

Case number: NST-E24-331101

Case Title: Olga Belousov v Gymnastics Australia

Determination

National Sports Tribunal General Division

sitting in the following composition:

Member

Mr Bruce Collins KC

in the arbitration between

Olga Belousov

(Appellant)

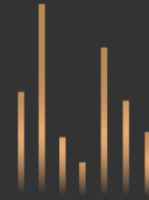
Represented by Gayann Walker of Counsel and Andrew Croxford of CMA Law (Legal Representatives)

And

Gymnastics Australia

(Respondent)

Represented by Alistair Edgar, CEO, Kelly Rourke, General Manager – Safer Sport, Ruby Bone, Company Secretary and Executive Officer and Louise Taylor, National Integrity Manager



PARTIES

1. Mrs Olga Belousov is a gymnastics coach. Olga and her husband, Sasha Belousov, arrived in Australia from their native country Russia to commence coaching in 1991. They started their coaching career in Russia in 1971. They attended University together and achieved a Diploma and Masters of Gymnastics (Honours). Since their commencement as professional coaches, they have always coached as a team, splitting responsibilities in each of their coaching positions. They have coached teams at State, National, Commonwealth Games and at Olympic level. Mrs Belousov has been a high-level coach of young Australian gymnasts for approximately 7 years. Mrs Belousov commenced coaching the Complainant when the young gymnast was aged 8 and continued as their coach until the Complainant was almost 17 years old. It was when the Complainant was 17 years old that the events occurred which gave rise to the present complaint. Mrs Belousov's husband, Sasha, also coached the Complainant on some occasions. Mrs Belousov's Curriculum Vitae is Annexure 2 to this Determination.
2. Gymnastics Australia is the body established to administer, develop and advance the sport of gymnastics in all of the Australian States in a centralised federated model.

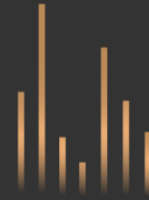
INTRODUCTION

3. These proceedings have their origins in a complaint made by the Complainant's parent¹ on behalf of their child, a gymnast who had been coached in a gymnastics high performance program by Mrs Belousov for a period of approximately 7 years prior to the dates upon which the alleged incidents occurred.
4. Each of the charges laid against Mrs Belousov and found by Gymnastics Australia to have been substantiated was founded and based upon an allegation that she had breached clause 1 (2) of the Gymnastics Australia Member Protection Policy (Version 14) (**the Policy**), in particular alleging that she had "bullied" the Complainant.

THE ORIGINS AND THE HISTORY OF THESE PROCEEDINGS

5. After receiving a complaint from the Complainant's parent on behalf of their child the Complainant, the Respondent, Gymnastics Australia conducted an investigation into the

¹ In cases where the athlete is in his or her late teens and close to adulthood, there is much to be said for the athlete co-signing and at least co-authorising the initial complaint so that it is authenticated and adopted in the chosen language of the athlete free from other influences.



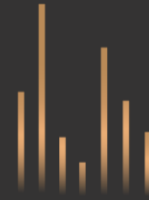
conduct of the Applicant.²

6. The Complainant's parent had alleged that Mrs Belouossov had acted in breach of the Policy and Child Safeguarding Policy (Version 3) (the **Safeguarding Policy**).
7. The complaint against Mrs Belouossov as formulated by Gymnastics Australia included and boiled down to twelve allegations. At the conclusion of its Investigation the Gymnastics Australia Investigation Committee concluded that seven of the allegations had been substantiated. Each of the substantiated allegations were based upon Schedule 1 (2) of the Policy – the allegation of bullying.
8. On 12 June 2024, Gymnastics Australia provided Mrs Belouossov with notice of the outcome of the Investigation and the proposed sanction as set out in the Breach Notice.³
9. Clause 5.4 of the Arbitration Agreement recorded, as was the fact, that Mrs Olga Belouossov disputed the Breach Notice and that as a consequence Gymnastics Australia had referred the matter to the National Sports Tribunal for Arbitration.
10. Clause 8.7(b)(iii) of the Gymnastics Australia Complaints, Disputes and Disciplinary Policy (the **CDDP**) provides that the National Sports Tribunal may arbitrate the **substantiated allegations**⁴ and proposed sanctions as set out in the Breach Notice. This provision effects an important definition and limitation of the precise issues in the Arbitration.
11. As recited in clauses 3.1 and 3.2 of the Arbitration Agreement entered into by the parties, the jurisdiction of a member of the National Sports Tribunal to conduct, hear and determine this Arbitration is engaged by section 23(1)(b)(i) and section 23(1)(c)(i) of the *National Sports Tribunal Act 2019* (the **NST Act**) and clause 8.6(b) of the CDDP.
12. In the course of outlining the jurisdictional underpinnings of these proceedings, Ms Walker, who appeared for Mrs Belouossov, clearly stated that the proceedings were *de novo* in character and Gymnastics Australia was required to call any evidence upon which it proposed to rely, first. There was no disagreement from Gymnastics Australia. The *de novo* nature of the proceedings and the resultant sequence of calling evidence in the arbitration was emphasised by the Arbitrator on numerous occasions in directions hearings and met with no objection from Gymnastics Australia.

² It is acknowledged that an earlier investigation by a Mr Moncur was not an official one conducted by and with the authority of Gymnastics Australia. No reliance is placed upon that investigation and having regard to its superficial nature and lack of any detailed reasoning, it does not feature in my analysis or in the submissions of either party.

³ Neither the letter of 12 June 2024 nor the formal "Breach Notice" called upon Mrs Belouossov to make submissions on the sanctions; they were imposed and announced simultaneously.

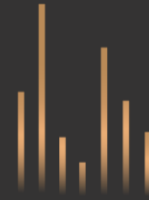
⁴ The parties were in agreement that this provision defined the issues in the Arbitration.



13. Of course, the signing by the parties of the Arbitration Agreement plainly determined the manner in which the proceedings would be conducted. The Arbitration Agreement conferred jurisdiction upon the Arbitrator to decide the seven questions which arose from the decision of the Gymnastics Australia Investigation Committee and Mrs Belouossov's decision to appeal those conclusions and the subsequent penalty purportedly imposed in reliance upon those findings. Nothing could be more dissimilar to the *Wednesbury*⁵ principle.
14. This arbitration was a hearing *de novo* which depended upon the evaluation of Gymnastics Australia's evidence and the responsive evidence from Mrs Belouossov. This was made clear in terms by Ms Walker who appeared for Mrs Belouossov. Throughout this determination, however, mention is made of the *Wednesbury* principle considerations due to the heavy reliance placed upon them by Gymnastics Australia.
15. Ms Walker's statement correctly set out the legal character of the proceedings. There was no express disagreement by Gymnastics Australia.
16. Finally, the following Schedule was, at the request of Gymnastics Australia, sent to the parties on 22 January 2025.

1.	Confirmation of jurisdiction and any other preliminary matters raised by the Parties
2.	Gymnastics Australia's opening statement <i>limit of 35 minutes</i>
3.	Opening Statement on behalf of Ms Belouossov <i>limit of 35 minutes</i>
4.	Tender of any documents by Gymnastics Australia (that process will include hearing and determining any objections to the tender of any documents)
5.	Cross-examination* of the first witness and succeeding witnesses made available for cross-examination* by Gymnastics Australia
6.	Any permissions re-examination by Gymnastics Australia
11:00am - short break	
7.	This process depends upon prior agreement between the Applicant and the Respondent as to the convenient order of availability of Gymnastics Australia's witnesses for cross-examination*
1:00pm – 2:00pm – lunch break	
8.	Tender of any documents by Ms Belouossov (bearing in mind that some documents made be tendered by Ms Belouossov as appropriate during the cross-examination* of Gymnastics Australia witnesses).

⁵ *Associated Provincial Picture House v Wednesbury Corporation* (1948) 1 KB 223

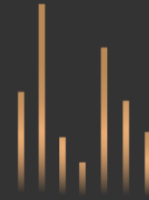


9.	Close of Gymnastics Australia's case
10.	Tender of any document by Ms Belouossov
11.	Cross-examination* of Ms Belouossov
12.	Any permissible re-examination of Ms Belouossov
3:30pm - short break	
13.	Final oral submissions by Gymnastics Australia <i>limit of 50 minutes</i>
14.	Final oral submissions by Ms Belouossov <i>limit of 50 minutes</i>
15.	Any oral submissions in reply by Gymnastics Australia

* The Arbitrator expects that cross-examination of each witness will not occupy more than 45 minutes. That direction is subject to the ability of the Parties to make any related application.

Receipt of the Schedule which set out the detailed sequence of the hearing did not give rise to any doubts or questions.

17. In those circumstances there could be no doubt as to the way in which Mrs Belouossov's appeal should be conducted and certainly no doubt as to the procedure which was to be followed.
18. The provisions to which I have referred above in my view make it abundantly clear that the arbitration set up and structured by the NST Act, the CDDP and the Arbitration Agreement is essentially a proceeding de novo or a fresh proceeding in which Gymnastics Australia is required to present its evidence ("go first"), and that such evidence was not necessarily limited to the material put before the Investigation Committee.
19. It would run counter to many years of legal learning if it were suggested that Mrs Belouossov was required to begin calling evidence to attempt to establish her innocence. This basic home truth which maps the proceedings did not seem to be clearly understood initially by the Representatives of Gymnastics Australia. What was also clearly not understood was the related home truth that, if Gymnastics Australia relied upon a witness statement, then, if required to do so by the Applicant, Mrs Belouossov, the statement maker had to be made available for cross examination. It became necessary for the Arbitrator to state and restate this simple proposition and the failure of Gymnastics Australia to accept that aspect of the procedure initially became something of a clog upon the conduct of the Arbitration. In the event, however, the actual hearing of the arbitration ran smoothly in accordance with those two precepts.



THE RELEVANT PROVISIONS OF THE POLICY

20. “Bullying” occurs when a person or group of people repeatedly and intentionally use words or actions, or the inappropriate use of power, against someone or a group of people to cause distress and risk to their wellbeing.

21. In its ordinary sense⁶, the word “bully” describes “someone who deliberately intimidates or persecutes those who are weaker”. It is a highly pejorative expression which reflects poorly upon a person so described. When used to describe a person the word may be highly damaging to the reputation of that person. The more expansive and detailed Oxford English Dictionary provides the following definitions:

“act the bully towards, treat in an overbearing manner to intimidate, overawe: to frighten into a certain course, to bluster, use violent threats, domineering or menacing.”

22. Schedule 1 (2) of the Policy provides as follows:

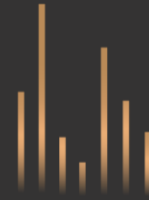
“Bullying must be behaviour of a nature **and level of seriousness** (emphasis added) which includes, but is not limited to, repeatedly:

- (a) Keeping someone out of a group (online or offline);
- (b) Acting in an unpleasant way near or towards someone;
- (c) Giving nasty looks, making rude gestures, calling names, being rude and impolite, constantly negative and teasing;
- (d) Spreading rumours or lies or misrepresenting someone (i.e. using their social media account to post messages as if it were them);
- (e) ‘fooling around’, ‘messaging about’ or other random or supposedly playful conduct that goes too far;
- (f) Harassing someone based on their race, sex, religion, gender, or a disability;
- (g) Intentionally and repeatedly hurting someone physically;
- (h) Intentionally stalking someone; and
- (i) Taking advantage of any power over someone else,

but does not include legitimate and reasonable:

- (a) Management action;
- (b) Management processes;

⁶ See the Compact Oxford English Dictionary.



- (c) Disciplinary action; or
- (d) Allocation of activities in compliance with agreed systems.⁷

23. Each of the original twelve complaints is exclusively based upon an alleged breach of the bullying provision in Schedule 1(2) of the Policy.

THE EVIDENCE⁸⁹

The First Complaint (12 May 2023)

24. The complaint/charge as formulated by Gymnastics Australia:

“... you allegedly refused to communicate with the Complainant after they had decided not to compete their vault (sic) due to an injury on bars.”

