

**IN THE MATTER OF A DISCIPLINARY PROCEEDING  
PURSUANT TO THE DISCIPLINE AND COMPLAINTS POLICY OF DIVE ONTARIO**

**July 10, 2020**

**Nº: DVON 20-0001**

**DIVING PLONGEON CANADA  
(COMPLAINANT)**

**AND**

**JOEL McCRADDEN  
KATHLEEN MURPHY  
ROB WELLS  
(RESPONDENTS)**

**AND**

**DIVE ONTARIO  
(INTERVENOR)**

**Order as to Sanctions of the Discipline Panel**

**1. Background**

1. This is a proceeding commenced under, and proceeding pursuant to, the Dive Ontario *Discipline & Complaints Policy* approved October 24, 2016 (the “Policy”).
2. The proceeding arises from a complaint filed by Mr. Bernie Olanski on behalf of Diving Plongeon Canada (“DPC”) on May 30, 2019, pursuant to section 7 of the Policy (the “Complaint”).
3. The Complaint alleged that each of the Respondents was a participant in score manipulation during a provincial diving competition held in Ottawa between May 17 and 19, 2019, which inflated the scores of a diver coached by Mr. Wells, and which allowed the diver to qualify for national competition despite not having earned enough points on their own merit.
4. The Respondents are “Individuals” within the meaning of section 1(d) of the Policy. Mr. Wells is a coach. Mr. McCradden has held numerous roles in diving and was contracted to work in the secretariat at the event. Ms. Murphy also has held numerous roles in diving, worked in the secretariat at the meet, and is employed as the Executive Director of Dive Ontario (the “Association”).<sup>1</sup>

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<sup>1</sup> In its Jurisdictional Order, the Panel determined that while it had jurisdiction to address the complaints against each of the Respondents in their capacity as Individuals pursuant to the Policy, it did not have jurisdiction to address Ms. Murphy in her capacity as an employee pursuant to section 6 of the Policy. Only the Association has the authority as Ms. Murphy’s employer to affect changes in her employment.

5. On June 5, 2019 by letter from Association President, Pat Grobe, the Association informed each of the Respondents that they had been suspended from “all activities related to competition management” until such time as an investigation was completed. The letter also informed the Respondents that Ms. Lise MacLean would be appointed Case Manager pursuant to the Policy for the purpose of investigating the Complaint.<sup>2</sup>
6. As Case Manager, it was Ms. MacLean’s responsibility to determine whether the complaint was frivolous, whether it fell within the jurisdiction of the Policy, and whether it should be forwarded to the Panel for adjudication.
7. On July 16, 2019, Ms. MacLean issued a full investigation report to the Association. On August 22, 2019 Ms. MacLean issued a second, summary report, which was shared with the Respondents.
8. In her reports, Ms. Maclean accepted the Complaint and recommended that the Complaint be forwarded to the Panel for adjudication pursuant to the Policy.
9. The full investigation report is 24 pages long and contains a detailed account of the interviews conducted by Ms. MacLean, and the evidence she reviewed in concluding her report. The report makes a number of findings of fact regarding the conduct of the Respondents during the May 17 to 19 provincial competition in Ottawa.
10. The Complaint was ultimately forwarded to this Panel in April 2020 for adjudication.
11. A pre-hearing was held on June 1, 2020. During the pre-hearing Mr. Wells confirmed his desire to acknowledge the facts of the complaint and to waive his right to a liability hearing pursuant to section 18 of the Policy.<sup>3</sup> The other Respondents were asked to provide their position on whether they intended to do the same, and the pre-hearing was adjourned to June 5, 2020 in order to allow the Respondents time to consider their answer.
12. On June 5, 2020 all Respondents confirmed that they had reviewed Ms. MacLean’s full investigation report and the findings of fact made within it. Each

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<sup>2</sup> For the purposes of conducting this arbitration, the Canadian Sport Case Management Services (“CSCMS”) was subsequently appointed as the Case Manager. The Discipline Panel (or “Panel”) was also subsequently appointed pursuant to the Policy on consent of all parties.

<sup>3</sup> Section 18 of the Policy states that “If a Respondent acknowledges the facts of the incident, the Respondent may waive the hearing, in which case the Discipline Panel will determine the appropriate disciplinary sanction. The Discipline Panel may still hold a hearing for the purpose of determining an appropriate sanction.”

Respondent expressed their desire to acknowledge the facts of the Complaint as found in her report and to proceed directly to a hearing on appropriate sanctions based on those findings of fact.

