

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)  
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA  
(CRDSC)**

NO: SDRCC 22-0565

BETWEEN:

GAVIN HAY  
(CLAIMANT)

AND

CANADIAN FENCING FEDERATION  
(RESPONDENT)

AND

BOGDAN HAMILTON  
(AFFECTED PARTY)

**DECISION**

Appearances:

On behalf of the Claimant: Chris Hay (Claimant's father)

On behalf of the Respondent: Adam Klevinas, Counsel  
Mike Pederson, National Coach

No one appearing on behalf of Bogdan Hamilton

1. On May 27, 2022, I was selected under Section 5.3 (b) of the *Canadian Sport Dispute Resolution Code* (the "Code") to hear Gavin Hay's ("Gavin") appeal of the decision of the Canadian Fencing Federation ("CFF") not to select him as a member of the Senior Men's Team Foil event at the 2022 Pan American Championships (the "Championships").

2. This matter was heard on an urgent basis as the date for the athletes to travel to Paraguay to compete in the Championships was May 31, 2022. Although Gavin had already been selected to compete in the individual Men's Foil event and would be travelling to Paraguay in any event, the Affected Party's travel status was in question until the matter was decided.
3. I conducted an oral hearing on May 28, 2022, and on May 29, 2022, issued my decision to deny Gavin's appeal, with reasons to follow. These are my reasons.

## **BACKGROUND**

4. CFF is a not-for-profit amateur sports association and is the national governing body for fencing in Canada.
5. The Claimant is a 22 year old athlete who has been involved in the sport of fencing since the age of 10. Gavin is currently completing his degree in Psychology at Penn State University, where he is a member of the NCAA varsity fencing team. He has been a member of the CFF high performance program for seven years and has represented Canada at a number of international events, including Junior and Senior Commonwealth Fencing Championships, World University Games and several World Cup events. In addition, Gavin narrowly missed being selected to represent Canada at the 2020 Olympics.
6. Bogdan Hamilton is a high school student who has also represented Canada at numerous international competitions including World Cup events.
7. On May 22, 2022, CFF informed Gavin that it had selected Bogdan Hamilton as the fourth member of the Men's Foil Team.
8. Gavin challenged the decision, asserting that CFF failed to follow the selection procedures outlined in the 2021/2022 Selection Booklet. (the "Selection Policy")
9. Due to the urgent nature of the appeal, the parties agreed to proceed directly to SDRCC, bypassing CFF's internal appeal process and to waive the mandatory resolution facilitation process.
10. I heard evidence from Mike Pederson, CFF's Interim Weapons Leader for Men's and Women's Foil on behalf of CFF. Mr. Pederson has been involved with the sport of fencing as an athlete or coach for over 44 years. Prior to his employment with CFF in 2014, he worked for the USA fencing team in a number of capacities including High Performance Director and coach and co-coached the USA National Team to a silver medal at the 2008 Olympics.

11. Gavin was represented by his father (“Mr. Hay”). Mr. Hay, while not a fencer, has been a “fencing parent” for over 12 years and has gained knowledge of the sport through his support of Gavin during that time.
12. This decision is based on the documents and submissions made by the athlete and CFF. The Affected Party, Mr. Hamilton, did not participate in the appeal despite knowledge of his opportunity to do so.
13. While I have also considered a letter of support for Gavin’s appeal by another member of Canada’s Team, I have given this document little weight. The athlete’s support is based on Gavin’s performance (4<sup>th</sup> place ranking) as well as his “dedication to the national team program.” While I commend the athlete’s support of a fellow athlete whom he identifies as a friend, there are many factors to consider in selecting a fourth athlete in the Team event, not just the ones identified above. Most importantly, as the athlete was not present to explain his comments, I was unable to ascertain the basis for his belief.
14. Although I have reviewed and considered all the arguments, I have referred only to those central to my analysis.