25. In their statement the Complainant said of this occasion:

“On 12 May 2023, on the first day of Nationals, during my bar routine, I slipped and landed on my neck. The medical personnel and my physiotherapist came over to assess my neck for any injuries. Just as I was about to stand up after being given clearance, Olga approached and instructed me to move because other girls needed to compete. Feeling unwell after the incident, I made the decision to only participate in the vault event. Olga was displeased with my choice not to do the beam routine. Subsequently she didn’t communicate with me for the remainder of the competition. “

26. In her statement¹⁰ Mrs Belouossov said:

“(Date of accusation incorrect – actually 10/5/23)

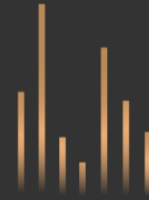
On this day, the interesting fact is that all communication re this incident came from Sasha Belouossov as he was the responsible coach for this competition in the apparatuses in which the Complainant was involved. They did fall on Day 1 on bars and didn’t finish Day 1 of competition. There was no problem with this for either of the coaches. They were medically checked at the competition. They at no time were ignored for this. However, most time was spent with competing gymnasts for the remainder of the day. There were 6 children in the team. On Day 2, Sasha asked them, if they would be competing today. The Complainant

⁷ This important carve out provision was not referred to in the Investigation Report prepared by the Gymnastics Australia Investigating Committee.

⁸ The language is taken directly from the Breach Notice dated 12 June 2024.

⁹ My conclusions with respect to each of the complaints are dealt with together later under the heading “Conclusions with Respect to Each Complaint”.

¹⁰ In relation to a number of the complaints, Mrs Belouossov gave additional responsive evidence in her oral examination.



replied to Sasha that they wished only to do Vault because they were a medal chance on this apparatus. Sasha supported this decision, checking they felt well enough to do so. They said that the doctor has cleared them of concussion, and they were ok to do this. They won a silver medal on Vault. Olga was barely a part of any of these discussions.”

“On Day 1, after their fall on bars, they were with medical staff and the parents – they did not return to the team on the gymnastics floor. Both coaches checked with their parent the next day to check on their condition. The parent communicated in a very pleasant manner that they were doing ok. On the 13th, a training day between the competition days, they didn’t train with the other team members as I assume they were resting. Day 2 of competition (14th), they competed on Vault only with Sasha supervising them – they were not in Olga’s care at this time. For the other 3 apparatus, they rotated and sat with the other children in the team. Olga was only responsible for the Beam and Floor apparatus. She was principally working with each of the gymnasts competing and didn’t directly work with the Complainant as they were not involved in these apparatuses. In no way were they intentionally ignored, but they did receive less interaction as they were not competing. Olga did congratulate them after they won their medal, as they did with all members of any team she coached. This was the same for all team members. Olga didn’t prior discuss their Vault performance with them as they were under Sasha’s direction at this time.”

The Second Complaint (13-14 May 2023)

27. The complaint/charge as formulated by Gymnastics Australia:

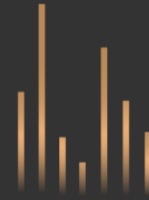
“Between 13 – 14 May 2023 during the Australian Gymnastics Championships in Queensland [Mrs Belouossov] ... did not speak to the Complainant or acknowledge their presence. [Mrs Belouossov] only acknowledged [the Complainant] after they had received a medal.”

28. In her statement the Complainant said of this occasion:

“During Nationals, it was the most difficult period for me. I experienced a lot of pain, yet Olga didn’t communicate with me or show any concern for my well-being.

Throughout the entire competition and training day, Olga didn’t speak to me or even acknowledge my presence. It wasn’t until after I received my medal that she finally started talking to me.

The team manager from Queensland noticed how Olga was treating me and expressed a willingness to talk to her about it. However, I asked them not to because I was afraid it would worsen the situation, which I strongly believed it would have.”



29. Mrs Belouossov's statement set out the following in answer to the complaint:

"On Day 1, after their fall on bars, they were with medical staff and the parents – they did not return to the team on the gymnastics floor. Both coaches checked with their parent the next day to check on their condition. The parent communicated in a very pleasant manner that they were doing ok. On the 13th, a training day between the competition days, they didn't train with the other team members as I assume they were resting. Day 2 of competition (14th), they competed on Vault only with Sasha supervising them – they were not in Olga's care at this time. For the other 3 apparatus, they rotated and sat with the other children in the team. Olga was only responsible for the Beam and Floor apparatus. She was principally working with each of the gymnasts competing and didn't directly work with the Complainant as they were not involved in these apparatuses. In no way were they intentionally ignored, but they did receive less interaction as they were not competing. Olga did congratulate them after they won their medal, as she did with all members of any team she coached. This was the same for all team members. Olga didn't prior discuss their Vault performance with them as they were under Sasha's¹¹ direction at the time."

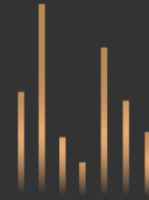
30. The other witnesses relied upon by Gymnastics Australia did not see the "incident", if it may be described in that way. Perhaps it is more accurately described as a "non-incident". The first feature of this "complaint" which stands out for me is that there is no evidence of any **refusal** by Mrs Belouossov to communicate with the Complainant: there was no comment or request from the Complainant which was unreturned while Mrs Belouossov was also coaching other athletes. I examine these circumstances in greater detail in the subsequent chapter which contains my conclusions concerning each complaint.

The Third Complaint (15 June 2023)

31. The complaint/charge as formulated by Gymnastics Australia:

"...allegedly spoke rudely to the Complainant after they has (sic) asked if they could stop jumping on the trampoline due to a sore back. Specifically, [Mrs Belouossov] stated 'I don't care if you do leaps. It's up to you' in which (sic) you praised other athletes and ignored the Complainant."

¹¹ Sasha is Mr Belouossov.



32. In their statement the Complainant said of this occasion:

“While I was jumping on the trampoline, my back started to hurt, so I stopped and asked Olga if I could switch to doing turns. Her response was, ‘I don’t care if you do leaps, it’s up to you’, said in a rude manner. Later during our stretching session, Olga went around praising everyone, but when she reached me, she said nothing and simply walked away.”

33. Mrs Belouossov’s statement set out the following in answer to the complaint:

“The Complainant was jumping on a Trampoline in a way in which they should not have been doing with a back injury. It was a poor judgement call for them to do this. Would it have been better to have said nothing and let them reinjure their back. Olga gave them an alternative activity which was a safer option. To have not said anything in this instance would have been a breach of coaching ethics. The Complainant was not ignored. Is correcting a child acting incorrectly rude – I think not.”

The Fourth Complaint (14 July 2023)

34. The complaint/charge as formulated by Gymnastics Australia:

“... allegedly referred to the Complainant and their teammates as ‘princesses’ due to their frequent injuries.”

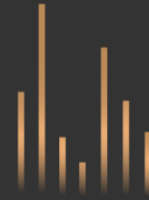
35. In their statement the Complainant said of this occasion:

“Olga mentioned that we have control over our injuries. I questioned this by asking if we could control breaking a bone. She replied affirmatively, linking it to our ability to concentrate and similar factors, suggesting we could even control getting sick. Additionally, she referred to us as “princesses” because of our frequent injuries. She compared our training regimen in Australia, commenting that it’s the only place she’s been where there’s minimal training and yet a high rate of injuries.”

36. Mrs Belouossov’s statement set out the following in answer to the complaint:

“Olga and Sasha have no recollection of referring to injured gymnasts in the manner. They consider the recovery from injury and the time to recover of the utmost importance. Each gymnast had a plan from their physio outlining what they could do at each step of recovery. Each gymnast’s recovery from injury was managed this way. To push above the medical advice or to goad injured gymnasts into training above their injury capability would be irresponsible.”¹²

¹² Later in these reasons I devote some attention to Mrs Belouossov’s oral evidence on



The Fifth Complaint (28 July 2023)

37. The complaint/charge as formulated by Gymnastics Australia:

“... allegedly put [your] hand in front of the Complainant’s face and told them to stop talking back, then refusing to communicate with them.”

38. In their statement the Complainant said of this occasion:

“I got into trouble for not jumping during ballet because my shin was sore. When I tried to explain the situation to Olga, she interrupted me by putting her hand in front of my face and told me to stop talking back. For the remainder of the ballet session, she refused to communicate with me.

Later, when I performed an incorrect exercise, she criticised me for talking too much and not paying attention. With the program changing every week and her not speaking to me, I struggled to understand what I was supposed to do. Then, she became upset because I didn’t ask her to watch my training on the balance beam. I felt frustrated because as my coach, it’s her responsibility to observe my practice, even if I don’t explicitly request it. In reality, I rarely ask her to watch unless I need help fixing something.”

39. Mrs Belououssov’s response was to say:

“Olga has and will raise her hand to say stop talking when she wants her gymnast’s attention. She does not invade the personal space of gymnasts when doing this, to put her hand in close proximity of the concerned gymnast’s face. Basic discipline must be present for the focus and performance of gymnasts. This is a High-Performance WAG program – lack of attention and focus can easily increase the risk of serious injury.”

The Sixth Complaint (3 August 2023)

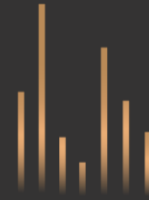
40. The complaint/charge as formulated by Gymnastics Australia:

“... allegedly asked the Complainant when they ‘would make [Mrs Belououssov] happy’ after the Complainant expressed that they had a good day on bars.”

41. In their statement the Complainant said of this occasion:

“I told Olga what I did on bars because I had a really good bars day, and she said yeah I heard Sasha was very happy. Then she followed that by saying when will I make her happy.”

this and other matters.



42. Mrs Belouossov's response was to say:

"Any time a gymnast did well on a routine or an apparatus, Olga would express she was happy with the performance, happy with the progress, happy with the effort applied – should she give no feedback at all and only criticise errors – fully negative and never positive. Remembering that English is the second language of Sasha and Olga, this is a ridiculous accusation."

The Seventh Complaint (17 August 2023)

43. The complaint/charge as formulated by Gymnastics Australia:

"...allegedly refused to address the Complainant by name while they were the only one on beam, talking without directly acknowledging the Complainant."

44. In their statement the Complainant said of this occasion:

"Olga hardly communicated with me. The only instruction she gave was, Complainant, go to the next apparatus". When I was on the beam, being the only one there, she had to coach me, but she never addressed me by name; she would just start talking without directly acknowledging me. Despite this, she accused me of not doing anything. Whenever I glanced up, she was consistently on her phone."

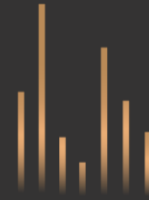
45. Mrs Belouossov's response was to say:

"This is a ridiculous accusation. It doesn't state that Olga was not coaching the Complainant, just not using her name for 15 minutes out of a 25 hour a week training schedule. It is not a private lesson – other gymnasts are constantly involved. If I don't say a gymnast's name for 15 minutes, honestly, what is this, simply nothing. It doesn't even state I was unhappy with them, just not using their name for 15 minutes."

THE IMPORTANCE OF CONTEMPORANEOUS STATEMENTS

46. The possibility of any genuine simmering or residual resentments (of which there is no convincing evidence) which might possibly be felt by the Complainant was clearly and completely dispelled as shown by the glowing terms used in messages which the Complainant wrote to Mrs Belouossov. I propose to quote in detail some of those messages, each of which is totally incompatible with the resentful allegations of "bullying". For example, a card received by Sasha and Olga sent by the Complainant in December 2023 (in the year in question and after the events which gave rise to the complaints) said:

"Dear Sasha and Olga,



Thank you for the wonderful past 8 years we have spent together, you have taught me so many good lessons. I will truly miss you both. I will be sure to come and visit, and keep you updated on all my long jump things. (emphasis added)¹³

Much love the Complainant ([REDACTED]) xx (and four hearts)”

A birthday card from the Complainant (7 December 2019) read:

“Dear Olga!

Happy Birthday. I hope you have the best day ever.

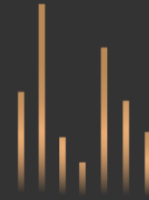
Thank you for Being (sic) the best coach and I appreciate everything you do for me

Love Complainant”

47. These cards were provided by Mrs Belouossov’s legal advisors to Gymnastics Australia early in 2024. The terms of these communications should then have weighed heavily with Gymnastics Australia. They did not, and Gymnastics Australia proceeded with the complaints. It is surprising that Gymnastics Australia could have been blinded to the clear messages in those communications.
48. In their cross examination the Complainant agreed on two occasions that the messages they sent to Mrs Belouossov were “true and heartfelt”. In other statements made by the Complainant their “true and heartfelt” feelings towards Mrs Belouossov were expressed in the following way:

Bruce Collins	But Complainant, those comments that you made ... were very nice, if I may (say) so they were.
	Both heartfelt and true, weren’t they?
The Complainant	Yeah.
Bruce Collins	You wouldn’t, it strikes me, having seen you, and listened to you this morning, that you’re just the sort of person who would not tell lies or write untruths in cards and letters. Are you?
The Complainant	No, they were all true.
Bruce Collins	Yeah, And. And not only true, but, and I think it’ll be commended for writing them frankly, but not only true but they were heartfelt, weren’t they?