13. The Panel received written submissions from DPC as Complainant, as well as from the Association in its capacity as Intervenor. None of the Respondents filed written submissions.
14. A teleconference hearing was held on June 26, 2020. All participants were afforded the opportunity to make oral submissions. No *viva voce* evidence was heard.
15. During the hearing, the Panel was asked to make a ruling regarding an appropriate sanction for each of the Respondents. The Association and DPC also urged the Panel to make a ruling about whether its Decision could be shared publicly and/or whether there were to be any limitations on its publication.
16. Accordingly, this Decision shall address the appropriate sanctions, the scope of those sanctions, and whether this Decision can be shared publicly.
17. However, before turning to the Orders of this Panel, it is necessary to review the findings of fact made in Ms. MacLean's full investigation report.

## **2. The Findings of Fact: Score Manipulation**

18. As this arbitration concerns score manipulation in diving, it is useful to review the relevant scoring process in place during the May 17 to 19 competition, as Ms. MacLean did in her investigation report.
19. The scoring process was as follows:
  - a. The Meet Manager/Technical Director creates an electronic file for each individual diving event of the competition from the main/secretariat computer.
  - b. The electronic file is sent to two scoring computers on the pool deck.
  - c. Three volunteers – two on scoring computers and one on a paper shadow sheet – record the judges' scores as they are announced after each dive.
  - d. The volunteer with the shadow sheet validates against the two scoring computers after each dive.
  - e. The results of one of the two scoring computers are displayed live on the leaderboard visible to the audience.
  - f. The highest and lowest scores are dropped to determine the average score for each dive.
  - g. The average score is multiplied by the level of difficulty of the dive.

- h. The scores are cumulated for each diver.
- i. At the end of the event, the results from one of the two scoring computers are pulled into the main/secretariat computer.
- j. The final results are printed from the main/secretariat computer.
- k. After a cursory review, the final results sheets are signed by the event referee and posted.
- l. A diver must meet the pre-determined qualifying score to be eligible to compete at the national level.
- m. A protest or appeal process is available as outlined in the Diving Plongeon Canada Rule Book.

20. The national qualifying score during the May 17 to 19, 2019 meet was 235 points.

21. Ms. MacLean's investigation report then went on to review details of events which had occurred with certainty during the weekend, and which included:

- a. A shot of the leaderboard, taken Friday May 17, 2019 showed that the diver in question had scored a total of 234.95 points.
- b. The score on the official results sheet, signed Friday May 17, 2019 was 235.90 points for that diver.
- c. Photos of the two scoring computers show a score of 234.95 points for the diver in question.
- d. Almost all parties who viewed the shadow sheet, including Ms. MacLean herself, found it obvious that changes had been made to it to achieve the final score of 235.90 points.
- e. The math in the shadow sheet was incorrect, as it did not correctly multiply by the designated difficulty of the dive.
- f. The event files had been edited and re-saved and the events results had been modified from the secretariat computer.

22. Addressing the score manipulating, and in considering the above, Ms. MacLean's report found that:

"The manipulation required thought and deliberation. There was no easy way to add a half-point to the last score, so adjustments were made to the second-last dive. Based on the evidence, the investigator concludes that a change was made to the second last dive and to the cumulated totals on the shadow sheet. The investigator concludes that the score for the second last dive was changed within the secretariat computer. There is absolutely no question that the scores were changed."

23. In determining responsibility for this manipulation, Ms. MacLean's report makes a number of findings, which the Respondents have now admitted, and which include that:

- a. During the competition Ms. Murphy had complained about judging and expressed dismay that the divers' scores were too low.
- b. The Respondents were alone together in the secretariat for 10 to 15 minutes, and collectively they had the knowledge and opportunity to carry out the score manipulation.
- c. Mr. Wells made a verbal statement within 48 hours of the incident which implicated himself, Mr. McCradden and Ms. Murphy.
- d. Mr. Wells followed-up this statement in writing, and again adopted it in his interview with Ms. MacLean.
- e. According to Mr. Wells, Mr. McCradden had changed the score of the diver in the secretariat computer and printed the results sheet, and Ms. Murphy had changed the shadow sheet.
- f. Mr. Wells took responsibility for not speaking up or preventing the score of his diver from being changed.
- g. Ms. Murphy's denials of her involvement, and speculation of "human error" were found to be inconsistent with other evidence and lacked credibility.
- h. Mr. McCradden was basically forthright, even when the facts worked against him, and conceded that the change to the score would have had to be made in the secretariat computer and that he was by that computer the vast majority of the time.

24. Ultimately, Ms. MacLean concluded that:

"The Respondents, Wells, Murphy and McCradden, jointly executed score manipulation at the [...] Platform event on May 17, 2019 at Ottawa, Ontario [...] their specific roles were as described in Mr. Wells' evidence. Mr. McCradden changed the score in the main computer. Ms. Murphy changed the shadow sheet. Mr. Wells did not prevent the act from happening."

25. As each of the Respondents has now accepted these findings of fact, I am bound by them. It is therefore incumbent upon me to apply the Policy to these facts in order to determine what, if any, further sanctions are appropriate.