### *The Selection Criteria*

15. The Selection Policy, updated February 18, 2022, governs the selection of athletes to represent Canada at the 2022 Cadet, Junior and Senior World Championships, and Cadet, Junior and Senior Pan American Championships.
16. Mr. Hay did not challenge the establishment of the Selection Policy nor the criteria prescribed in it.
17. The Selection Policy established a High Performance Selection Ratification Committee (“HPSRC”) consisting of the High Performance Director and two or three members of the High Performance Advisory Committee.
18. The task of the HPSRC is to “ratify the final selections, and will ensure that the final team composition proposed by the National Coach for all World Championships, Pan-American Championships and meets the criteria published in this Handbook.” [reproduced as written]
19. The Selection Policy specified that results from 2021 and 2022 competitions and participation at the High Performance Camp would be used for the selection to the National Team.
20. The relevant section of the Policy for the selection of athletes for the Senior Team is as follows:

### Senior Team Selection (4 athletes)

- Top 3 Athletes ranked higher in the senior HP ranking.
- The fourth spot may be filled by an athlete recommended by the National Coach, which must be approved by the HP Director and the HPAC

*The National Coach's recommendations shall be based on the following criteria:*

- Total number of HP points.
- Performance in individual and team World Cup and Grand Prix events during the current season.
- Attendance at the National Team program.
- Discipline in competition, on and off the piste.
- Performance at the most recent Senior World Championships and Senior Pan American Championships; and,
- Improvement in competition as determined by the National Coach.

### ***Evidence and Argument***

21. There is no dispute that neither Gavin nor Mr. Hamilton were in the top 3 ranked Athletes, and thus did not automatically qualify for the Team event.
  - i. Total number of HP Points
22. There is also no dispute that Gavin was the 4<sup>th</sup> highest ranked athlete with 1750 HP points and Mr. Hamilton was the 5<sup>th</sup> ranked athlete, with 900 HP points.
23. Mr. Hay noted that in the only event at which Gavin and Mr. Hamilton both competed, Gavin finished higher in the standings than Mr. Hamilton, and Mr. Hamilton did not earn any HP points at Senior FIE (International Fencing Federation) events.
24. Mr. Pederson testified that while individual results are important, they are not the most important factors to consider for the fourth member of a team. His evidence was that while the Team event is comprised of four athletes, only three actually compete, and that team chemistry is very important. He said that the coach determines which athletes will compete, and in which order. That decision is, in part, based on the coach's judgement of how each athlete performs under stress, the athlete's temperament and their style.
25. Additionally, Mr. Pederson testified that the point total could be slightly misleading, since both Gavin and Mr. Hamilton were in the same "zones," or pools and as such, both athletes had similar profiles.

ii. Performance in Individual and Team World Cup and Grand Prix events during the current season

26. There is also no dispute that Gavin competed in four individual World Cups competitions in the 2021/2022 season while Mr. Hamilton competed in two. Neither athlete advanced past the cut on the second day of competition (i.e. they were not in the top 64 competitors).
27. Mr. Pederson considered Mr. Hamilton's experience at the Team event at a World Cup event, and the fact that he competed in all four matches at that event, as well as his participation in the Team event at the Junior World Championships where he competed in all four matches. Mr. Pederson also considered Mr. Hamilton's participation in the Team event at the Junior Pan American Championships, where Team Canada finished second. In contrast, Gavin, although selected for the Team event at two World Cup events, did not compete at either.
28. Mr. Hay contended that although Gavin was selected for the Canadian Team at two international events, he was not given the opportunity to fence, despite a request to do so, because the coach was biased against him. As Mr. Pederson was not at the competition in Paris, he had no ability to respond to this assertion.

iii. Attendance at National Team Programs

29. Gavin has attended most, if not all, National team Program events, while Mr. Hamilton has attended several, but not all Team Program events.