¹³ The Complainant’s decision to transition to athletics and particularly the long jump event was no doubt critically related to her unhappy experience with injuries in gymnastics and is clear proof of her determination.



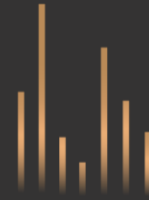
The Complainant Yes.

49. The unprompted spontaneous nature of the statements made in these communications by the Complainant gives me great confidence in concluding that they contain an accurate description of the Complainant's real feelings towards Mrs Belouossov free from injury concerns, stress and the possible influence of other persons.

AN ASPECT IN A NUTSHELL

50. The evidence of Wendy Gilliver, who is a senior competitive WAG Coach Level 7-10, was important for me in assisting to gain an objective view of both the Complainant and Mrs Belouossov. Ms Gilliver coached the Complainant some time ago and sometimes filled in for Mr and Mrs Belouossov when they were overseas. Ms Gilliver did not witness any of the "incidents" referred to in the complaint filed by the Complainant's parent, although she was present upon some of the relevant days. Ms Gilliver had not seen Mrs Belouossov "put her hands in front of the children's faces". However, she said that on one occasion "Olga had come up to me and asked whether 'she' is rude as the Complainant had told Olga to stop being rude because she told the Complainant to "shh". Mrs Belouossov went on to ask Ms Gilliver if it is rude to say "shh" in Australian culture. Ms Gilliver, on one occasion (not the subject of this Arbitration) heard the Complainant "getting quite upset behind [her]. The Complainant was distraught and was raising their voice". Mr Gilliver said that "the Complainant can be a challenging athlete, they're very respectful but talkative, and likes to voice their opinion, it seems they always has an answer back". "Olga and Sacha's coaching style is very old school ...". It seems to be that Ms Gilliver has gone close to putting the proceedings in a nutshell. Ms Gilliver's evidence was not challenged, and I accepted it without reservation.
51. I have found Ms Gilliver's evidence helpful and insightful; insights which should have been of inestimable assistance to Gymnastics Australia and, if shared by that organisation, would have led it to take a more sensible, sensitive, effective, efficient and less extravagant and costly course.
52. Ms Gilliver's statement confirms the impression I have formed of the Complainant and has assisted me considerably in my assessment of the nature and character of the Complainant and the interchanges between the Complainant and Mrs Belouossov.

THE CROSS EXAMINATION OF THE COMPLAINANT



53. The measured effect of the Complainant's answers in cross examination was to place what may have happened in the context of the normal interchange between a "talkative"¹⁴ 17-year-old and their coach.
54. The following questions and answers during cross examination of the Complainant convey a far more prosaic impression of what happened than the saturnine picture painted in the Complainant's statement made at the end of the following year after the events in question.
55. Except for their initial exaggeration¹⁵ the Complainant must be given credit for their truthful and realistic evidence as exemplified by the following exchanges in cross examination:

Gayann Walker Yeah. So.

If you start talking back to Olga during a practise session, she might need to discipline you to, to try and get you back on track. Do you agree with that?

The Complainant I mean, I guess so.

Gayann Walker Now you might not agree, have agreed with what Olga was trying to relay, but you'd have to agree that she was trying to give some coaching and some education and what her beliefs were to you and your squad mates.

The Complainant Yeah, I guess so.¹⁶

Gayann Walker But then you claim that she spoke to you with a rude manner. Is it possible that you've misconstrued how she was talking to you? I understand that Olga has been described as being quite blunt.

The Complainant Potentially, but yeah.

Gayann Walker But you get. I understand that you do get upset at competitions a lot, don't you?

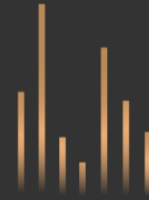
The Complainant Yes, due to stress.

Gayann Walker Yeah. And when you get upset, sometimes small things can seem like big things. Like they can get out of proportion, can't they? Maybe in your own mind.

¹⁴ Noting that the original and only complaint was made by the Complainant's parent.

¹⁵ As evident from the tone and content of their statement.

¹⁶ This evidence places the complaint in its proper context and sets it quite apart from any allegation of bullying. Further it is a clear recognition by the Complainant that what occurred fell within the carve out provision of the Policy: management and disciplinary action.



The Complainant Maybe.

Gayann Walker Right now, it's alleged that. Excuse me. Alleged that on the 14th of July 2023, you would complain that Olga, you use the word a Princess. Refer to, to you and your team mates as princesses in a discussion that she was having with you and your squad mates.

The Complainant Yes.

Gayann Walker Now you might not agree, have agreed with what Olga was trying to relay, but you'd have to agree that she was trying to give some coaching and some education and what her beliefs were to you and your squad mates.

The Complainant Yeah, I guess so.

Gayann Walker It was possible that she was telling you that she was happy with your performance and that she simply misspoke.

The Complainant I couldn't have known that.

56. As to the complaint based on the "really good day on the bars"¹⁷, the Complainant was asked:

Bruce Collins ... Can I ask you this, Complainant, you told Olga that you thought that you had a really good day on the bars, is that right?

The Complainant Yes.

Bruce Collins And she agreed with that, didn't she?

The Complainant Yes, she did.

Gayann Walker Yeah, yeah. So, the issue that you have you had on that day was that just that she didn't say your name during that particular period of coaching.

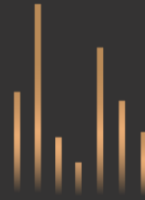
Is that right?

The Complainant Yes, she wouldn't say my name and just start talking at me, so I had no clue. Like, I don't know, I just found it very rude. Inappropriate.

Bruce Collins The issue is you knew she was talking to you though, didn't you?

The Complainant Yeah. And I would pay attention.

¹⁷ See the detailed analysis in the chapter of Conclusions.



Bruce Collins But no, that that's good. I don't expect that of you. **But is your complaint that although you knew that she was talking to you, she just didn't put the name Complainant in with the other words that she was saying?** (Emphasis added)

The Complainant **Yeah, I guess so.** (Emphasis added)

Bruce Collins Yeah, I think we can do better than that.

If something like that happened, Complainant.

Do you think that Olga might have thought you were talking back and that there was just a difference of opinion between the two of you about what was happening.

The Complainant Most of the time I was just answering questions.

Bruce Collins But if she thought you were talking back.

Would you understand that that might be a part of the overall situation.

The Complainant Yeah, but I still don't think it makes it OK.

57. It seems unusual and reflects poorly upon the choices made by Gymnastics Australia that it should lay a charge of bullying against a coach based upon the fact that on one occasion in the course of an overall engagement which lasted some hours she neglected to use the gymnast's first name in a conversation which the gymnast knew was directed to them.

58. The following passage of evidence demonstrates an awareness by the Complainant of Mrs Belousov's feelings towards them and Mrs Belousov's objectives as their coach:

Bruce Collins In other words, there was a difference of opinion between the two of you about what was happening.

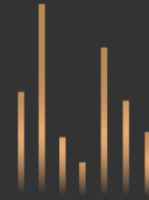
The Complainant Yeah.

Gayann Walker Yeah. And would you accept that Olga may have criticised you and criticised was your, were your words. Because she cares about you.

The Complainant Potentially.

Again, such an acceptance by the Complainant is far removed from bullying.

Observations of the Complaint when giving Evidence



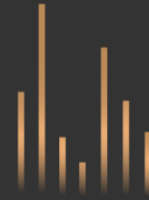
59. The Complainant was 19 at the time they gave their evidence in this arbitration. They gave their evidence by video conference. The Complainant presented as an emotional person for whom the occasion was at times a teary one. When they commenced their evidence, they repeatedly pulled their clothing top over their chin and mouth for no apparent reason other than as a nervous mannerism and occasionally looked to their left. In reply to a question from the Arbitrator they said that their parent was sitting next to them out of camera shot. This had not been disclosed to the Arbitrator by them or by Gymnastics Australia. The Complainant's parent's presence should have been made known to the Arbitrator, particularly as the Arbitrator had previously been informed by Gymnastics Australia that on that day of the hearing the Complainant's parent was unavailable to give evidence because they had to be interstate to be with a close relative who was ill.
60. Gymnastics Australia had sought to limit or circumscribe the cross examination of the Complainant¹⁸. In any event, as events proved, the experience was not an intimidating one and the Complainant presented as a likeable and engaging, although sensitive, young person.
61. The evidence which I accept without reservation was that the Complainant was a difficult athlete to coach and was prone to talk back to Mrs Belouossov and to be argumentative.¹⁹
62. I have concluded that in what is a two-sided exercise in the evaluation of the complaints those findings are essential to a proper understanding of the complaints made against Mrs Belouossov.
63. During their evidence on a number of occasions, the Complainant swept their hair back in a gesture with their hand which was not made necessary by the annoying presence of hair on their face but was clearly a nervous gesture, yet one which was perfectly natural and of the kind which one sees in many intense or driven people when placed in a tense situation.
64. I am supported in my findings as to their disposition by their own words in their cross examination.²⁰
65. The Complainant agreed that the stress of competition affected them. I have concluded that such stress was certainly felt by the Complainant to a considerable degree when they were competing at the Australian Championships and was further exacerbated by a number of falls in competition and a number of injuries which plainly were career threatening to a gymnast.²¹

¹⁸ "If any cross examination of witnesses is allowed by the Tribunal how that will be managed. In this respect we note that the original complainant, the Complainant, is a young person (a minor at the time of two of the matters) and any cross examination should be managed in a trauma informed way."

¹⁹ See the evidence of Ms Gilliver referred to above.

²⁰ See, for example, paragraph 55 above.

²¹ In one of their messages to Mrs Belouossov, the Complainant referred to their decision to transition from gymnastics to another competitive sport.



66. The Complainant's parent's complaints far outstripped the evidence of their child in their statement made almost one year later and when compared with the Complainant's more contemporaneous correspondence with Mrs Belouossov and their statements in cross-examination at the hearing, stood in a vastly different area of discourse. The Complainant's parent's statement of complaint was admitted into evidence only as evidence of the original complaint and not as evidence of the truth of its contents.

THE ORAL EVIDENCE OF MRS BELOOUSSOV

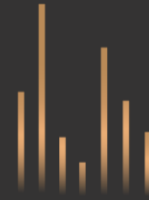
67. Mrs Belouossov's oral evidence in the Arbitration contained an answer which I consider illuminates Mrs Belouossov's character and her overall approach to the Complainant. Mrs Belouossov said:

".... I usually treat everyone the same like any other gymnasts, and I believe I treat them well. I believe they're a good child ...".

68. In other parts of her oral evidence Mrs Belouossov made clear that she did not simply shun or avoid the Complainant.

Coaching Style

69. Some coaches may be phlegmatic, bordering on gruff, a quality which has immortalised some well-known coaches from various sporting fields, and at the same time contributed to the success of those coaches. Is the coach to weigh the quantity of her words to the group or to individual athletes, has she said enough? Has she said too little or too much? Has her silence in the company of other young athletes whom she is also coaching been misinterpreted by an emotional and sensitive member of the group? I must from my own lengthy observations, acknowledge the vast idiosyncratic differences in coaching styles as well as in the character of the individual athlete. In the intense heat of competition, and with a group of tense young gymnasts to handle, it is not surprising that a no-nonsense and efficient approach would be the order of the day for the coach, although it must be emphasised that at all times coaches must be vigilant not to encroach upon the boundaries of what has been described as bullying. The approach taken by Mrs Belouossov may not be properly described as saccharine, but bullying it is not.
70. Is it expected that each word and the quantity of words should be weighed in the scales while the coach attends to her group of athletes, including one who is emotional, talkative and highly charged? The answers to these rhetorical questions are self-evident when those qualities are



considered in the context of a stress-prone nervy child whose parent had made the original complaint on their behalf.

71. I have concluded that the complaints were unjustified and had their origins in the Complainant's admitted stress²², performance anxiety²³, fear and worry of the occurrence of injuries taken together with perhaps a heightened desire to succeed accompanied by an unrealistic view of their own abilities.
72. Mrs Belouossov's submissions emphasised the manifest flaws in the Report of the Investigation Committee and relied strongly upon the acknowledged fact that the Complainant was a difficult athlete to coach. Those submissions emphasised that the Complainant has misunderstood Mrs Belouossov and that Mrs Belouossov was a highly competent and well-respected coach and that, in any event, the complaints themselves did not even if accepted rise to the level of the definition of "bullying". Mrs Belouossov's submissions contended that her approach to coaching was unobjectionable and that the complaints did not meet the standard of proof referred to in *Briginshaw*²⁴ and that Mrs Belouossov's conduct fell within the management and discipline exception in Schedule 1 (2) of the Policy.