### **3. Application of the Policy and Code to Score Manipulation**

26. Section 2 of the Policy provides that "Individuals" who fail to comply with the Association's policies, bylaws, rules and regulations, and *Codes of Conduct*, may be subject to sanction pursuant to the Policy.

27. Section 3 of the Policy states that it applies to all Individuals in relation to matters that may arise during the course of the Association's business, activities, and events including, but not limited to, competitions, tryouts, practices, training camps, travel associated with Association activities, and any meetings.
28. For its part, section 4 of the Dive Ontario *Code of Conduct and Ethics*, dated October 24, 2016 (the "Code"), provides that an "Individual who violates this Code may be subject to sanctions pursuant to the Policy."
29. Each of the Respondents is an "Individual" within the meaning of the Policy and the Code.
30. Section 5 of the Code adds that Individuals have a responsibility to "maintain and enhance the dignity and self-esteem of the Association members and other individuals by:
- (i) Demonstrating respect to individuals regardless of body type, physical characteristics, athletic ability, age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status, gender identity, gender expression, sex, and sexual orientation;
  - (ii) Focusing comments or criticism appropriately and avoiding public criticism of Individual or the Association;
  - (iii) Consistently demonstrating the spirit of sportsmanship, sport leadership, and ethical conduct;
  - (iv) Acting, when appropriate, to correct or prevent practices that are unjustly discriminatory;
  - (v) Consistently treating individuals fairly and reasonably; and
  - (vi) Ensuring adherence to the rules of the sport and the spirit of those rules."
31. The actions of two of the three Respondents resulted in manipulation of an official score. The manipulation provided an advantage to a diver who had not, on their own merit, met the qualifying score of 235 points.
32. Ms. Murphy and Mr. McCradden were in positions of authority and were responsible for meet management. Their conduct undermined confidence in Dive Ontario, and potentially in the sport of diving as a whole. Their conduct did not treat athletes fairly or reasonably. It did not demonstrate ethics, sportsmanship, leadership, or ensure that the rules and spirit of sport were followed.

33. Mr. Wells did not act, instead accepted this advantage for his diver, and in so doing similarly undermined the Association, the sport of diving, and the spirit of sportsmanship, ethics, and the rules and spirit of sport.
34. In applying the Code to the findings of fact, I find that the Respondents violated sections 5(iii), (v), and (vi) of the Code.
35. By changing the score on the shadow sheet, Ms. Murphy breached sections 5 (iii), (v) and (vi).
36. By altering the scores in the secretariat computer, Mr. McCradden similarly breached sections 5 (iii), (v) and (vi) of the Code.
37. By failing to prevent the manipulation of the score of his diver, Mr. Wells also breached sections 5 (iii), (v) and (vi). I find, however, that by making his statement within 48 hours of the incident, and subsequently confirming it in writing, that Mr. Wells at least partially ameliorated his breach of: sub-section (iii) by having attempted to demonstrate ethical conduct after his initial breach; and also his breach of sub-section (vi) by attempting to ensure, even if belatedly, that the rules and spirit of sport were conformed to. I will address this in more detail below in determining an appropriate sanction for Mr. Wells.
38. Having established breaches of the Code by each of the Respondents, the Panel is guided by section 23 of the Policy in assessing what sanctions are available. Section 23 provides that the Panel may apply the following disciplinary actions, singularly or in combination:
  - a. Verbal or written reprimand
  - b. Verbal or written apology
  - c. Service or other contribution to the Association
  - d. Removal of certain privileges
  - e. Suspension from certain teams, events, and/or activities
  - f. Suspension from all Association activities for a designated period of time
  - g. Withholding of prize money or awards
  - h. Payment of the cost of repairs for property damage
  - i. Suspension of funding from the Association or other sources
  - j. Expulsion from the Association
  - k. Any other sanction considered appropriate for the offense
39. Prior to determining appropriate sanctions, it is necessary to review the submissions of the Complainant, and the response of the Intervenor and the Respondents.

#### **4. Submissions on Sanction:**

##### **A. Complainant**

40. In its submissions, DPC drew the Panel's attention to the serious nature of the conduct and its deleterious effect on the sport of diving as a whole. As noted above, the Panel is fully cognizant of the corrosive nature of score manipulation on the trust and confidence of members of a sport in its governing bodies.
41. During the hearing, DPC also submitted that it considered this a "sad day", and conceded that it appreciated the distinguished careers and contributions of the Respondents prior to this proceeding. DPC added that it had taken the Respondents' prior records into account when making recommendations on sanction.
42. With respect to the appropriate sanctions for Mr. Wells, Mr. McCradden and Ms. Murphy, DPC submits as follows:

##### **Mr. Wells**

43. DPC notes as mitigating factors that this was Mr. Wells' first known offence and an isolated incident; that he did not personally alter scores; that the score manipulation did not change the final athlete rankings at the competition; that Mr. Wells confessed within 48 hours of the incident; that Mr. Wells showed genuine remorse; and that Mr. Wells has already been subject to interim sanctions dating back to June 5, 2019 that required him to refrain from all activities related to meet management.
44. As aggravating factors, DPC offers the planned, deliberate and dishonest nature of the misconduct, as well as his position of authority and as a role model for many young athletes.
45. DPC has asked that I suspend Mr. Wells from any and all activities of the Association and of Dive Canada for one month (or until July 31, 2020). DPC also asks that I order Mr. Wells to complete an appropriate ethics training course at his own cost, and that he provide a written apology to each individual, coach and official who was registered and participated in the May 17 to 19, 2020 provincial championships in Ottawa.

##### **Mr. McCradden**

46. In its submissions, DPC notes as mitigating factors that this was Mr. McCradden's first known offence and an isolated incident; that the score manipulation did not change the final athlete rankings at the competition; and that Mr. McCradden has



already been subject to interim sanctions dating back to June 5, 2019 that required him to refrain from all activities related to meet management.

47. As aggravating factors, DPC offers the planned, deliberate and dishonest nature of the misconduct; that Mr. McCradden was personally involved in altering the scores; that Mr. McCradden's misconduct was a serious breach of trust as a paid contractor of Dive Ontario whose role it was to oversee the competition and to ensure that it was managed in a manner consistent with the rules and policies of the Association; and that Mr. McCradden denied the allegations until the eleventh hour and did not apologize or show remorse.

48. DPC has asked that I suspend Mr. McCradden from any and all activities of the Association and of Dive Canada for a period of three (3) years, expiring on or about June 30, 2023.

#### Ms. Murphy

49. In its submissions, DPC notes as mitigating factors that this was Ms. Murphy's first known offence and an isolated incident; that the score manipulation did not change the final athlete rankings at the competition; and that Ms. Murphy has already been subject to interim sanctions dating back to June 5, 2019 that required her to refrain from all activities related to meet management.

50. As aggravating factors, DPC offers that Ms. Murphy breached her fiduciary duties as the Association's most senior employee; the planned, deliberate and dishonest nature of the misconduct; that Ms. Murphy was personally involved in altering the scores; that Ms. Murphy's misconduct was a serious breach of trust given that her role at the competition was to ensure that it was managed in a manner consistent with the rules and policies of the Association; and that Ms. Murphy denied the allegations until the eleventh hour and did not apologize or show remorse.

51. DPC has asked that I suspend Ms. Murphy from any and all activities of the Association and of Dive Canada for a period of four (4) years, expiring on or about June 30, 2024.

#### **B. Intervenor**

52. In its capacity as Intervenor, the Association also made brief submissions intended to aid the Panel in its deliberations, though it was not invited to nor did it offer specific recommendations on the sanctions themselves.

53. First, the Association invited the Panel to consider whether it had jurisdiction to restrict the Respondents from participating in activities of DPC, as requested by

DPC, or whether the jurisdiction of the Panel was limited to only the business and activities of the Association. This issue will be addressed further in the section below.

54. The Association indicated that it believes that each Respondent is passionate about diving and further that each of them brings a unique skillset to the sport which would be difficult to replace.
55. At the same time, the Association submitted that breaches of the Code are serious and that appropriate disciplinary actions must be taken in order to re-establish and maintain trust within the diving and broader sport community.
56. The Association asks that this Panel take all relevant factors into account, including the impact any possible sanctions may have on the Respondents, the Association, and the diving community.
57. The Association also submitted that there will be different aggravating and mitigating factors applicable to each Respondent, but that in determining the appropriate sanctions this Panel should be mindful about issuing sanctions that are overly disparate among the Respondents.
58. Finally, the Association agrees with DPC, and submits that all Respondents would benefit from participation in an approved ethics training program, at their own expense, before being permitted to actively resume participation in the sport. The Association asks the Panel to provide clarity on the process to be followed by the parties for the selection and approval of any such program, and if ordered, that DPC and the Association be tasked with jointly approving any program.

### **C. The Respondents**

59. None of the Respondents chose to file written submissions with the Panel.
60. Each Respondent was given the opportunity to make oral submissions during the hearing on June 26, 2020.
61. All of the Respondents agreed that this has been a long, stressful, and trying process for them.
62. Mr. Wells stated that he was prepared to live with whatever sanction was meted out but urged the Panel to consider the impact on the athletes in his club if he were suspended from coaching for any period of time. He did concede that there was an assistant coach who could step into his role if absolutely necessary.

