduction in football.

- Approach to disciplinary violations during competitions: the arguments in the previous paragraph are, *mutatis mutandi*, applicable to this one. Again, the facts of the cases cited had no relation to spying or drone surveillance during the Olympic Games, which is the offence here analyzed.

- Historic approach to espionage cases: the cases mentioned by the Applicants were not judged by FIFA. FIFA has speculated, not without basis, that it would have imposed a higher sanction in the Bielsa case; on the other hand, as the Applicants themselves mention, the Manchester City case was settled so there is no idea of a sanction being available.

- The sanction approaches disqualification: while the sanction is harsh, as has been noted, it also leaves ample room for the team to (i) continue playing in the Olympics instead of being *e.g.*, directly disqualified, (ii) and it still leaves chances for a qualification instead of *e.g.*, a forfeiture (in fact: the team qualified, something which shows that the sanction was not automatic

disqualification). The applicability of the sanction beyond the New Zealand game goes hand in hand with the deterrent nature of the sanction.

-Inappropriate use of sanctioning options: firstly, as will be explained below (infra, paras. 83-87), the sanction does not punish the players but the organization. Secondly, a severe sport sanction may be reasonably thought to be a more positive deterrent than a fine (which can perhaps convert offenses into a "price" to be calculated for future potential offenders). Moreover, this is not the "nuclear sanctioning option" as mentioned, since there were other more severe sanctions in the catalogue (disqualification, forfeiture, etc.).

- Failure to consider mitigating factors: with regard to the cooperation mitigating factor alleged by the Applicants, FIFA's position is not unreasonable: the FIFA DC does in fact establish a "duty to collaborate" (Article 12), which validity is not under discussion in this case. However, cooperation is a basic duty in disciplinary proceedings that is expected to be effective at every moment – particularly, *prior* to the discovery of the offence— and not only afterwards, as happened in this case. Moreover, since the sanction was not the harshest one available, it is arguable that mitigating factors were considered in the decision.

- No sanctioning with respect of wider conduct: the offense took place in *this* edition of the Olympic Games, and the sanction was for *this* edition of the Olympic Games only. Other investigations, which are beyond the scope of this Application, may or may not lead to other sanctions which in any case will not apply to this edition of the Olympic Games.

82. The Panel thus submits that it is not possible to read the FIFA AC Decision and categorize it as a "grossly" or "evidently" disproportionate sanction, which constitutes an abuse of the power or discretion, or even shocking. The decision is not an exercise of pure arbitrary power but purports to contain a logic and reasoning according to the circumstances of the case. The offence was, as has been noted, serious and unprecedented, and the sanction is within the measures provided by the FIFA DC which actually provides for more severe sanctions.

7. On the repeated idea that the FIFA AC Decision punishes the players

83. The Applicants also repeatedly argue in their written and oral submissions that the Decision is grossly disproportionate because it scapegoats and unfairly punishes the players.

84. In this regard, the Panel paid great attention to the testimony of Janine Beckie, a Canada team player, who expressed her shock and devastation as to what had passed. On the basis of her credible testimony, together with the letter written by all the players, the Panel notes that there was no evidence presented before it that any of the players knew or were involved in the espionage. The Panel expresses its sympathy to the players, to the extent they appear as unfortunately affected by this episode, along with players from the other teams participating in the group, who were also affected by these events.

85. That said, it is clear the Applicants' argument in this regard cannot be sustained: the sanctioned party is clearly Canada Soccer and not the players. Nothing in the Appealed Decision suggests otherwise. It is true that a consequence of the

sanction affects the players and, in sport, this is a scenario which has happened before and will happen again. Moreover, strict and direct liability of the federation or association for actions of persons within their organizations – expressly provided for in Article 8 of the FIFA DC - is an enshrined principle of the *lex sportiva*: it is the principal mechanism for avoiding impunity and undermining the effectiveness of a system of sanctions. There can be no doubt, on the basis of the evidence before the Panel, that Mr Lombardi was part of Canada Soccer – he was the only analyst present in the Olympics - and that his actions, whether they were known or countenanced more broadly, are attributable to the organization. This, by itself, is sufficient, in accordance with Articles 8 and 13 of the FIFA DC and Article 6.1 of the ROFT Paris, to confirm the responsibility of Canada Soccer. Moreover, the evidence before the Panel indicates that Mr Lombardi was brought to the OG by the coach herself, Ms Priestman, and that she was aware of, and appeared to support, the use of espionage by Canada Soccer (as indicated in the emails from March 2024 made available to the Panel and Canada Soccer's own presentations before the FIFA AC – *supra* paras. 16-18).

86. In any event, the Applicants themselves expressly recognize and do not challenge their own "liability" (as emphasized in para. 2 of the Application). Having recognized its own liability, it is not open to Canada Soccer to then complain about the consequences of its actions on its players, a matter for which it is also fully responsible.

87. As already noted, the Panel considers, at least on the basis of the evidence before it, that the players were not involved in the violations that are the subject of these proceedings. The Panel highlights the strength, character and spirit that the women in Canada's football team have shown during the competition despite adversity. However, to the extent that the players feel harmed or shocked, this is in any case due to actions attributable to their own organization rather than elsewhere.

8. Conclusion by the Panel

88. The Panel concludes that the Applicants have not persuaded it that the points deduction sanction is grossly disproportionate to the violations that occurred. In the context of the Olympic Games, where issues of fair play and decency are paramount, as the representative of the French National Olympic Committee made clear during the hearing, the highest standards of probity must be met. If they are not, the consequences and sanctions that follow need to be strong and may even be harsh. So long as they are not grossly disproportionate there is no basis for them to be to be set aside.

VIII. Costs

89. According to Article 22 para. 1 of the CAS Ad Hoc Rules, the services of the CAS ad hoc Division "are free of charge".

90. 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*".

91. Accordingly, there is no order as to costs.

IX. CONCLUSION

92. In view of all these considerations, the Application filed on 29 July 2024 is dismissed.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

DECISION

The Ad Hoc Division of the Court of Arbitration for Sport renders the following decision:

The application filed by Canadian Olympic Committee and Canada Soccer on 29 July 2024 is dismissed.

Seat of the Arbitration: Paris, France
Operative part of the award notified on 31 July 2024
Reasoned award notified on 7 August 2024

THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT

Mr Roberto Moreno
President of the Panel

Laila El Shentenawi
Arbitrator

Philippe Sands KC
Arbitrator