THE FIRST GYMNASTICS AUSTRALIA SUBMISSION

The shortcomings of this submission

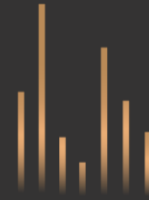
73. In the first place the submission completely misses the point. The arbitration is not a simulacrum of a Wednesbury²⁵ review. It was a hearing de novo in which the Arbitrator was charged with the task of hearing and considering the evidence which was led at the hearing and making findings of fact on the basis of that evidence. This task lay at the heart of the Arbitration and even after the Arbitrator had written to the parties pointing out the specific failures and shortcomings of the Gymnastics Australia submission, Gymnastics Australia for reasons unknown and incomprehensible elected not to accept the Arbitrator's invitation to remedy what were fatal deficiencies. I am therefore obliged to conclude that Gymnastics Australia has with its eyes open and in spite of numerous clear indications, simply decided not to address the key elements in the case.

²² See paragraph 55 above

²³ See paragraph 55 above

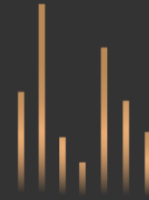
²⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336

²⁵ *Associated Provincial Picture House v Wednesbury Corporation* (1948) 1 KB 223



74. However that may be, the Gymnastics Australia decision has consequences. In the first place Gymnastics Australia has elected not to argue its case either on the relevant principles or on the facts.
75. Instead, Gymnastics Australia has chosen to rely upon the Investigation Report. There are a number of reasons why Gymnastics Australia is precluded from doing so. In the first place, as I have said, this is not a *Wednesbury*²⁶ case. Secondly, the Report is not evidence of the facts referred to (obliquely) in the Report. Thirdly, the Report lacks any reasoning. The reader is told nothing concerning the competing versions of the events and how they are to be (or were) resolved. Fourthly, the Report relies upon material which was never included in evidence or put to Mrs Belouussov. Fifthly, the Report relied upon anonymous material which was never tested, and which was not shown to Mrs Belouussov. Sixthly, Mrs Belouussov was given no opportunity to address the Committee upon the subject of penalty. Seventhly, the evidence apparently relied upon by the Committee included evidence of particular witnesses who did not see any of the conduct complained of. Eighthly, the Committee relied upon the evidence of two witnesses who said, in effect, that “the conduct seems to be the sort of thing Olga would do”. The Report was a travesty and was not improved by virtue of it being the second Report delivered in relation to the conduct of which complaint was made.
76. Any one or more of those reasons preclude Gymnastics Australia’s reliance upon the Report and Gymnastics Australia entered the final stage of the Arbitration with a blithe statement to the Arbitrator to the effect that “you read everything and come to your own conclusion”. In addition to the obvious deficiencies in such an approach it was a clear breach of clause 6 of the Arbitration Agreement.
77. In the second place, the Gymnastics Australia approach is firmly based upon the unfounded assumption that the contents and conclusions of the Investigation Report were free from relevant error and did not exhibit the type of reasoning described in the *Wednesbury* authorities as so unreasonable that no reasonable person could have drawn those particular conclusions.
78. For the reasons I have set forth above, the flaws, inadequacies and omissions in the Investigation Report are of such a nature as to preclude reliance upon it even if this proceeding was a *Wednesbury* review, which it is not.
79. Whilst it is not strictly necessary to do so, for the reasons I have enumerated, I must, in spite of its flawed and misconceived approach, make findings as to those submissions and those findings are set out below.

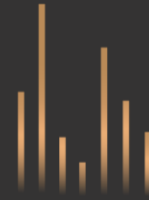
²⁶ *Associated Provincial Picture House v Wednesbury Corporation* (1948) 1 KB 223



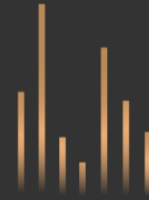
80. With due respect and in fairness to Gymnastics Australia, the ten paragraphs of its “final submission” should be set out in full²⁷:

- “1. GA maintains the investigation into Mrs Belouussov’s conduct was within the framework of the Complaints Disputes and Discipline Policy (CDDP) to which we are bound through the Australian Sports Commission (ASC) and Sport Integrity Australia (SIA).
2. The CDDP sits within the National Integrity Framework (NIF), a suite of policies developed by SIA. The policy and its procedures are designed to ensure the allegations of Prohibited Conduct was managed through an effective, consistent and timely process, which is fair and transparent.
3. GA has a duty of care to all its participants, particularly children and young people who are members of our organization. Moreover, a responsibility to respond to and assess all complaints as prescribed by the NIF and issue a respective sanction if deemed necessary.
4. In this case it was determined that Mrs Belouussov was in breach of the Safeguarding Children and Young People Policy and the Member Protection Policy.
5. GA maintains the sanction is proportionate, and educative in nature to support Mrs Belouussov’s development as a High-Performance coach.
6. GA notes the 2013 finding made against Mrs Belouussov, as tendered, was used as precedence only to inform the sanction. As per the CDDP, GA is within its right to consider any previous misconduct when determining a sanction. This finding was not used to inform the outcome of the investigation.
7. GA maintains the process afforded to Mrs Belouussov was procedurally fair, noting the following:
 - a. Mrs Belouussov was afforded the right to attend an interview which was refused.
 - b. Mrs Belouussov participated in an investigation by reasons of the provision of a written response.
 - c. Both the CDDP and the breach notice outlined Mrs Belouussov’s rights to challenge the findings and the proposed sanction.

²⁷ The submissions do not disclose its author’s identity.



8. Furthermore, by virtue of participating in the NST, Mrs Belouossov has exercised her right of appeal to the proposed sanction as set out in the breach notice.
 9. GA has to the best of our abilities, continued to participate openly and transparently throughout these proceedings, in respect to the process and ensuring the Mrs Belouossov's right of appeal is maintained.
 10. As directed by the Australian Human Rights Commission's '**Change the Routine Report**', Gymnastics Australia is committed to achieving a transformative cultural change ensuring the human rights of gymnasts across Australia are upheld, moreover, creating an inspiring experience for every Australian."
81. It was incumbent upon Gymnastics Australia to make submissions, at least with respect to the following matters:
- (i) The meaning and effect of relevant documents;
 - (ii) The proper interpretation of the relevant provisions of the Policy, including what is meant by "bullying" and what are the constituent elements necessary to make out a charge of bullying;
 - (iii) Whether there was any evidence to support or establish proof of each of those elements;
 - (iv) Whether I should accept the evidence of particular witnesses and the reasons for such acceptance or rejection.
82. Regrettably, the Gymnastics Australia submissions made no attempt to deal with any of those matters and, if the matter ended there, I would be obliged to conclude that Gymnastics Australia has not made a case for any of the alleged breaches.
83. However, the matter may not end there.
84. Troubled by the shortcomings of the Gymnastics Australia submissions, once I had completed my reading of them, I considered whether concessions should be made to that body and I requested the National Sports Tribunal Case Officer, to forward a letter to Gymnastics Australia (copies to Mrs Belouossov's legal representatives) confirming timetabling direction for closing submissions which were for:
- (i) The Respondent to provide their closing written submissions on or before 5.00 pm on Tuesday, 28 January 2005;
 - (ii) The Applicant to provide their closing written submissions on or before 5.00 pm on Friday, 31 January 2025;



- (iii) The Respondent to address any points raised with their reply to be submitted on or before 5.00 pm on Monday, 3 February 2025.

Both the Respondent and Applicant submitted their closing written submissions as requested.

85. On Wednesday, 3 February 2025 the following reply was received by the National Sports Tribunal Case Officer from Gymnastics Australia:²⁸

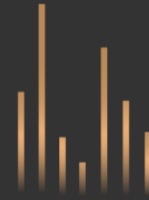
“GA wishes to rely on the evidence put forward at the hearing and ask Member Collins to consider this evidence for the purpose of determining whether the conduct is substantiated.”

Conclusion

86. For all of those reasons²⁹ Gymnastics Australia had no justification for ignoring its obligation to make concluding submissions appropriate to the hearing of an arbitration which considered the seven substantiated complaints. Any sedulous attention to what was going on around it would have ensured that appropriate submissions were made. The absence of any signatures on the Gymnastics Australia submissions raised the question who if anyone, was at the helm.
87. In so far as the “submission” invited me to “consider the evidence for the purpose of determining whether the conduct has been substantiated”, that is precisely what I have done, subjecting the material to the most detailed and repeated examination to ensure that no point favourable to Gymnastics Australia has gone unnoticed as the result of the failure of Gymnastics Australia on two occasions to make proper and helpful submissions.
88. Whilst the submissions from Gymnastics Australia are unhelpful to my execution of that task, it is nonetheless an accurate and concise description of the task which I have to carry out and reflects the de novo nature of the arbitration proceedings.
89. It must be observed that the submission which refers to the evidence in the arbitration is quite at odds with the first submission advanced by Gymnastics Australia which simply referred to the Investigation Committee Report and asserted, without any detailed references to the evidence, that Gymnastics Australia had followed the relevant procedures.
90. In a sense, therefore, although both submissions are ill-conceived and entirely unhelpful, I have addressed each of them in the course of preparing my Determination.
91. I have for the purposes of this section of my Determination re-read the transcript of each of the directions hearings, the main hearing and the relevant directions and the relevant

²⁸ It should be noted that Ms Walker who appeared for Mrs Belouossov also pointed out that she was surprised that Gymnastics Australia’s oral submissions did not deal with or analyse any of the witnesses’ evidence in the proceedings.

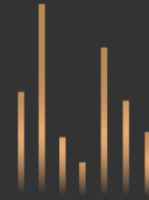
²⁹ Set out in paragraphs 14 – 17 inclusive, above.



correspondence. I have observed numerous instances where the Arbitrator stated or made directions which were intended to make provision for the fact that Gymnastics Australia had decided not to take helpful legal advice or obtain legal assistance.

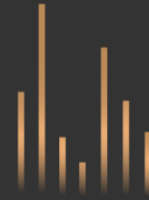
92. As events have transpired, regarding the two sets of final submissions made by Gymnastics Australia, I have been obliged to conclude that Gymnastics Australia has deliberately decided not to make any submissions:
- (i) as to the meaning of the provisions of the Policy which are apparently relied upon by Gymnastics Australia.
 - (ii) with respect to the evidence of particular witnesses; and
 - (iii) with respect to the manner in which the evidence is alleged to fall within the relevant provisions of the Policy.
93. I can do no more than I have done to ensure that Gymnastics Australia focusses upon the relevant issues and makes submissions accordingly. In the full knowledge of the nature of the deficiencies and errors of omission in its response, Gymnastics Australia has elected to say nothing in its final submission to endeavour to cure those errors and provide the assistance which is due to the Arbitrator.
94. The consequences of that failure are of added importance in the present case where simple words used by Mrs Belousov have been put in service to support the unsupportable. The conduct complained of does not support repeated allegations of bullying – a term which Gymnastics Australia declined to subject to analysis. In fact, when the unwarranted assumptions and implications made by the Complainant are stripped away and when the context of the characters of the two persons involved is considered, the intrinsic words and the almost imaginary actions complained of do not approach or merit the notion of “bullying”.
95. I have reproduced above³⁰ the complete submissions relied upon by Gymnastics Australia to stand as its final submission. Upon close examination it can be seen that what was delivered by Gymnastics Australia in response to a direction to make and lodge a Final Submission, proved to me nothing more than a contention that the Investigation Committee had carried out an appropriate investigation. There is no express submission that the Committee, on the issue of liability, had reached appropriate and correct conclusions of fact or otherwise. The document relied upon by Gymnastics Australia conspicuously lacked the following necessary features of a properly drawn final submission:

³⁰ At paragraph 77.