63. Mr. McCradden has asked that the Panel take into account his many years of dedicated service and previously unblemished record. He thanked DPC and the Association for acknowledging his contributions to the sport.
64. Ms. Murphy wanted the Panel to consider her lengthy, varied and distinguished career in diving. She wished the Panel to consider what impact any ruling would have on her ability to coach in Canada.

## **5. The National Sanction Jurisdiction Issue**

65. Before addressing the specific sanctions ordered by this Panel, it is necessary to address the jurisdiction of the Panel to grant DPC's request to suspend the Respondents not only from all of the business and activities of the Association, but also from all those of DPC.
66. As noted, the Association takes the position that it is unclear whether the Panel has the jurisdiction under the Policy to issue a sanction that would restrain the Respondents from participating in activities beyond those of the Association itself.
67. When asked during the hearing for the source of the Panel's jurisdiction for issuing this broader sanction, DPC pointed the Panel to section 23(k) of the Policy, which provides that the Panel can issue "any other sanction considered appropriate for the offense."
68. The Association offered that even if I do have jurisdiction, which it does not concede, I should not render a decision that provides for national sanctions. According to the Association, to do so risks setting a precedent of provincial diving organizations exercising extra-provincial influence by restraining individuals under their control from participating in the sport nationally. This, the Association says, would usurp the role of DPC in governing the sport nationally.
69. While the Association concedes that this is not a concern in this case given DPC's involvement as Complainant, and indeed its request that I issue sanctions of national-scope, the Association submits that the Panel should be mindful of other cases wherein DPC is not involved, but the province nevertheless issues extra-provincial sanctions that could lead to unfair results for DPC and/or other respondents.
70. The Association also notes that the diving community is small, that members are likely to be aware of any decision rendered by this Panel, and that the consequences for the Respondents will be national in scope, regardless of

whether the Panel specifically restrains their involvement in the sport of diving beyond the business and activities of the Association.

71. The Association raises important points. However, in the Panel's view the wording of the Policy itself clarifies the issue of jurisdiction.

72. Sections 3 and 4 of the Policy describe the "Application of the Policy", and provide as follows:

3. This Policy applies to all Individuals in relation to matters that may arise during the course of the Association's business, activities, and events including, but not limited to, competitions, tryouts, practices, training camps, travel associated with Association activities, and any meetings.

4. This Policy also applies to all Individuals' conduct outside of the Association's business, activities, and events when such conduct adversely affects relationships within the Association (its work and/or sport environment) or is detrimental to the image and reputation of the Association. The jurisdiction of this Policy will be determined by the Association at its sole discretion.

[Emphasis added]

73. "Individuals" are defined in section 1 of the Policy as:

All categories of membership defined in the Association's Bylaws, as well as all individuals employed by, or engaged in activities within the Association including, but not limited to, athletes, coaches, referees, officials, volunteers, managers, administrators, committee members, and directors and officers of the Association.

[Emphasis added]

74. On sanctions, section 23 of the Policy provides that:

The Panel may apply the following disciplinary sanctions, singularly or in combination:

- a. Verbal or written reprimand
- b. Verbal or written apology
- c. Service or other contribution to the Association
- d. Removal of certain privileges
- e. Suspension from certain teams, events, and/or activities

- f. Suspension from all Association activities for a designated period of time
- g. Withholding of prize money or awards
- h. Payment of the cost of repairs for property damage
- i. Suspension of funding from the Association or from other sources
- j. Expulsion from the Association
- k. Any other sanction considered appropriate for the offense

[Emphasis added]

75. It is the Panel's view that a textual and contextual analysis of the Policy reveals that it is intended to capture any activity of an Individual that has the potential to negatively impact the Association, which may necessarily extend to activities outside of the Association's purview so long as they are capable of affecting the Association (as indicated in section 4 of the Policy). However, the ambit of *who* the Policy controls (pursuant to the definition of "Individual") and *what* it prevents them from doing (pursuant to section 23) is nevertheless dependent on, and limited to, relationships with the Association itself.
76. Nothing in the Policy, including section 23(k), purports to give the Panel the ability to discipline persons in their capacity as members of DPC (or any other association), nor to restrain a person's ability to participate in the business and activities of DPC (or any other association).
77. In the Panel's view, it would be *ultra vires* the Panel's jurisdiction under the Policy to issue any sanction against an Individual that has scope beyond the business and activities of the Association.
78. However, as a result of DPC's involvement as Complainant in this proceeding that does not end the inquiry.
79. The Panel also reviewed the Diving Plongeon Canada *Policy Relating to Conduct* (the "DPC Policy"), and finds support for its conclusion that there are clear jurisdictional lines between the Association and DPC in sub-section 2 (a) of the DPC Policy, which reads:

## 2. Application of this Policy

(a) This policy applies to all Participants as defined above. For further clarity, this policy applies to the conduct of Participants while engaged in programs, activities and events convened under the jurisdiction of DPC. This policy does not apply to the conduct of individuals at programs, activities and events convened under the jurisdiction of other entities, including diving clubs and provincial sections.

