

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA**

**CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA**

No.: SDRCC 22-0559

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN:**                    **Rowing Canada Aviron (RCA) (Claimant)**

AND

**Canada Games Council (CGC) (Respondent)**

AND

Baseball Canada

Golf Canada

2025 Canada Games Host Society (Affected Parties)

**ARBITRATOR:** Professor Richard H. McLaren, O.C.

**COUNSELS/REPRESENTATIVES:**

For the Claimant:                    Adam Klevinas

For the Respondent:                    Aaron Bruce

For Affected Parties:                    Brian Ward and David McCarthy

**APPEARANCES:**

For the Claimant:                    Terry Dillon  
Jennifer Fitzpatrick

For the Respondent:                    Kali MacAdam  
Denis Mahoney

For the Affected Parties:                    Jason Dickson (Baseball Canada)  
Chris Balison  
Mary Beth McKenna (Golf Canada)  
Akash Patel  
Kevin Blue  
Garrett Ball  
Karen Sherriffs (2025 Canada Games Host Society)

## ARBITRATION AWARD

1. The Claimant, Rowing Canada Aviron (“RCA”), is the National Sport Organization (“NSO”) for the sport of rowing in Canada.
2. The Respondent, Canada Games Council (“CGC”), is the multi-sport event organizer for the next Canada Summer Games in 2025 (“Games”). The CGC is an independent, not for profit organization formed in 1991 by the Federal-Provincial/Territorial Governments.
3. The named Affected Parties are: Baseball Canada (“Baseball”) and Golf Canada (“Golf”) who may, if the Claimant is successful, be removed from the upcoming Canada Summer Games Program planned to take place at St. John’s Newfoundland in 2025.
4. The sport of rowing was not included in the program for the Games. The decision of the CGC came to the attention of RCA on 6 January 2022.
5. The Sport & Games Committee (the “Committee”) is a committee of the CGC Board of Directors. It has a remit to oversee the technical sport matters of the Games. The 2025 Canada Games Sport Selection Process was developed by the Committee and applied to the determination to exclude RCA from the Games.
6. To complete the selection of sports for the Games the Committee had two possible outcomes. The Committee could not accommodate both women’s baseball and rowing due to their team sizes. Thus, a decision had to be made between two sports. If rowing was selected there was no room for any other sport to be added. If women’s baseball was selected there would be room for one more small sport to be selected for the Games.
7. The Committee engaged in an analysis of the two sports following which there was a consensus to select women’s baseball. That decision was made by the Committee on 24 October 2021. With that decision and the quota framework in place there was not enough quota to accommodate rowing.
8. Sports being considered for the final 10% of the quota selection could only be added to the program at their minimum team size. The minimum team size for RCA had remained as originally filed in December 2019. The Committee had no authority to reduce any sports team size. Sports had a

period between 27 April 2021 and 1 July 2021 to change their minimum team size. If no adjustment was made, which was the case with RCA, the minimum team size remained at the previously submitted level.

9. In December 2021 Golf was selected as its team size would fit within the remaining quota. The final decision of the Committee on the sports for the Games Program was communicated to all NSOs on 5 January 2022.
10. An appeal of the Committee decision to add the Golf and Women's Baseball teams was made by RCA on 18 January 2022. RCA proposed to "... remit this matter back to the CGC Sport and Games Committee and have the sport of rowing considered under a reduced quota format, along with the sports of golf and female baseball, to fairly determine which sport should have been included on the 2025 Canada Summer Games program".

### **SUBMISSIONS**

(i) RCA

11. RCA submits that its procedural fairness rights were breached by CGC in the final stage of the sport selection process to determine the sports to be included in the Games program. In the original applications rowing was ranked fifth for inclusion ahead of golf, women's baseball, men's and women's rugby 7s which are now on the program. In support of the procedural submission reference was made to *Mangar Makur Chuot & SSAF v. SSNOC CAS OG 16/005*; and *IAAF/USA Track & Field CAS 2002/O/401*.
12. It was submitted that there was a legitimate expectation that RCA would be informed by CGC of the necessity to reduce its team size in order to meet the quota requirements.
13. The relief requested is an order remitting the matter to the Committee to reassess its decision once CGC has provided RCA with guidance regarding the number of quotas that would have been acceptable in the final stage of the sport selection process. In the alternative RCA requested that it be granted the opportunity to submit a revised quota proposal for the Committee's consideration.