- (i) An in principle analysis of the text of the Policy which formed the basis of the Complaints made against Mrs Belooousov revealing how that analysis was said to support the charges laid against Mrs Belooousov.
 - (ii) A submission which analysed in detail all of the evidence including the evidence led in the arbitration³¹ and which Gymnastics Australia urged should be accepted together with reasons why particular evidence should be accepted or rejected.
 - (iii) A submission which discussed the terms of the original complaint made by the parent of the gymnast.
 - (iv) A discussion of the relevant standard of proof in serious charges of this kind.
 - (v) An analysis of the question whether the specific conclusions draw by the Investigation Committee were supported by evidence and accompanied by appropriate reasons.
96. The ersatz final submission delivered by Gymnastics Australia was disappointing in that it failed to provide the, or any, required assistance to the Arbitrator in respect of any of the categories enumerated in the paragraph above. That failure by Gymnastics Australia was in line with its uncooperative approach to production of documents and making statement makers available for cross examination, if required by Mrs Belooousov's legal team.
97. It is surprising that the body which initiated and progressed 12 serious charges which challenged the professional quality and integrity of Mrs Belooousov's work should, in effect, make no independent attempt to support those charges when given the opportunity to do so in its "Final Submissions". Such a failure was not in accord with the critically important structure initiated by the Federal Government for the purpose of a rules based approach to the fair resolution of sporting disputes and the sensible, practical foundation for the fair and proper resolution of sporting disputes.
98. I have concluded that Gymnastics Australia has failed, in its first round of Final Submissions, to advance any independent submissions of its own to convince the Arbitrator that any of the seven charges referred to arbitration had been made out.
99. That would be sufficient for me to make an award dismissing each of the seven charges after I had conducted a thorough examination of the whole of the evidence, however, once again the matter does not end there.
100. Each of the conspicuous failures to address the key elements in the case in the Gymnastics Australia Final Submissions was also a feature of the report prepared by the Investigation

³¹ Which obviously went beyond the evidence before the Investigating Committee.



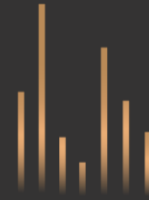
Committee and those failures alone would render that Report an unsound basis for Gymnastics Australia's Final Submissions.

101. What I have set out in paragraph 90 above are significant failures in both the Report of the Investigation Committee and the Final Submissions of Gymnastics Australia. However, a number of additional features of the Report of the Investigation Committee operates either alone or in combination to invalidate the conclusions drawn by the Committee and deprive its Report of any proper foundation upon which Gymnastics Australia could rely.

THE REAL OR PRACTICAL WORLD OF COACHING

102. If "complaints" of this kind were taken up and pursued by athletes, parents and the sporting body itself, the functions of coaches would be reduced to a feeble exercise involving a reversal of the didactic role, and the expert role of the coach as instructor, guide, mentor, engaged in a sport in which discipline is a highly rated and most sought after quality. Most of all what is required when complaints of this kind are made is common sense – a quality which was here lacking in spite of the express power given to Gymnastics Australia to dismiss complaints if appropriate. It must be remembered that the complaints made span a period of four months (within a seven year period) in which the gymnasts were coached and trained "around 32 hours per week".³² In those circumstances one can only admire Mrs Belousov's restraint, diplomacy and focus upon helping to achieve the best for her charges.
103. It seems to me that a proper evaluation of the question whether Mrs Belousov has bullied the Complainant requires an understanding and recognition of the steely determination and sacrifices of both athletes and coaches in what Branch Rickey has described as a "bilateral quest for excellence". Other sporting pundits refer to "the privilege of pressure". Thus, what can be expected from the coach is an exhortation to perform and this can take many forms; it is not one size fits all and minds may differ as to the best methods to be employed.
104. All of that said and granted, the discretion afforded to the coach, bullying in any of its forms will not be countenanced and the wide latitude extended to the coach cannot be used as a cloak or an excuse for bullying behaviour and the lines of demarcation are very clear and must be observed.
105. At the same time, care must be taken not to confuse a misplaced sense of entitlement and the athlete's own sense of disappointment with their own performance, with the actions of the

³² It is not to the credit of Gymnastics Australia that it refused to mediate the dispute or to accept requests from Mrs Belousov to dismiss the complaints before the hearing.



coach who cannot work effectively in the shadows of unjustified and exaggerated complaints, whether from young athletes or parents.

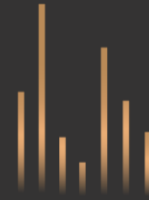
THE GYMNASTICS AUSTRALIA INVESTIGATION REPORT AND GYMNASTICS AUSTRALIA'S EXCLUSIVE RELIANCE UPON THE REPORT IN PLACE OF AN INDEPENDENT FINAL SUBMISSION

106. Gymnastics Australia's final submission does not in terms assert that the conclusions drawn by the Investigation Committee are correct. The submissions made are in their nature procedural and process driven.
107. For the reasons I have set out above, the approach taken by Gymnastics Australia is a most unsatisfactory approach for the sporting body to take.³³
108. The Investigation Report did not set out a reasoned basis for its conclusions except for a ritualistic and misguided reference to "balance of probabilities". An important function of the provision of reasons is often overlooked. One of the most effective means for the decision maker to evaluate the cogency of his or her reasons is to consider the nature and character of those reasons and then consider whether they fall short of supporting the conclusions drawn.
109. The Investigation Committee relied upon evidence which plainly was remote from the real issue in the proceedings. For example, the Committee expressly relied upon a statement by a person who did not see any of the actions complained of but said that (the complaint) "was the sort of thing Olga would have done".³⁴
110. The Investigation Committee did not give Mrs Belooussov an opportunity to address the Committee on penalty.
111. The Investigation Committee relied upon anonymous material which could not be properly tested by Mrs Belooussov.

³³ At the first detailed Directions Hearing Gymnastics Australia's representative, an employee, when asked about the intentions of Gymnastics Australia with respect to the evidence said: "... I'll stick to my career in the police that's probably where I sit being asked questions, not the one that (is) asking questions. But no, we've got no intention to call any witnesses to this. We, they, provided statements and were interviewed."

"... we've no intention to call them or to put the Complainant through any questions further to what they've (supplied) at the time they were interviewed with the parent." the Complainant was 19 at the time this statement was made.

³⁴ See the Statement of Teammate who was not cross examined.



112. The Investigation Committee read and took into consideration the original complaint received from the Complainant's parent and which was not provided to Mrs Belouossov until many months later at approximately 7.00 pm on the evening before the commencement of the hearing. Gymnastics Australia's inattention to the production of that critical document is to be deprecated.
113. The Investigation Committee relied upon evidence from witnesses who did not observe any of the incidents.
114. The conclusions drawn by the Committee did not satisfy the universal test laid out in *Associated Provincial Picture House v Wednesbury Corporation*³⁵, where it was emphasised that if the relevant conclusion drawn by the relevant authority was so unreasonable that no reasonable authority could have come to it. Considered as a means of independently proving the case in chief should be mounted by Gymnastics Australia in the Arbitration, the Report of the Investigation Committee relied upon by Gymnastics Australia failed completely in that objective. It is not strictly necessary in the Arbitration to apply the *Wednesbury*³⁶ test to the Report but if the Report is measured by that standard I would conclude that its content and the conclusions set out in the Report were so unreasonable that a reasonable body could have arrived at them.

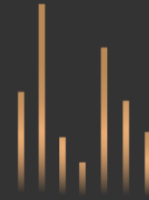
CONCLUSIONS WITH RESPECT TO EACH COMPLAINT

Introduction: the vital personal and social importance of taking a firm stand against bullying in all its forms

115. I wish to set out the framework and to describe the context in which my consideration of each complaint is to be considered.
116. A multitude of examples from different sports and different countries around the world have highlighted the occurrence and the most unhappy consequences of all types of bullying. Examples abound of instances where young lives have been irrevocably blighted by bullying of all kinds.
117. Australia has been a world leader in establishing and enforcing policies to prevent and, where appropriate, punish the commission of bullying offences.
118. In my opinion, Gymnastics Australia is to be commended for carefully adopting and applying a detailed Policy which is appropriate to achieve those objectives. No fault can be found with the

³⁵ *Associated Provincial Picture House v Wednesbury Corporation* (1948) 1 KB 223

³⁶ *Ibid.*



manner in which the Policy defines and deals with bullying. These proceedings are concerned with the misguided application of the Policy.

The First Complaint

119. I can discern no actions of Mrs Belouossov on 12 May 2023 which could remotely be regarded as bullying. The athlete herself substantially limited the occasion for conversation with Mrs Belouossov by deciding, as she was reasonably entitled to, not to participate in the beam event. The Complainant has not suggested that there was any reason why Mrs Belouossov should communicate with the Complainant nor was there any suggestion that after any comment made by the Complainant that Mrs Belouossov **refused** to reply. The Complainant's evidence in cross examination reveals that to be so.³⁷ The burden of the first complaint is the alleged refusal and must be considered in the context provided by the evidence of both Mrs Belouossov and the Complainant: it is almost dispositive of this complaint that Mr Belouossov was the Complainant's coach at that time.
120. In my opinion, the allegations made in this complaint do not, upon the true construction of the Policy, come close to being described as "bullying". Further, I accept the evidence of Mrs Belouossov who has described a routine set of events such as one would expect to observe at a gymnastics championship. What has been alleged is not a shunning: Mrs Belouossov simply got on with her work which did not require her to interact with the Complainant who had withdrawn from the beam. It is unrealistic and contrary to common sense in a group coaching structure to be weighing the frequency and content of a coach's spoken words, particularly when some other gymnasts in the group are due to compete in an impending event and some are not. In her oral evidence, the Complainant was asked:

Gayann Walker "... what I'm saying to you is that Olga would have needed to give her full attention to those who are competing on beam and floor, wouldn't she?

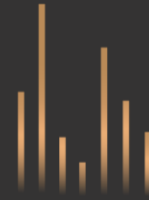
The Complainant Yeah, I mean, we were all competing as a team, but to some extent, yeah."

The Complainant was then asked:

"... and because you were competing only on vault that Sasha was your kind of primary coach

The Complainant Yes"

³⁷ See the evidence set out in paragraph 120.



The Complainant was then asked:

“... but it’s possible that Olga relied on Sasha to coach you and support you in competing on the vault

The Complainant “Yes”

121. It is, of course, physically impossible to speak individually to everyone in a group of athletes all of the time. No doubt on particular occasions a coach will be more or less voluble depending upon the circumstances. Here, one of those circumstances was the Complainant’s decision not to compete in the beam event and this decision no doubt reduced the stimuli for any extended conversation between athlete and coach. I am not in any way assisted by the Teammate’s illogical and immature statement that Mrs Belouossov “would work everyone except for you”. The first complaint is not a description of bullying, and it should be dismissed. In any event, it falls clearly within the common sense exception to the scope of a bullying complaint which is set out at the end of Schedule 1 (2) of the Policy. As Mrs Belouossov went about her tasks on that day she was engaging in legitimate and reasonable “activities” within the meaning of the exception in Schedule 1 (2) of the Policy, sub-paragraphs (a), (b) and (d).

122. Like all human activities this complaint must be set in a full context. That context is provided by paragraphs 10 to 15 of Mrs Belouossov’s statement:

“10. At the Australian Gymnastics Championship in 2023, Sasha and I divided up the apparatuses like we normally do. I covered the children on floor and beam, Sasha covered uneven parallel bars and vault.

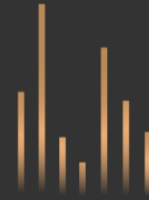
11. On the first day, 12 May 2023 the Complainant was injured on the bars. They were medically checked and did not compete for the remainder of the day. They were with medical staff and their parents and did not return to the competition floor.

12. The next day, 13 May 2023, was a training day. The Complainant did not train with the rest of the team. I presume they were with their parents who attended the event as well.

13. On the second day of the competition, 14 May 2023, I understand that Sasha spoke with the Complainant who told him they only wanted to compete on vault. We respected their decision.

14. I was focused on the children who were competing on the floor and beam and since the Complainant was not competing in those, I had no reason to proactively interact with them. I was very busy with the other children on the team.

15. I did congratulate them on their bronze medal. It was a great result.”



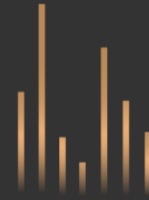
I accept without reservation the evidence of Mrs Belouossov given in her statements and orally.

123. My conclusions upon this part of the case may be graduated. First, if the statement of the Complainant is accepted in its entirety, I have found it impossible to conclude that such evidence showed that Mrs Belouossov had “bullied” the Complainant. Plainly, there was no evidence of any compelling circumstance which demanded or called upon further comment or response from Mrs Belouossov. There was no “refusal” by Mrs Belouossov to speak to the Complainant.
124. There was no evidence of any harm to the Complainant and this “complaint”, like all the others, does not rise to the required level of **seriousness** within the meaning of the Policy. A lack of the required seriousness is a characteristic of all seven complaints.

