

June 29, 2017

Dear FINA Members, dear friends,

I have received the decision from the Court of Arbitration for Sport (CAS) relating to its determination of the question of my standing (capacity) to bring appeals to the CAS concerning decisions taken by the FINA Ethics Panel and FINA Executive bodies. The decisions I was appealing to the CAS concerned unsatisfactory determinations of complaints, against senior officials within FINA, which included allegations of serious breaches of the FINA Code of Ethics.

Unfortunately, the CAS was unable to find grounds within the FINA constitutional framework to allow me to pursue my appeals further to the merits assessment stage. This is disappointing, and concerning, as it suggests that no one can challenge a decision taken by FINA to dismiss (or even refuse to consider) a complaint based on breaches of the FINA Code of Ethics.

After failing with its attempts to stifle my appeals, with arguments alleging that the CAS did not have jurisdiction to hear the appeals, FINA continued with its quest to stop the appeals at the preliminary procedural stages. FINA has now been successful in stopping the appeals, through its arguments relating to my lack of technical and legal standing to bring the appeals, and the decisions which I challenged will now not be subject to an independent merits assessment.

As set out in my manifesto (which was released on 27 June 2017) one of the fundamental Seven Drivers for change which I propose is that I will strive for increased good governance and enhanced transparency within FINA, particularly at the senior administrative levels. Given the nature of the allegations made in the complaints, concerning the conduct of Mr Husain Al Musallam and Mr Dale Neuburger, I am not prepared to allow FINA to suppress those complaints and avoid undertaking a fair, transparent, impartial and procedurally correct assessment of those complaints. This was (and remains) the key motivation behind my appeals to the CAS.

Within its written decision, the CAS comments that the motives behind the appeals are “*noble causes*” but that such virtuous motivations do not, on their own, provide a technical and legal standing to bring the appeals.

It is unfortunate and disappointing that FINA has sought to stifle my appeals (as it did with the complaints concerning Mr Al Musallam and Mr Neuburger) based on procedural technicalities, rather than allow an independent arbitral panel to examine decisions of a world governing body which include allegations of breaches of ethics principles by its own senior officials. The obvious lack of accountability and transparency at the senior levels of FINA, exacerbated by constitutional uncertainty, are concerning aspects of the current FINA constitutional framework. I will not tolerate this unsatisfactory position and will not allow our sport to succumb to the reputational harm which other sports have suffered.

I am considering my position with my legal advisors and am contemplating an appeal of the CAS' decision to the Swiss Federal Tribunal. FINA cannot be allowed to be both the 'judge' and the 'jury' in circumstances where there are serious complaints raised concerning breaches of the FINA Code of Ethics, particularly when the allegations relate to its own senior officials.



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