*(ii) CGC*

14. CGC denies that it violated RCA's right to procedural fairness. Rowing's minimum team size on file was within the available quota for the final 10%. The offer to reduce rowing's minimum team size and increase its chances of selection came too late and outside the period to so advise the Committee. By the time the offer came CGC's selection policy and procedures no longer permitted it to negotiate team sizes with applicant sports.
15. Decisions were made in accordance with the policy of the Committee. It did not create legitimate expectations that it would provide RCA with further information to support its determination of what team size to put forward for consideration for inclusion in the selection process.

*(iii) Affected Parties*

*(a) Women's Baseball*

16. It is submitted that CGC outlined a clear selection process, communicated it in a timely and transparent manner and followed the rules and process as set out.

*(b) Golf*

17. It is submitted that re-opening of the final stage of the process would breach the sport of Golf's procedural rights since it complied with the procedure and was selected as one of the sports for the Games.
18. CGC followed a fair and transparent process and its policies did not disadvantage any applicant sports. In any event RCA knew on two different occasions that quota was an issue in its application. It was unreasonable for RCA to hold an expectation that CGC would tell it the required athlete quota.

**DECISION**

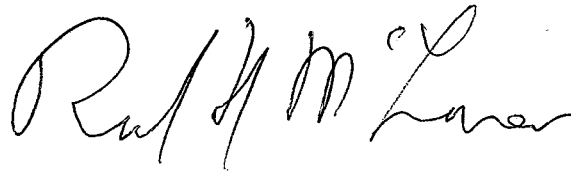
19. In the initial ranking process to determine the program for the 2025 Games RCA ranked fifth out of 22 sports. It was therefore ranked ahead of four sports now included on the program at the end of the selection process: golf, women's baseball, men's and women's rugby 7s.

20. There are multiple criteria used to select sports for the Games program. One factor is the quota system which is described in the 2025 Canada Games Sport Selection Process. The initial exclusion of rowing from the Games program occurred when 90% of the quota was allocated on 31 January 2019. On 24 October 2021 the Committee decided to include women's baseball and could not also include rowing in the final 10% of the quota allocation and decision because there would be insufficient quota for both sports.
21. It was submitted that the RCA had a legitimate expectation prior to the final stage of the sport selection process that CGC would make an inquiry of RCA regarding "how it could reduce its quota". At the Hearing the Arbitrator was advised that the submitted quota was 24 and that the quota could be lowered to a minimum of 4. From a careful reading of the selection process there is no obligation placed upon CGC to advise any sport of the need to reduce its quota or provide information on the quantum of quota that would fit the decision-making matrix. See 2025 Canada Games Sport Selection Process.
22. To make its case the RCA needs to create a construct by the notion of a legitimate expectation. The argument is that to have not fulfilled this expectation results in a breach of the procedural fairness rights and entitlement of the RCA to participate in the process. Within the CAS sports jurisprudence there is a concept of procedural fairness rights as reflected in the quoted CAS decisions. The problem with RCA's submission is that in order to trigger a breach of the procedural fairness right there has to be put in place this procedural construct of a legitimate expectation which was not fulfilled. I do not find that there was such an expectation. On that basis there can be no breach of the expectation which might trigger the procedural fairness right.
23. If the process were reopened the outcome threatens the procedural fairness of the other applicants and in particular the two Affected Parties who had submitted acceptable proposals and were selected. Thus, RCA's appeal should be dismissed and the current selected sports should remain as decided by the Committee.
24. The other difficulty with the RCA submissions is the requested remedy. In order for the final 10% selection process to be reconsidered by the CGC Committee the RCA quota must be stipulated at less than what was originally

filed and never altered despite the fact that the RCA missed its window of opportunity to do so. If an order to reconsider was granted by me then I would also have to stipulate that the RCA quota could be reduced by the Committee to as low as 4. However, the Committee has no such power; nor do I, to stipulate a quota in order to trigger a real reconsideration which would be more than perfunctorily going over what was already decided that the RCA quota as filed could not be accommodated and selected.

25. For all the foregoing reasons the appeal of the RCA of the CGC program decisions for the Games is denied. Therefore, the appeal is dismissed.

DATED AT LONDON, ONTARIO CANADA THIS 2<sup>nd</sup> DAY OF JUNE 2022.

A handwritten signature in cursive script, reading "Prof. R. H. McLaren". The signature is written in black ink and is positioned above a horizontal line.

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Professor Richard H. McLaren, O.C.

Arbitrator