The Second Complaint

125. This complaint is hard to surpass for its sheer triviality. I do not see how the Investigation Committee could conclude that it was not frivolous or vexatious.³⁸ I accept without reservation the evidence of Mrs Belouossov who impressed me as a highly competent and caring coach. I also accept that the Complainant was not directly in the care of Mrs Belouossov on this occasion.
126. As in the case of the first complaint, the events complained of fall within the everyday routine life of a coach who in the nature of things must take the lead and give directions to an athlete in the manner described by Mrs Belouossov in her statement, I have concluded that to the extent she was engaged in a limited way with the Complainant she was routinely engaged in legitimate and reasonable management action within the meaning of sub-paragraphs (a), (b) and (d) of Schedule 1 (2) of the Policy.
127. As in the case of the first complaint, I may express my conclusions in a serial manner. First, in the absence of proof of any reason which demanded or cried out for Mrs Belouossov to say more to the Complainant than she did, I do not consider that it is rationally permissible to conclude that there has been any bullying of the Complainant by Mrs Belouossov. Accepting everything said by the Complainant, they had not described anything which remotely approaches “bullying”. Then, when Mrs Belouossov’s evidence is accepted, as I do, the occasion takes on a more condign, if not benign, complexion. Next, when the Complainant’s evidence given in cross examination is considered the occasion is set in its everyday context and the faintest spark of any complaint of bullying is extinguished.

³⁸ *Associated Provincial Picture House v Wednesbury Corporation* (1948) 1 KB 223



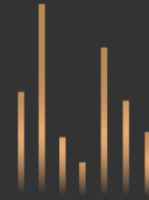
128. No other witness gave evidence that he or she had observed anything of what happened on 13 – 14 May 2023.

The Third Complaint

129. The burden of this complaint by the Complainant is that when they were experiencing a lot of pain they were advised by Mrs Belouossov not to jump on the trampoline. The evidence shows me that the event was amply staffed with physiotherapists and doctors.
130. Again, a complete and literal construction of the Complainant's complaint, if accepted in full, conveys no description of bullying conduct. The expression, "I don't care if you do leaps. It's up to you", shows that, mindful of the fact that the Complainant had a sore back, Mrs Belouossov gave them an alternative. In truth, and as a straightforward matter of language, Mrs Belouossov was saying "as you have a sore back I care (or am concerned) about you jumping on the trampoline, however, I don't care (I do not mind) if you do leaps, you have my permission to do leaps". This was, in my view, a natural and ordinary example of an everyday interchange between a considerate coach and an injured athlete in need of wise advice.
131. It remains important for a coach to make clear that the required physical strength and the competitive senses of an athlete can only be maintained at an appropriate level if his or her physical training is purposefully directed towards the avoidance of injury and, where necessary, injury recovery. Only the most delicate or highly sensitive young person would take offence at the words chosen by Mrs Belouossov. Even if offence was taken, the single comment could not amount to bullying. The words used by Mrs Belouossov have been completely misinterpreted by the Complainant.
132. I do not consider that a kind and indulgent approach of that kind could be regarded as bullying. I accept without reservation the evidence given by Mrs Belouossov with respect to this complaint.
133. Gymnastics Australia had no basis whatever for continuing with this allegation of bullying. Moreover, the description of what occurred falls squarely within the exception to bullying – the coach was properly managing the athlete within the meaning of sub-paragraphs (a), (b) and (d) of the Policy.

The Fourth Complaint

134. This complaint is that on one occasion Mrs Belouossov described the Complainant and their team mates as "princesses". Perhaps of greater importance is that the only word complained

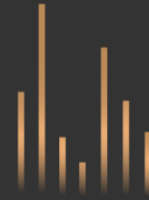


of by the Complainant was the word “Princesses”. The additional gloss placed on the word by the Complainant was not used by Mrs Beloussov and was merely an inference or assumption drawn by the Complainant without justification and in the absence of words attributed to Mrs Beloussov. There is nothing to suggest that there was any venom or sting in the manner in which the statement was made. If I accept everything said by the Complainant if the word “princesses” was used, it was part of conveying an important and necessary component of the discipline which is part of the life of a gymnast. The Complainant’s own description of the didactic element in what she describes makes eminent good sense.³⁹ What is also clear to me is that the Complainant understood what the coach was endeavouring to convey. Once again, this complaint falls squarely within the carve out provisions of Schedule 1 (2) of the Policy. The use of the word “Princesses” was the method legitimately chosen by the coach to make an important point concerning the dedication and discipline required to be a successful gymnast. All seven complaints, it must be remembered, arose out of a high performance program in which coaches and athletes had their eyes set on international and possibility Olympic participation.

135. In their oral evidence the Complainant was asked the following questions and gave the following answers:

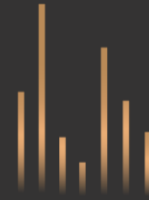
Bruce Collins	When, when you and a group of other children were at the same time referred to by Olga as princesses?
	You were big enough and experienced enough not to be too concerned about that, won’t you?
The Complainant	It was just the whole principle behind it. I wasn’t. Yeah.”
Bruce Collins	No, that (was) a very good answer, but you’d be inclined, I suggest, to, to simply say, look, things like that happen. Things like that are said in life and you’ve just got to move on and treat them accordingly.
The Complainant	Ok.
Bruce Collins	Isn’t that what you think? Is (that not) the wise advice a parent might give?
The Complainant	Sure.

³⁹ See paragraphs 56 and 58 above and see also the personal messages set out in paragraph 47 above



The Fifth Complaint

136. The complaint concerns Mrs Belouossov raising her hand in front of the Complainant's face as part of a legitimate request for the Complainant to stop talking while Mrs Belouossov is talking to the group.
137. In her statement, Mrs Belouossov admits to sometimes "raising her hand to quiet my gymnasts, the Complainant included". Mrs Belouossov went on to say:
- "The Complainant was not the easiest gymnast to quiet. They back chatted me a lot and was unhappy when they did not get their own way." Mrs Belouossov went on to say: "On that day (Complainant) did not have a written diary note from a physio about an injury to their shin. On this day, the Complainant continued to talk back to me and was disruptive in the practice session by talking to and distracting other gymnasts." When responding to the allegation that she had not watched the Complainant on the beam that day, Mrs Belouossov said that "... I had to look after the whole squad and cannot be watching all gymnasts all the time. The Complainant's expectation that I watch them constantly during the practice session is unrealistic and unachievable by a coach. I try and treat (sic) all gymnasts equally and everybody is the same."
138. I accept without reservation the evidence from Mrs Belouossov set out in the paragraph immediately above. It was not challenged in cross examination. The Complainant did not deny that they were talking. The evidence is consistent with the observations of other objective witnesses, including Ms Gilliver.
139. Putting one's hand up is a common manner of expression in every day personal interactions and, particularly, in classroom or lecture room situations and press conferences, indeed in many group situations where it is necessary to quell competing speakers so as to enable the person giving the lecture to manage the discussion by confining it to one speaker, often the lecturer himself or herself. Even if this action occurred it should not be examined in isolation, if who I accept to be a talkative gymnastic spoke out of turn and if the coach politely requested them to remain quiet while the coach was speaking and at the same time conveyed the same notion by an accompanying hand gesture, then it is an impossible stretch to conclude that such an action constituted "bullying" within the meaning of the policy, and I so find.
140. I am not satisfied that Mrs Belouossov did anything of an offensive nature when she asked the Complainant to stop talking, as she was entitled to do. If by a commonly employed gesture familiar to all teachers, instructors and pupils, Mrs Belouossov raised her hand it was clearly not done spitefully or in a challenging manner. I am not satisfied there was any or any offensive invasion of the Complainant's personal space. There is no specific description and



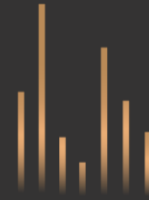
no detail in the Complainant's statement which would enable me to infer that the gesture was invasive or intrusive.

141. I have generally accepted the evidence of Mrs Belouossov in preference to the Complainant. In addition, Ms Gilliver's evidence⁴⁰ shows how deferential and concerned was Mrs Belouossov to be polite when she was faced with a need to quieten down a pupil who I have found was a talkative 17 year old anxious to ensure that their views were not only heard but accepted. Those verities of a pupil/coach relationship were a far cry from bullying and do not come close to establishing a charge of bullying. They are also more accurately regarded as the proper exercise of the management functions of a coach within the meaning of the carve-out provisions in Schedule 1 (2) of the Policy.
142. It is important to note that the Complainant does not deny that they were talking on this occasion. I am of the opinion that if all that a Tribunal had before it was evidence that the athlete was talking and was asked with the assistance of a commonly accepted hand gesture to stop, then that would not amount to bullying.

The Sixth Complaint

143. The complaint is that on 3 August 2023 Mrs Belouossov asked the Complainant when they would make (Mrs Belouossov) happy after the Complainant expressed that they had had a good day on the bars. At the outset I have formed the view that one should approach this interchange in a manner which gives a sensible meaning to the words in fact used and, when one does so, the interchange may be seen to consist of the following:
- (i) the Complainant in fact had "a good day on the bars";
 - (ii) that the Complainant **said** to Mrs Belouossov that they thought they had "had a really good day on the bars";
 - (iii) that the next element in the subject conversation between the Complainant and Mrs Belouossov was for Mrs Belouossov to agree with the Complainant's statement that, in other words, the only statement of Mrs Belouossov in the totality of the complaint was in effect, "You have had a good day on the bars".
144. I do not consider that Mrs Belouossov's agreement with the athlete's expression of satisfaction with their own performance could constitute bullying. I have concluded that this complaint, like

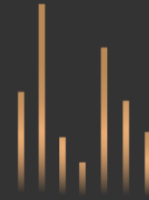
⁴⁰ In her statement in which she demonstrates that Mrs Belouossov was concerned to ask whether "Shh" was rude. That level of concern does not portray the actions of a bully.



others, is entirely lacking any justification; it does not do justice to a national sporting body to have formulated the complaint or to have continued to press the complaint.

The Seventh Complaint

145. This complaint was that Mrs Beloussov “refused” to address the Complainant by name “while they were the only one on beam, talking without directly acknowledging the Complainant”. The evidence does not provide any justification for the use of the pejorative word “refused”. It is not surprising if during a session involving a number of other athletes lasting for some hours that Mrs Beloussov did not use the Complainant’s name for a time on a single occasion. The English language has personal pronouns which sometimes stand in for names. The evidence before me discloses that Mrs Beloussov was, in fact, coaching the Complainant, was speaking directly to them and in an otherwise unobjectionable manner. It seems to me that the Complainant’s parent and/or the Complainant have scoured this interaction with Mrs Beloussov in order to light upon the most minute possible infraction to add to their list of criticisms of Mrs Beloussov. When the evidence, such as it is, is carefully considered against the language of the Policy. I am unable to conclude that the conduct complained of could remotely be considered as bullying.
146. When I examine the terms of the Policy, I am required to consider the critical carve out at the end of Annex 2. The whole of those qualifying words is of importance once, and in the opinion I have formed, the circumstances of each and every complaint falls within each of the sub-categories (a) to (d) and are examples of “legitimate and reasonable” action across each of the specified sub-categories.
147. I now have to express additional conclusions which apply to all seven complaints.
148. I have worked in detail through each complaint in this case with a thoroughness which has left me with a sense of disbelief that charges such as this have been made the subject of two detailed formal investigations and ultimately a full arbitration with three or more directions hearings, while the parties engaged in what was at times a faltering process brought about by the unsatisfactory performance by Gymnastics Australia at various points during the proceedings..
149. Even if that were true, bearing in mind that Mrs Beloussov was merely speaking in a way considered, without justification, by the 17 year old gymnast to be “rude” or brusque does not enter the same area of discourse as “bullying” as defined by the Policy. The actions and the words used by Mrs Beloussov in each of the seven “instances” were perfectly reasonable and they fell within the normal framework of an everyday athlete/coach relationship.



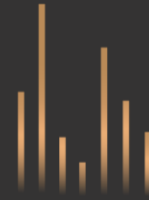
150. A re-reading of all of the Complainant's "notes" leaves me with the profound impression that, without exception, the seven complaints made are based upon trifles which in turn became imaginary slights when applied to a busy no-nonsense high performance coach who was getting on with her job and attending to other athletes as well. What is emblematic of each of these complaints is that the athlete was too ready to take offence when none was intended or effected or which could reasonably be considered to be offensive by an objective observer. In the present case the Complainant has read nuances into the exchanges which were not there. Mrs Belouossov's conduct did not rise to the level of unpleasantness. One must feel sadness that the Complainant should have built up such matters in their own mind and translated them into allegations against Mrs Belouossov. A far preferable approach for one to take is to return to the uplifting messages in the cards sent by the Complainant to Mrs Belouossov.