iv. Discipline in competition, on and off the piste

30. CFF says that because Gavin has not competed in a team event in 2021/2022, his discipline in each event during the qualifying period is unknown, as is his ability to fulfil a strategic role in a team event. It contends that because the Team event is critical to Canada's effort to qualify for the Olympics, it was important to have an athlete with known experience, thus tipping the balance to Mr. Hamilton.
31. Mr. Pederson's opinion was that Mr. Hamilton had demonstrated the best potential to contribute to the success of the Team, based on personal observations as well as match indicators (total touches scored minus total touches received, over total matches) at events in the 2021/2022 year.
32. Mr. Hay disputed CFF's assertion that Gavin's discipline in competition was unknown. Mr. Hay says that CFF selected Gavin to participate in Team events in previous years, specifically the Junior Commonwealth Fencing Championships in July 2018, the Senior Commonwealth Fencing Championships in November 2018 and the World University Games in July 2019. Mr. Hay further noted that

Gavin had been selected as Team Canada's captain for the Senior Commonwealth Games, where he performed very well, erasing a point deficit against the opposing team.

33. CFF says that while Gavin's discipline was not unknown, it did not consider his performances in events prior to the 2021/2022 year, as they were not obtained during the qualifying period and because CFF's intent was to evaluate athletes based on their most recent performances. Additionally, Mr. Pederson said that the level of competition at Commonwealth Championships is very low compared to the competition at World Cups, and are considered as akin to training opportunities.

v. Performance at the most recent Senior World Championships and Senior Pan American Championships

34. Neither athlete competed at a Senior World Championships or a Senior Pan American Championships.

vi. Improvement in Competition as determined by the National Coach

35. Gavin's final placements at five World Cup events during the current season were 92<sup>nd</sup> (Belgrade), 105<sup>th</sup> (Cairo), 107<sup>th</sup> (Seoul), and 206<sup>th</sup> (Paris). Mr. Hamilton's placements were 113<sup>th</sup> (Cairo) and 115<sup>th</sup> (Plovdev).
36. The CFF considered Gavin's results to be less consistent than Mr. Hamilton's although it recognized that Gavin competed in more events.
37. Mr. Pederson's evidence was that the goal for Canada's Team at the Championships is to successfully qualify for the second day of the competition. If Canada ranks 2<sup>nd</sup> after the United States following the Team event, which, in his opinion, it had a very good chance to do, Canada will qualify for the 2024 Olympics. For this reason, Mr. Pederson placed great weight on the athletes' performance at Team events.
38. In Mr. Pederson's opinion, the fourth team member had to be reliable, consistent and be able to do what they are sent out to do. Mr. Pederson recommended Mr. Hamilton based on his opinion that Mr. Hamilton had been the most consistent and solid performer at the Senior and Junior Team events this year. In Mr. Pederson's view, Mr. Hamilton listened well, was versatile, disciplined, and a team player. Additionally, Mr. Pederson was of the view that Mr. Hamilton was very consistent and that a coach could rely on his ability to deliver what was asked of him.

## ANALYSIS

39. CFF has the initial burden of establishing, on a balance of probabilities, that the selection criteria were appropriately established and that the selection decision was made in accordance with the criteria. If that burden is satisfied, the onus then shifts to Mr. Hay to demonstrate, on a balance of probabilities, that Gavin should have been nominated in accordance with the criteria. (*Code* Section 6.10)
40. Subsection 6.11 (a) of the *Code* provides that, once appointed, I have the power to review the facts and apply the law and may substitute my decision for the decision that gave rise to the dispute. 6.11 (b) provides that I have the power to conduct a hearing *de novo*, and that the hearing must be *de novo* where the sport organization did not conduct its own internal appeal process.
41. While I am not bound by other Tribunal decisions, a consistent and predictable approach to the application of certain principles is essential to fairness in decision making.
42. The Tribunal has held that carding and nomination appeals are akin to judicial review, as opposed to appeal or *de novo* hearings. The standard of review to be applied to these appeals is that of reasonableness, not correctness. (*Palmer v. Athletics Canada* (SDRCC 08-0080)) Reasonableness is a deferential standard; that is, a decision of a sport organization's experts will not be interfered with provided that it is transparent, intelligible and can be justified based on published criteria.
43. The decision to select a fourth member for the Team is a discretionary one. Once the decision is made to include a fourth athlete, the factors identified in the Selection Policy must be considered in making that selection.
44. I find that CFF, in accordance with the Selection Policy, considered all six factors in making the decision.
45. Mr. Hay contends that CFF failed to properly apply the factors since an analysis of all data points suggests that Gavin should have been selected over Mr. Hamilton.
46. There is nothing in the Selection Policy that requires all factors to be given equal weight or to indicate that any factor is to be ranked more highly than another.
47. I have given significant weight to the expertise of Mr. Pederson and the HPRSC, who are experts in the sport of fencing. While I have given Mr. Hay's views some weight given his background, he does not have the coaching experience of Mr. Pederson, nor is he as well placed to assess the skills and abilities of the Affected Party.

