

**SUMMARY ANALYSIS**  
**Proposals for the ISU 50th Ordinary Congress 2004**  
**Amendments to the Constitution and Regulations**  
March 16, 2004

based primarily on a “Detailed Analysis” originally distributed by  
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see: <http://www.frogsonice.com/skateweb/articles/publius/>

**Parts I and III- VII of this Summary Analysis are shown on separate documents.**

## **II. PROPOSAL 52 -- REVISING THE DISPUTE RESOLUTION PROCESS**

This Proposal represents a complete re-write of existing Articles 22 and 23 and a complete change in the procedures established for resolution of disputes within the ISU family. The complexity of it obscures the fact that the changes reduce the protections currently available to the Members and persons affiliated to them. It should be **REJECTED**.

The Legal Advisors stated in their report to the 48th Congress in 2000 that the purpose of the dispute resolution process of the ISU should be “to insure that decisions involving skating expertise and judgment are made by skating experts, not by outsiders.” That report also included the following assertion: “Arbitrary conduct by any ISU official or organ may be addressed by political action at the next-following ordinary or extraordinary Congress.” In reality, the Constitution does not contemplate that the Congress would become a usual part of the dispute resolution process. If the goal of the Members is to keep the dispute resolution process within the organisation, it is imperative that the procedures specified in the Constitution are effective in protecting the rights of the Members and the rights of persons affiliated to them. In that context, the Members should consider the following factors:

- ▶ The structures set forth in Proposal No. 52 are confusing and complex and do not represent an improvement over the current provisions of Articles 22 and 23. They actually provide much less protection to the Members and persons affiliated to them than the current provisions.
- ▶ There is no protection inside the ISU against any “arbitrary conduct by an ISU official or organ” which is not in the category of “disciplinary or ethical offence”.
- ▶ Performance evaluations are automatically outside the jurisdiction of the Disciplinary Commission, even if they reflect “arbitrary conduct” by the official or body making that evaluation.
- ▶ The Proposal would grant complete discretion to the Disciplinary Commission and to the Appeals Commission as to whether to afford the opportunity of the party to have a hearing. In other words, such hearing is not a right but only a gift.
- ▶ The jurisdiction of the Appeals Commission is limited solely to appeals of (1) a decision against jurisdiction of the Disciplinary Commission, which appeal may be brought by any of the parties, (2) a decision of the Council imposing a penalty or suspension of membership against

any Member, which appeal may be brought by the Member, and (3) a decision by the Disciplinary Commission against a party accused of a “disciplinary or ethical offence”, which appeal may be brought by the party thus found to have committed such offence.

- ▶ A proceeding against the Council or a member of it for an “ethical offence” is thus not subject to appeal if the Disciplinary Commission rules in favour of the Council. The Council has defined what an “ethical offence” is through adoption of the Code of Ethics. Unless the authority over the Ethics Rules is transferred solely to the Members, the Council might cancel a proceeding against it merely by changing the Code of Ethics so that its own conduct is not an “ethical offence”.
- ▶ The Proposal states that the Disciplinary Commission and the Appeals Commission are each an “independent body” but that is not achieved where the Council has the authority to approve or disapprove the procedures and rules of both of those Commissions. Only the Congress can do that and preserve the “independence” of those Commissions. “Independence” is not achieved where the Secretariat serves in an administrative capacity for each of the Commissions. Actual “independence” is not achieved where the Council has jurisdiction over charges of a “disciplinary or ethical offence” which are lodged against any member of the Disciplinary Commission.
- ▶ The Commissions must have sources of funds to conduct their operations, or they will they be dependent. The Members must be informed of the economic impact, but that is not stated in the Proposal as the Procedural Provisions of the Constitution require.
- ▶ The provisions of Articles 22 and 23 serve as the “agreement” for arbitration in order for the Court of Arbitration for Sport to accept jurisdiction over disputes arising under the ISU Constitution and Regulations. The provisions of proposed Articles 24 and 25 in the Proposal do not provide adequate protection of the Members or to clubs or persons affiliated to them.

The complexity, confusion, and limitations on the scope of dispute resolution procedures are a stark contrast with Proposals No. 53, 54, 56 and 57 (discussed in Section III of this Analysis) which actually do clarify and solidify rights of Members and associated individuals in the dispute resolution process.