Conclusion

151. It is impossible to conclude that the preceding actions or non-actions constituted "bullying" within the meaning of the policy. It is irrational to conclude that Mrs Belouossov's part in each alleged situation could sustain a description of her as a "bully, a person who deliberately intimidates or persecutes those who are weaker".⁴¹
152. The Gymnastics Australia Investigation Committee should have found that none of the complaints had been substantiated. They were at best a collection of trivial circumstances which were exaggerated to imaginary heights and conjured up by an otherwise pleasant young person who was, on their own admission and on the evidence of other witnesses, prone to react adversely to stress and whose parent had made the initiating complaint. A recurrent characteristic of the Investigation Report was its reliance on upon "inexact proof, indefinite testimony or indirect inference" as described in *Briginshaw*⁴² (supra).
153. A proper and balanced consideration of those factors by Gymnastics Australia and the Investigation Committee should have led both bodies to conclude that none of the complaints remotely approached the description of bullying in the Policy and should have been dismissed at the threshold. Instead, they were kept alive and taken forward by Gymnastics Australia in an over zealous approach which failed to balance the personal rights of the coach against unjustified, if not imaginary, complaints initiated by the parent of an impressionable young person who in any event saw themselves at the end of their career in gymnastics and was about to transfer her competitive instincts to another quite different sporting endeavour.

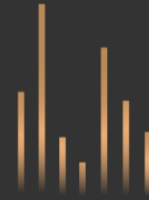
⁴¹ Compact Oxford English Dictionary.

⁴² *Briginshaw v Briginshaw* (1938) 60 CLR 336



LESSONS TO BE LEARNED

154. There is a duty imposed upon any sporting body in the present situation to acquire and apply a properly formed understanding of the process and the consequences of signing the Arbitration Agreement which describes the nature of the Arbitration and the constituent legal steps and the relevant obligation that this would impose upon the sporting body. It was made clear to me on numerous occasions that Gymnastics Australia had not endeavoured to acquire a proper understanding of the practical effect of its having entered into the Arbitration Agreement.
155. The need to address and specify each of the elements of the charges is a vital step in proceedings of the present type. This step was not taken in the complaint, nor dealt with in the inadequate reasons of the Gymnastics Australia Investigation Committee.
156. It is of fundamental importance for the Sporting Body to take legal advice, at least initially, so that proceedings may be conducted as envisaged by the Arbitration Agreement. This need not be a financially ruinous decision. It is reasonable for a sporting body to limit its exposure to legal costs by initially obtaining legal advice concerning the procedural characteristics of the arbitration process and the obligations that process imposes upon the sporting body. From that point onwards it is reasonable for the sporting body to rely upon the general principles relating to arbitration which are set out in section 40 of the National Sports Tribunal Act which obliges an arbitrator to conduct the proceedings “with as little formality and technicality, with as much expedition and at the least cost to the parties as a proper consideration of the matters before the matter before the Tribunal ...”.
157. What was clearly lacking was a basic understanding of important mechanisms such as the need to fully comply with a Notice to Produce documents and the importance of such compliance.
158. Gymnastics Australia seemed to lack an understanding that the Policy Document meets and imposes a duty upon Gymnastics Australia to be mindful of the rights of all “Members”, an expression which includes coaches. The organisation was required to consider any complaints made to it in the light of all the circumstances including the proper role, the relevant context and the viewpoint of the coach.
159. The present case has shown:



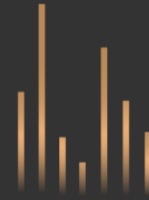
- (i) that the decision not to engage and utilise legal advisers has resulted in delays and a failure by Gymnastics Australia to observe proper procedures⁴³;
- (ii) however, a trimmed down approach to an Arbitration such as this could be taken by a sporting body once it has been advised of the essential elements in an arbitration and decided to participate in the Arbitration without the daily attendance of lawyers,
- (iii) it is now clear that the (unsigned) Final Submissions of Gymnastics Australia were not legally oversighted or approved. If there was any significant legal input then it was either misguided or completely missed the point.
- (iv) in the result, the Submissions filed by Gymnastics Australia were of no assistance whatever to the Arbitrator who of his own motion raised the issue so that Gymnastics Australia was given every opportunity to consider its position. This failure has added to the costs of the Arbitration, required the Arbitrator to make a number of adjustments in favour of Gymnastics Australia delayed the completion of this Arbitration and disadvantaged Mrs Belouossov and her legal advisers,
- (v) those factors have ensured that this proceeding, despite numerous directions by the Arbitrator, has not proceeded as efficiently and in as cost-effective a manner as it was intended.

160. It is clear to me that Gymnastics Australia has not utilised the clearly expressed explanatory material made available by the National Sports Tribunal (including the published list of those experienced lawyers who have indicated their willingness to take on cases of this kind pro bono).

161. In the present case I observed clear signs of a lack of objectivity and a flawed determination for Gymnastics Australia to take the unwarranted course it decided it would take rather than an objectively based analysis.

162. Perhaps no better example of this approach can be given than the following statements made on behalf of Gymnastics Australia concerning the evidence of the group of gymnasts being referred to as “Princesses”. It was said in an unsolicited intervention by Gymnastics Australia representative that: “Mr Collins, I would be very offended if someone said that to me. I think it is derogatory and I have been a police officer for twenty years.”

⁴³ That course of behaviour was described by Counsel for Mrs Belouossov as “honest ineptitude”. For example, it was altogether unsatisfactory for Gymnastics Australia in the face of a Notice to Produce given at least several weeks beforehand, to make available to Mrs Belouossov’s legal team the critically important initial complaint made by the parent of the Complainant, at approximately 7.00 pm the evening before the hearing.



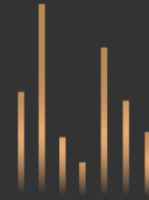
163. The unrestrained and unapologetic use of anonymous statements – an anonymous witness may say anything and his or her assertions are for the most part hidden behind the veil of anonymity and beyond the reach of a fully informed cross examination. Such an approach is reminiscent of the infamous Venetian practice from Renaissance times described by the expression “*bocche dei leone*” where anonymous accusations were written down and the paper inserted into a stone head of a lion fixed on walls in various public locations.
164. The lack of any understanding of the application of the well-known long-standing *Briginshaw*⁴⁴ principle.
165. The failure to understand and explain to prospective witnesses the essential link between advancing a witness statement and the need for the maker of the statement to be available for cross-examination, if required by the opposing party.
166. The misconception that witnesses may be shielded from a critical examination of their statements if that is proper and essential to the protection of the rights of the accused person.
167. Failure to observe the well settled and uncontroversial requirement that the accused person must be given an opportunity to address on the question of penalty.⁴⁵
168. Sending representatives to directions hearings who were not properly prepared or briefed and who did not have authority or the capacity to answer relevant questions.
169. Failing to properly search for or produce documents which are the subject of a Notice to Produce. The corporate memory of an organisation is not limited or attenuated simply because there are former employees who worked for the organisation at the time documents caught by the notice to produce were received or brought into existence. A Notice to Produce is not adequately responded to by a statement that documents referred to in the Notice to Produce were dated before the commencement of the employment of current employees.
170. Failing to properly manage and apply legal advice, assuming the provision of such advice.

Conclusion

171. None of what I have said is to imply that a proceeding such as this should be attended by the same, at times, technical rules of a criminal trial. Everything I have said about the deficiencies in the processes of the Investigation Committee and the conduct of the Arbitration may be reduced to the basic requirements of natural justice, seasoned perhaps by a little experience and leavened where necessary by the timely addition of a little fundamental legal advice.

⁴⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336

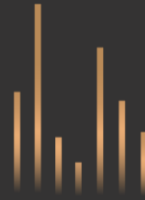
⁴⁵ See, for example, *Hall v NSW Trotting Club* (supra)



THE FUTURE

172. The team at Gymnastics Australia have repeatedly shown that they have had difficulties understanding and accommodating the basic elements of an arbitration conducted under the provisions of the National Sports Tribunal Act – an arbitration which Gymnastics Australia requested and followed up with its execution of the Arbitration Agreement.
173. On numerous occasions the Arbitrator had to make adjustments, concessions and specific directions in an attempt to bring about an improvement in Gymnastics Australia's performance as a party to this arbitration. By and large these endeavours have not been successful, in fact the 13 March 2025 letter from Gymnastics Australia declining to reply to the Arbitrator's offer to permit it to deal with two issues of potential importance to Gymnastics Australia, is a case in point.
174. The National Sports Tribunal has in the past conducted education sessions to explain the important in principle and practical features of the National Sports Tribunal Act, and in view of the national importance of the National Sports Tribunal procedures it would, in my opinion, be of considerable utility if the team at Gymnastics Australia engage with the CEO of the National Sports Tribunal in a workshop meeting which could usefully address the many shortcomings which this case has brought to light.
175. The tale of this investigation does no credit to Gymnastics Australia, nor to the policies it professes to promulgate. The Investigation Report was procedurally flawed, sloppy, unfair to Mrs Beloussov and without reasons. The Report was altogether lacking in analysis, it was not even an exercise in once over lightly. Gymnastics Australia should analyse, critique, re-organise and re-calibrate the whole of its disciplinary structure⁴⁶ as to properly give effect to a Policy which has been drafted so as to give effect to the modern necessity to stamp out bullying of all types.
176. Gymnastics Australia should retain the services of a skilled administration/sports lawyer to revisit, or perhaps visit it for the first time, following subjects from the ground up:
- (i) the nature of an arbitration and its procedural features;
 - (ii) the rules of natural justice and their procedural impact;
 - (iii) how to properly interview witnesses;
 - (iv) the obligation to produced documents;
 - (v) the management of statement makers;

⁴⁶ Perhaps it is not necessary to revise the Policy provided Gymnastics Australia takes the trouble to work out what it means and how it should be implemented.



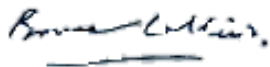
- (vi) the unconditional nature of the corporate memory;
- (vii) the value of well chosen and economically utilised legal advice;
- (viii) the need for a proper legal analysis of the charges;
- (ix) balance of probabilities or *Briginshaw*⁴⁷ and why;
- (x) how to produce a proper set of reasons;
- (xi) the law of privilege.

COSTS

177. The provisions of section 46 of the NST Act together with section 13 of the *National Sports Tribunal Rule 2020* have the effect of conferring the exclusive power to make orders for costs upon the Chief Executive Officer of the Tribunal. Accordingly, there is no requirement for me to say anything with respect to costs.

AWARD

1. Having arbitrated the seven charges and the complaints that were found to be substantiated by the Gymnastics Australia Investigation Committee by hearing and having considered the whole of the evidence presented by Gymnastics Australia and the whole of the evidence in response tendered on behalf of Mrs Olga Belousov and all of the submissions of the parties.
2. I determine, declare, find and award that the sanctions imposed upon Mrs Olga Belousov are and always have been null void and of no effect.

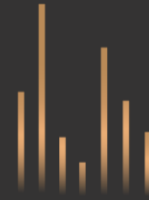


Bruce Collins KC

Arbitrator

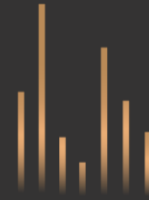
At Sydney on 20 May 2025.