[Emphasis added]

80. Persons engaged in programs, activities and events convened under the jurisdiction of provincial sections (i.e. the Association) are not ordinarily subject to discipline by DPC. However, sub-sections 2 (c) and (d) of the DPC Policy modify jurisdiction in cases where DPC determines that it must act as Complainant:

(c) Notwithstanding section (a), any individual, provincial section or club may request that DPC consider applying this policy to a provincial or local matter that would otherwise be outside the jurisdiction of DPC.

(d) Upon receipt of such request or in such other circumstances as DPC, in its sole discretion, considers necessary and appropriate, DPC may intervene in any matter which it deems to be of national or sport-wide importance, detrimental to the sport of diving in Canada or the reputation of DPC, or harmful to the physical, mental or emotional health and safety of Participants. Upon making such determination, DPC shall be entitled to undertake such investigation of the surrounding circumstances as DPC, in its sole discretion, deems necessary or advisable. After reviewing the results of any such investigation, DPC shall have the right, but not the obligation, to make a complaint which shall be governed by the terms of this Policy. Any decisions made by DPC pursuant to this section are within DPC's sole discretion and are not appealable.

[Emphasis added]

81. As is clear from the wording of the DPC Policy, where a Member (such as the Association) asks DPC to assert its jurisdiction over a local or provincial matter, *or* where DPC elects to bring a complaint against an Individual in a provincial matter, that complaint is governed by the DPC Policy.

82. While there is no evidence before me that the Association sought DPC's involvement in this proceeding, DPC chose to act as Complainant in this proceeding and its submissions underscore the fact that it deems this matter to be "of national or sport-wide importance, detrimental to the sport of diving in Canada or the reputation of DPC."

83. However, the peculiarity of this proceeding is that it was convened pursuant to the Association's Policy and has at all times continued pursuant to that Policy.

84. While sub-sections 6(b) to (h) of the DPC Policy provide for essentially the same methods and manner of conducting a disciplinary hearing as do the Association's Policy, sub-section 6(a) of the DPC Policy mandates that any such hearing be heard before a Panel of three (3) adjudicators.

85. This proceeding was convened before a single adjudicator acting as Panel in compliance with section 16 of the Association's Policy.
86. Furthermore, when asked for the source of this Panel's jurisdiction to grant national sanctions, DPC pointed to section 23(k) of the Association's Policy, rather than any provision of the DPC Policy.
87. In view of the totality of these circumstances, the Panel finds that notwithstanding that DPC acted as Complainant in this proceeding, that this matter was convened under, and could only have been conducted pursuant to, the Association's Policy and that DPC attorned to the jurisdiction of the Association's Policy in prosecuting the complaint.
88. For DPC to pursue sanctions that are national in scope, it must commence and prosecute a complaint under the DPC Policy, as contemplated by sub-section 2(d) of the DPC Policy. That did not occur in this proceeding.
89. As such, this Panel's jurisdiction is limited to only those sanctions provided for under the Association's Policy, which relate solely to business and activities of the Association itself.

## **6. Sanctions Ordered by this Panel**

90. Each of the Respondents continues be suspended on an interim basis from engaging in any activities related to competition management dating back to the Association's letter of June 5, 2019.
91. It is now incumbent upon the Panel to determine whether any further or other sanctions are warranted against each of the Respondents in their capacities as Individuals under the Policy.
92. It is not lost on the Panel that all participants in the hearing recognized that this was, to borrow DPC's submission, "a sad day" for diving.
93. Having received brief oral submissions from each of the Respondents, the Panel was struck by the obvious remorse of Mr. Wells. For his part, Mr. McCradden also seemed to express remorse and a genuine desire to achieve some form of conciliation with diving's governing bodies.
94. While Ms. Murphy was more stoic, if there is any conclusion to be drawn from this it is likely evidence of her mounting fatigue with a process that has been on-going since May 2019, rather than a lack of remorse on her part.

95. As noted by DPC in its submissions, the Panel is cognizant that each of the Respondents has made lengthy and meaningful contributions to the sport of diving, and each previously had unblemished records.
96. However, as submitted by DPC, a meaningful response to score manipulation is needed in order to restore confidence in the Association, DPC and the sport of diving. It is incumbent upon this Panel to assist in restoring that confidence.
97. The Panel is also cognizant of the need, as stressed by the Association, to ensure that any sanctions issued are not unduly disparate as between these Respondents.
98. With that in mind, the Panel finds as follows with respect to each of the Respondents:

Mr. Wells

99. The Panel finds that Mr. Wells breached sections 5(iii), (v) and (vi) of the Code by failing to intervene in score manipulation and by accepting an unfair advantage for his diver. However, this misconduct is at least partly ameliorated by his admitting his misconduct within 48 hours of the incident.
100. Furthermore, as noted by DPC and by the Panel throughout this Decision, Mr. Wells has continued to show genuine remorse. He waived his right to a hearing at the earliest stages of this proceeding and has been prepared to accept whatever sanction the Panel deemed appropriate.
101. Mr. Wells' only caution to the Panel is that he did not wish any diver in his club to be disadvantaged by virtue of his suspension from participating in the sport of diving.
102. All of the foregoing is laudable and does not escape the Panel's attention.
103. Nevertheless, the Panel is concerned by the fact that Mr. Wells is a role model for young, competitive athletes in his position as a coach.
104. Furthermore, while Mr. Wells did not personally change the scores of his diver, he has a lengthy history in the sport of diving and knew better. He knew that the score manipulation was wrong – as clearly evidenced by his subsequent remorse – and yet he accepted the unfair advantage to the diver that he coached.



105. Coaches stand in a unique position of trust with athletes. They must act and be seen to act ethically. They must uphold the rules and spirit of sport. Mr. Wells failed to do so.
106. Accordingly, this Panel sets aside the interim suspension of Mr. Wells. The Panel hereby orders that for a period of three (3) months from the date of this Order (until October 10, 2020), Mr. Wells is suspended from all business, activities and events of the Association including, but not limited to: competitions, practices, tryouts, training camps, travel associated with Association activities, and any meeting. Mr. Wells is not permitted to participate in any of the foregoing, or any other activity that is sanctioned by, or insured under the Association's policy of insurance, as an athlete, coach, volunteer, manager, administrator, committee member, director or officer of the Association, or any other capacity that would similarly qualify him as an Individual under the Policy.
107. Mr. Wells is also required to complete an appropriate form of ethics training prior to October 10, 2020 and if he fails to do so will not have his privileges reinstated until such time as he does complete said training. This Panel orders that DPC and the Association jointly identify and approve a form of training and make it available to Mr. Wells, at his own expense, no later than September 10, 2020.

Mr. McCradden

108. The Panel finds that Mr. McCradden breached sections 5 (iii), (v) and (vi) of the Code by altering the scores in the secretariat computer to provide an unfair advantage to a diver that had not otherwise qualified for national competition.
109. Mr. McCradden did not accept the facts of the complaint or Ms. MacLean's findings of fact until June 5, 2020. However, as noted by Ms. MacLean, Mr. McCradden was basically forthright. He also seemed remorseful and expressed a desire to achieve a measure of conciliation with the Association and DPC during the hearing.
110. Mr. McCradden has held a number of high-profile roles within diving as an athlete, coach, Dive Ontario officer, and most recently as an IT service provider for the May 2019 meet in Ottawa. Given his lengthy career in diving, Mr. McCradden knew the rules and spirit of the sport and knew better than to engage in score manipulation.
111. It is not lost on the Panel that Mr. McCradden was retained by the Association to assist with the information technology systems at the Ottawa competition

and then used that very system to undermine the integrity of the Association and the sport of diving.

112. This misconduct is deserving of strong condemnation, but as noted by DPC and the Association, the Panel should not ignore Mr. McCradden's lengthy history of service to the sport.
113. Accordingly, this Panel sets aside the interim suspension of Mr. McCradden. The Panel hereby orders that for a period of twelve (12) months from the date of this Order (i.e. until July 10, 2021), Mr. McCradden is suspended from all business, activities and events of the Association including, but not limited to: competitions, practices, tryouts, training camps, travel associated with Association activities, and any meeting. Mr. McCradden is not permitted to participate in any of the foregoing, or any other activity that is sanctioned by, or insured under the Association's policy of insurance, as an athlete, coach, volunteer, manager, administrator, committee member, director or officer of the Association, or any other capacity that would similarly qualify him as an Individual under the Policy.
114. Mr. McCradden is also required to complete an appropriate form of ethics training prior to July 10, 2021 and if he fails to do so will not have his privileges reinstated until such time as he does complete said training. This Panel orders that DPC and the Association jointly identify and approve a form of training and make it available to Mr. McCradden, at his own expense, no later than June 10, 2021.

Ms. Murphy

115. The Panel finds that Ms. Murphy breached sections 5(iii), (v) and (vi) of the Code by changing the shadow sheet to provide an unfair advantage to a diver that had not otherwise qualified for national competition.
116. Ms. Murphy has not expressed her remorse for this behavior, and until June 5, 2020 denied any responsibility for the change.
117. Ms. Murphy has held a number of high-profile roles within diving as an Olympic athlete, a coach, a meet manager, a Dive Ontario officer, as well as her position as Executive Director of Dive Ontario, the Association's most senior employee. As with Mr. Wells and Mr. McCradden, Ms. Murphy's lengthy career in diving meant that she was fully aware of the rules and spirit of the sport, and yet chose to break them.
118. Furthermore, given Ms. Murphy's earlier criticism of the judging during the May 17 to 19 competition in Ottawa, the Panel is concerned that Ms. Murphy's

conduct was not merely a momentary lapse of judgment, but a calculated decision.