48. The Tribunal has repeatedly held that selection decisions are best determined by experts, that is; the high-performance committees of national sport organizations, and provided that the sport organization followed its own rules, arbitrators should rarely, if ever, interfere. (see, for example, *Sera* (SDRCC 13-0200), *Bastille v. Speed Skating Canada* (SDRCC 13-0209), *Blais-Dufour* (SDRCC 11-0145) and *Larue v. Bowls Canada* (SDRCC 15-0255))
49. Reasonableness means I will not substitute my own decision for that of a sport organization, provided the decision falls within a range of possible, acceptable outcomes. (see *Mehmedovic v. Judo Canada*, SDRCC 12- 0191/92, *Palmer v. Athletics Canada*, SDRCC 08-0080)
50. I find that the HPRSC's decision was within a range of possible outcomes. I accept Mr. Pederson's evidence that the composition of a Team involves assessing more than a head-to-head comparison between two alternative athletes and that that he considered characteristics that are not specifically identified within the enumerated factors. In this case, those characteristics include such things as team chemistry, temperament, discipline and versatility. Those characteristics are not easily assessed based solely on data points or metrics. Nevertheless, I accept that an athlete's win/loss record and their indicators (total touches scored minus total touches received) are important data points to consider in evaluating an athlete's potential for inclusion as a member of the Team.
51. While acknowledging that Gavin has performed better than Mr. Hamilton at individual events, I have also considered Mr. Pederson's evidence that performance in individual events is only one factor, and a less important one than the others. I further acknowledge Gavin's experience at Team events, which CFF placed great weight on. I note however, that his experience was somewhat dated and was obtained at events that were considered less competitive than the Pan American Championships.
52. Mr. Pederson's opinion about why Mr. Hamilton was recommended was transparent, grounded in his extensive background in the sport and, in my view, reasonable and supportable. To the extent there was an element of subjectivity in selecting the fourth Team member, I defer to Mr. Pederson's 44 years of experience in the sport in recommending Mr. Hamilton over Gavin.
53. Furthermore, the HPRSC, which consists of experts in the sport of fencing, accepted Mr. Pederson's recommendation to select Mr. Hamilton.
54. I find no error, manifest or otherwise, in the application of the Selection Policy. Given that I find the reasons for Mr. Pederson's recommendation of Mr.

Hamilton over Gavin to be transparent and within a range of reasonable outcomes, I decline to interfere with the decision.

Bias

55. Although Mr. Hay did not assert that the selection decision was biased, he contended that because of biased coaching, Gavin had been denied opportunities that might have given him a better chance for selection for the Team, including the denial of the opportunity to fence as part of a Team event in Paris.
56. It is distressing to hear allegations of mistreatment of athletes by coaches. I find that Gavin may have been treated unfairly by one coach on more than one occasion which interfered with his ability to benefit from competitive opportunities. While I accept that the coach's conduct may in fact have deprived Gavin of an opportunity to fence in a Team event, I am not persuaded that had Gavin in fact been given that opportunity, the selection decision would have been any different in light of all of the factors that were considered.

**CONCLUSION**

57. The appeal is denied.
58. I wish to thank the parties for their helpful submissions and for their cooperation during the hearing.

DATED: June 8, 2022, Vancouver, British Columbia

A handwritten signature in black ink, appearing to read "Carol Roberts", written in a cursive style.

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Carol Roberts, Arbitrator