⁴⁷ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

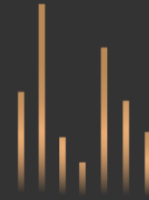


ANNEXURE 1

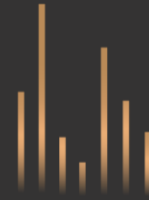
Date/ Direction Made	Action	Description
2 December 2024	Hearing	Adjourned
2 December 2024	Amended Directions	<ol style="list-style-type: none"> 1. The Respondent inform the Applicant as to whether any other material was relied upon in its investigation, which was not discovered (or contained in the documents shared) on 19 September 2024. 2. The Respondent informs the applicant of the names of any witnesses it seeks to rely on and call for the purposes of cross-examination on 17 December 2024. 3. The Applicant shall provide to the Respondent a complete copy of the Hall v New South Wales Trotting Club [1977] NSWLR 378 decision. 4. The Parties confirm with the NST whether there are any other issues in dispute that were not previously identified in their responses to the “issues in dispute” requested by the NST on 29 November 2024.
2 December 2024	Directions	<ol style="list-style-type: none"> 1. The Respondent has leave of the Tribunal to file one (1) witness statement by Complainant’s parent and serve same on the Parties by 5.00 pm AEDT on Tuesday, 10 December 2024.
10 December 2024	Directions	<p>The Applicant is entitled to know in advance the detailed evidence upon which the Respondent (“GA”) intends to rely. In short, he or she who asserts must prove.</p> <p>What evidence (documentary and facts witnesses) GA decides to call is entirely a question for it to decide.</p> <p>The Tribunal is not “requiring” GA to call any or any particular evidence. The Arbitrator repeats that is entirely a decision for GA.</p> <p>Then there is the question of the forms of that evidence and GA should assume that if it for whatever reason decides not to present a witness for cross examination whilst at the same time</p>



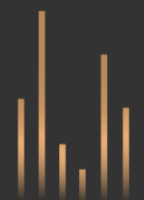
		<p>endeavouring to rely upon that witnesses statement then it will inevitable be faced with an objection by the Applicant to such evidence and the tribunal will be required to rule upon that objections if and when it is made and after considering any submissions by the Parties.</p> <p>As to the question of redactions, they will be decided by the Tribunal, as and when any objections to evidence are made at the hearing and after considering the submissions of the Parties.</p> <p>The Arbitrator has indicated (subject to the submissions of the Parties) that in the event of physical unavailability of any witness whose statement is proposed to be tendered, the Parties are advised that the Arbitrator will permit that person to give evidence by Microsoft Teams. The arbitrator has already pointed out, without finally ruling on the point, that the Parties should be aware that the approach to be taken to a witness whose statement is tendered is that if the Applicant requires that person to be available for cross-examination then that should occur. That is a fundamental element of procedural fairness, which is of considerable importance to the National Sports Tribunal.</p> <p>As to the Application for a Notice to Produce, GA must indicate before 5.00 pm 11 December 2024 whether and if so on what grounds it object to the producing the documents required.</p> <p>Before 5.00 pm 11 December 2024 GA is also required to provide to the applicant a list of witnesses that it proposes to call and the dates of the statements that will be tendered.</p> <p>Once again, it is entirely a decision to be made by GA however the Arbitrator respectfully suggests that GA should again give consideration to the question whether its case might be assisted by the provision of legal advice. That is merely a suggestion contended to preserve a level playing field and is no way to be considered as an advice or a criticism by the Arbitrator.</p> <p>These and other related matters must be clearly resolved as soon as possible so that there can be no impediment to the hearing beginning and concluding on 17 December 2024. In order to ensure that that occurs the Arbitrator has fixed a Directions Hearing to be conducted by Microsoft Teams beginning at 9.30 am on Thursday, 12 December 2024. This will ensure that the Parties have adequate time to consider the</p>
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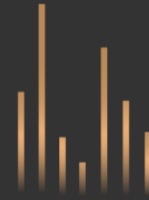
		material which must be produced by GA before 5.00 pm, 11 December 2024.
12 December 2024	Pre-Hearing Conference	Gymnastics Australia indicate whether and if so on what grounds it objects to the producing the documents required.
13 December 2024	Directions	<p>Please see below Directions made by Member Collins during the Pre-Hearing Conference on 12 December 2024:</p> <ol style="list-style-type: none"> 1. The proceedings listed for 17 December 2024 shall be vacated. 2. Those proceedings referred to above will be listed for Hearing on Thursday, 23 January 2025 (and such hearing will run into the evening or the next day should further time be required) ("the Hearing Date") 3. Gymnastics Australia will make available its final list of witness statements that it seeks to rely upon and those statements will be made available to the Applicant on or before Friday, 20 December 2024. 4. On or before Wednesday, 15 January 2025, the Applicant will file their submissions in reply to the evidence provided pursuant to Direction 3 above. 5. Should either Party have an issue with the timetable, as Directed, then that Party has leave to apply to the NST Registry, if necessary. 6. The Applicant shall file a one-page document as to her submissions in seeking a stay of the sanction imposed on the Applicant by 5.00 pm AEDT on Friday, 13 December 2024. 7. Gymnastics Australia shall file a one page document as to their submission to the Applicant seeking a stay of the sanction imposed on her by 5.00 pm AEDT on Monday, 16 December 2024. 8. Gymnastics Australia is Directed to reply fully and formally to the Applicant's Application for a Notice and each Party has the opportunity to ask any questions regarding the Application for a Notice and each Party has the opportunity to ask any questions regarding the application for a Notice at a Directions Hearing. 9. If any Party seeks a Directions Hearing prior to the Hearing Date, then they have leave to apply to the NST Registry.
17 December 2024	Hearing (Day 2)	Adjourned
10 January 2025	Direction Hearing	Gymnastics Australia has requested your consideration regarding the possibility of scheduling a direction hearing prior



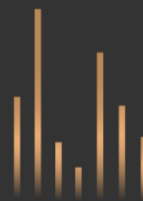
		<p>to the hearing. They intend to raise the following concerns and how they will be managed during the hearing:</p> <ul style="list-style-type: none"> whether the Tribunal (or the Applicant) expect any witnesses to provide oral evidence in addition to the witness statements they provided as part of the investigation. Gymnastics Australia note that some of those witnesses were prepared to provide statements for the purpose of the investigation (one anonymously) but are not prepared to give evidence at the Tribunal and be cross examined by lawyers. If any cross examination of witnesses is permitted by the Tribunal how that will be managed. In this respect Gymnastics Australia note that the original Complainant, is a young person (a minor at the time of two of the matters) and any cross-examination should be managed in a trauma informed way. the expected estimates of submissions so if any witnesses are required to attend, the timing can be proactively managed prior to the hearing commencing.
14 January 2025	Direction	<ol style="list-style-type: none"> Witness evidence in chief to induced by statement. GA to provide a list of witnesses, to provide witness statements from Ms Anderson and Complainant's parent, and to ensure that Belousov has copies of documents relevant to the original directions by Wednesday 15 January 2025. GA to advise which charges they propose to proceed with Belousov to lodge evidence in reply to GA by Monday 20 January 2025. Belousov to advise which witnesses they wish to be available for cross-examination. GA to advise which witnesses they wish to be available for cross-examination. Each party to advise the other of any documents they propose to tender and provide copies to the other party. GA to provide an outline of submissions by Monday 20 January 2025 (or three days prior to hearing).



		8. Belousov to provide response submissions on or before Wednesday 22 January 2025.
17 January 2025		GA notify the Complainant's parent is no longer in a position to provide a statement and be cross examined, they have had to travel interstate to tend to their unwell father. This as addressed in GA correspondence dated 15 January 2025.
21 January 2025	Direction	Each party is to provide to the arbitrator and to the other party a Bundle of the documents upon it proposes to rely (including copies of statements) on or before 7.00 pm 22 January 2025.
21 January 2025	Direction	The Applicant must file its material before 5.00 pm today; and immediately advise the Respondent which witnesses are required to be available for cross-examination.
22 January 2025		Respondent provided original Complaint made by the Complainant's parent and recorded notes from the Gymnastics Australia Complaints Management System taken during a meeting between the Complainant's parent, the Complainant, and GA Integrity.
22 January 2025	Direction	<ol style="list-style-type: none"> 1. I confirm the Hearing will be proceeding tomorrow commencing at 09.30 am (emphasised). 2. The Arbitrator expects all directions that were previously made to be complied with. In particular it is up to the Parties to confer and agree upon the order in which the witnesses will be cross-examined. This process should be completed before 12.00 pm today. 3. Gymnastics Australia is ordered to produce: <ol style="list-style-type: none"> a. the formal complaint made by the Complainant's parent and any notes and variations there of; b. any notes made by Gymnastics Australia referring to or recording of any discussions between the Complainant's parent and representatives of Gymnastics Australia (<i>see paragraph (6) of the Statement of Ms Bonnie Anderson</i>). 4. Gymnastics Australia has requested from the Arbitrator an indicated of the steps to be taken in order at the Hearing on 23 January 2025.
23 January 2025	Hearing	
28 January 2025	Direction	Respondent is to provide their closing written submissions on or before 5.00 pm on Tuesday 28 January 2025
28 January 2025	Direction	Is to provide their closing written submissions on or before 5.00 pm on Friday 31 January 2025 .
3 February 2025	Direction	Respondent to address any points raised with their reply to be submitted on or before 5.00 pm on Monday, 3 February 2025 .



4 February 2025	Direction	<ol style="list-style-type: none"> 1. Will the Parties confirm that they have no complaints or matters they wish to raise concerning the procedure following in the Arbitration. 2. In particular, will Gymnastics Australia please confirm it has tendered all the evidence they wish to tender, including any evidence in reply. 3. It seems to me that without the evidence of the Complainant's parent's letter, there is no evidence of any initiating complaint. I, therefore, propose to admit that letter as EXPB1. Could both Parties confirm that they have no objections. The letter dated 4 December 2023 is evidence of the complaint, not the truth of its contents. <p>I wish to receive replied to each of the above by 5.00 pm, 4 February 2025.</p>
4 February 2025	Direction	<ol style="list-style-type: none"> 1. Lastly, both Parties are invited to make any submissions in respect to costs. If Parties wish to do so then this submission should reach me by 5.00 pm, 5 February 2025.

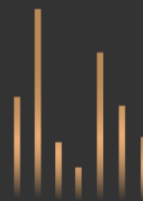


ANNEXURE 2

Olga Belooussov – Curriculum Vitae

Employment History

2024	<u>Robertson Gymnastics Centre</u> Women's Artistic Gymnastics Coach
2016 – 2023	<u>Delta Gymnastics</u> National and International Stream Head Coach
2015 – 2015	<u>High Performance Centre – gymnastics Queensland</u> Team Coach
2014	<u>Prime Gymnastics Club – Singapore</u> Specialist Gymnastics Coach and Coach Mentor
2013	<u>High Performance Centre – Gymnastics Queensland</u> Team Coach
2001 – 2012	<u>Moreton Bay College Centre of Excellence in Gymnastics</u> International Master Coach
1994 – 2001	<u>Elite High Performance Centre – Gymnastics Queensland</u> Head Choreographer and Team Coach
1996 (part time)	<u>Lawnton Academy of Artistic Gymnastics</u> Specialist Coach
1993	<u>Connie Burch Gymnastics Academy</u>



Elite High Performance Coach

1992 Western Australia Institute of Sport

Elite High Performance Coach

1971 – 1991 Soviet Union Gymnastics (State of Mordovei)

Junior Head Coach and Head Choreographer

Education

1985 to present Federation International Gymnastics

International Judging Brevet

1991 to present Australian Coaching Council

Honorary Level 3 Coach – Gymnastics

Transition to High Performance Gold in 2013

1971 Smolenski Institute of Sport, Physical Culture and Education

Rehabilitation Therapist for Gymnastics Injuries

1967 – 1971 Smolenski Institute of Sport, Physical Culture and Education

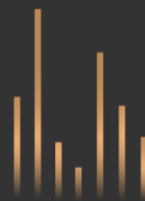
Master of Sports Coaching (Gymnastics)

Awards Presented by Gymnastics Associations

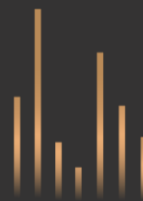
- *Gymnastics Queensland Women's Artistic International Coach of the Year*
 - Awarded in 2004, 2006, 2007, 2009, 2010, 2011, 2012, 2013, 2015, 2021, 2022
- *Gymnastics Australia International Level Coach of Year*
 - Awarded in 2018, 2019, 2022

Athlete Achievements

All Achievements are in the Senior International Division unless noted otherwise



Athlete	Achievement
Georgia Goodwin	<p>2022 Commonwealth Games</p> <p>1st All Around, 1st Vault, 2nd Beam and Bars, 2nd Team</p> <p>2021 Olympics</p> <p>37th All Around</p> <p>2018 Commonwealth Games</p> <p>2nd All Around, 3rd on Bars</p> <p>Australian Champion, 2021, 2019, 2018, 2015, 2014</p>
Larissa Miller	<p>2014 Commonwealth Games</p> <p>2nd on Bars</p> <p>2010 Australian Championships</p> <p>3rd on Bars</p> <p>2009 Australian Championships</p> <p>1st on Bars</p> <p>2008 National Club Championships</p> <p>2nd All Around, 1st Beam, 2nd Vault, 2nd Floor, 3rd on Bars</p> <p>World Championship Representative 2009, 2010, 2011</p> <p>2004 Australian Level 8 All Around Champion</p>
Georgia Rose Brown	<p>2009 Australian Championships (Junior International)</p> <p>1st Beam, 2nd Bars, 3rd Floor</p> <p>2008 National Club Championships</p> <p>2nd All Around, 2nd Floor, 3rd Beam</p>
Chloe Sims	<p>2007 World Championship Team</p> <p>2006 Commonwealth Games</p> <p>1st All Around and Bars</p> <p>2005 Australian Youth Olympic Festival</p>



	<p>1st All Around</p> <p>2004 Commonwealth Youth Games</p> <p>1st All Around</p>
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In total, gymnasts coached by Olga and Sasha have received 45 international medals.