119. While an order concerning Ms. Murphy's employment status is beyond this Panel's jurisdiction, as noted by DPC, the Panel is entitled to consider the totality of the circumstances of Ms. Murphy's involvement with the Association in rendering a decision on sanction.
120. As the Association's Executive Director, Ms. Murphy owed the organization fiduciary duties and duties of loyalty that go beyond those owed by most other Individuals, including the other two Respondents.
121. As noted in DPC's submissions, section 6 of the Code placed upon Ms. Murphy duties to:
  - a. Act with honesty and integrity and conduct herself in a manner consistent with the nature and responsibilities of the Association's business and the maintenance of Individual's confidence;
  - b. Conduct herself openly, professionally, lawfully and in good faith in the best interests of the Association; and
  - c. Be independent, impartial, and not be influenced by self-interest, outside pressure, expectation of reward, or fear of criticism.
122. By engaging in score manipulation Ms. Murphy breached each of these enhanced duties to the Association and it is incumbent upon the Panel to denounce, in the strongest possible terms, these breaches in order to restore confidence in the Association, DPC, and the sport of diving.
123. Accordingly, this Panel orders that for a period of twenty four (24) months from the date of this Order (until July 10, 2022), Ms. Murphy in her capacity as an athlete, coach, volunteer, manager, administrator, committee member, director or officer of the Association, or any other capacity that would qualify her as an Individual under the Policy, is suspended from all business, activities and events of the Association including, but not limited to: competitions, practices, tryouts, training camps, travel associated with Association activities, and any meeting. Ms. Murphy is not permitted to participate in any of the foregoing, or any other activity that is sanctioned by, or insured under the Association's policy of insurance, in her capacity as an Individual under the Policy.
124. To be clear no order of this Panel is intended to, nor shall it have the effect of, constituting discipline in the employment relationship between Ms. Murphy and the Association. To the extent that conflict arises between Ms. Murphy's duties as an employee of the Association and her suspension as an Individual

under the Policy, the Association has the sole jurisdiction to address such conflict, provided only that this Decision and its orders shall remain in force and effect until its expiry.

125. Ms. Murphy is also required to complete an appropriate form of ethics training prior to July 10, 2022 and if she fails to do so will not have her privileges reinstated until such time as she does complete said training. This Panel orders that DPC and the Association jointly identify and approve a form of training and make it available to Ms. Murphy, at her own expense, no later than June 10, 2022.

## **7. Publication of the Decision of the Panel**

126. DPC and the Association have asked that the Panel provide guidance about whether this decision can be shared, and if so, in what parts and to whom.

127. DPC submits that this Decision must be shared broadly in order to ensure transparency and so that the diving community is fully informed about governance issues. According to DPC, stakeholders in diving require access to the full decision of the Panel so that they know the facts of what transpired in May 2019 in Ottawa, as well as what was done about the misconduct.

128. DPC submits that this is necessary in order to restore and maintain trust in the Association and DPC as governing bodies within the sport of diving.

129. The Respondents made no submissions on the issue of publication.

130. The Association asked that the Panel consider the chilling effect any publication might have on future investigations if identifying details about witnesses were released publicly.

131. In finding that the entirety of this decision is to be treated as a public document that can be disseminated by the Association and DPC without restriction, I am guided by section 22 of the Policy, which states that:

“The decision will be considered a matter of public record unless decided otherwise by the Discipline Panel.”

[Emphasis added]

132. It is clear from the wording of the Policy that by default a decision of the Panel is a public record unless there are compelling reasons for the Panel to decide otherwise.

133. This is consistent with the open court principle and with the Association's mandate to ensure good, transparent governance in the sport of diving.

134. I see no reason to depart from the default in this case.

135. I therefore accept DPC's submissions on the need for unrestricted publication of this Decision and so order it. However, mindful of the Association's concerns about privacy, no identifying details regarding third-parties and/or witnesses have been included in this Decision.

### **8. Concluding Remarks**

136. I wish to thank counsel for their diligent work, professionalism and candor throughout this process.

137. Similarly, the Panel wishes to express its belief that the Respondents have understood the gravity of their misconduct, and that with the benefit of time and hindsight will be able to resume their roles as positive contributors to the sport of diving.

138. Any appeal of this decision shall be made pursuant to section 31 of the Policy under the provisions of the Association's *Appeals Policy*.

139. I remain seized of this matter only to the limited extent that questions of implementation arise.

Per:



Elliot P. Saccucci, Panel