

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

**NO: SDRCC 23-0648  
(ORDINARY TRIBUNAL)**

**JUSTIN PARINA  
(Claimant)**

**AND**

**BOXING CANADA  
(Respondent)**

**Before:**

Brian Conway (Arbitrator)

**Counsels/Representatives:**

For the Claimant: Ms. Julia Miller (Counsel) and Ms. Kate Martini (Counsel)

For the Respondent: Mr. Christopher Lindsay

## DECISION

### I. INTRODUCTION

1. This Arbitration concerns the decision of Boxing Canada (the “Respondent” or “BC”) not to recommend to Sport Canada that Justin Parina (the “Claimant” or “Athlete”) be carded for the 2023-2024 cycle.
2. The Claimant has been in the Boxing Canada High Performance Program and a carded athlete with Boxing Canada since the 2020-2021 cycle.
3. The Respondent is a national not-for-profit sport organization that governs boxing in Canada and represents athletes, coaches and officials. Its responsibilities include the selection and recommendation to Sport Canada of athletes eligible for the Athlete Assistance Program (“AAP”).
4. Sport Canada’s AAP is a sport funding program that contributes to the pursuit of excellence. This program is designed to reduce the financial burden of preparing for and participating in international level competitions.
5. The Claimant was notified on April 25, 2023 that he had not been nominated by BC for a Senior National Card.
6. The Claimant appealed the decision of BC through BC’s appeal process and the Appeal decision (summary, conclusion and recommendations) of Peter Eriksson dated May 17, 2023 stated:
  - I. The carding criteria was over six (6) months late for publication, this is a major error.
  - II. The athlete, Justin Parina, was invited to attend, via email the “King of the Ring” event in Sweden on October 14, 2022 by Boxing Canada’s High Performance Coordinator Ms. Andréane Parent. At no time was there an indication that this event was an (sic) development opportunity and not an international event or that the athlete was not representing Canada. Mr. Parina responded the same day thanking Ms. Parent by saying “Thank you for the opportunity to represent Canada” which is clearly the athletes understanding and perception that he was representing Canada at the event. This understanding/perception was never corrected or clarified by Boxing Canada’s High Performance Director.
  - III. Four months after the event is completed Mr. Kraig Devlin High Performance Director writes to Mr. Parina that they have reconsidered the carding points for the “King of the Ring” as not fitting the criteria as an international event. The following was in the email *“upon reflection and when viewed thru the lens of the table point system, the coaches and I believe that the way we presented the developmental opportunity to you was unclear concerning what it may mean to point totals. We apologize for this lack of clarity and want to acknowledge that we are working to ensure that we are building a fair and transparent athlete ranking system”*. This is clearly not a fair decision for the athlete and seems to be an afterthought without reason.

IV. Nowhere in the selection criteria is it outlined what type/name of International or Continental competitions should be accepted according to Boxing Canada's Points system, this needs to be clear at the time of publication of the criteria.

**Recommendation** (sic): I recommend that in fairness to the athletes and the sport that not only Mr. Justin Parina but all athletes attending the event "King of the Ring" in Sweden should get carding points according to the Boxing Canada's published points system as an international event. It is therefore crucial to reconsider the selection of carding for 2023/24 with inclusion of this International event."

7. After review of Mr. Erikson's recommendations and providing points to participants in the "King of the Ring" event, BC informed the Claimant that he "remains ranked just beyond the number of cards available for distribution for this cycle"
8. The Claimant appealed to the Sport Dispute Resolution Centre of Canada ("SDRCC").
9. The SDRCC was created on March 19, 2003, through the *Physical Activity and Sport Act S.C. 2003, c. 2*.
10. Under the Act, the SDRCC has exclusive jurisdiction to, among other things, provide the sport community with a national alternative dispute resolution service for sport disputes.
11. On June 26, 2023, the Claimant filed an appeal with the SDRCC to reverse the Respondent's nomination decision.
12. All Parties have agreed to accept the jurisdiction of the SDRCC in this matter.
13. The Claimant seeks the SDRCC's intervention and seeks to reverse the Respondent's decision not to nominate him to Sport Canada for a Senior National Card. Schedule A - Claimant's Statement to the SDRCC in paragraph 15 states "...As a result, Boxing Canada should reverse its decision and award Mr. Parina with a Senior National Card."
14. I note here that the remedy sought is not within the power of the SDRCC to award, as it is ultimately Sport Canada that makes decisions regarding which nominations for AAP assistance are accepted. However, I have proceeded on the basis that what is sought is a decision requiring BC to nominate the Claimant to Sport Canada for one of the four carding positions available (in preference to one of the affected parties).
15. On July 10, 2023, I accepted the mandate to be the Arbitrator in this matter pursuant to Article 5.3 of the Canadian Sport Dispute Resolution Code<sup>1</sup> ("the Code"). No challenge to my appointment has been made by the Parties.
16. On July 19, 2023, a preliminary conference call was held between the Claimant and the Respondent (collectively hereinafter referred to as the "Parties"), myself and representatives of the SDRCC to establish a schedule of proceedings. During the conference call, the Parties stated that they wished to have the Arbitration conducted via written submissions only and I agreed to proceed in that manner.

17. No appearance nor submissions were made by any affected parties (Wyatt Sanford, Jerome Feujio, Keoma Ahmadih and Jonathan Hannah) - notwithstanding that they were notified of these proceedings.
18. Deadlines were set for written submissions from the Parties.
19. The Parties each provided written submissions for consideration. I have reviewed and considered all of the materials supplied by the Parties and I will refer to some (but not all) in this Decision.

## **II. POSITION OF THE CLAIMANT**

20. In the present case, it is alleged by the Claimant that the Respondent:
  1. Failed to post the Carding Criteria in Accordance with the High Performance Athlete Agreement (i.e., 8 months before the start of the AAP eligibility cycle for boxing);
  2. Nominated athletes in non-Olympic Weight Classes (contrary to the carding criteria for cycle 2020-2021);
  3. Failed to invite the Claimant to the Eindhoven Cup event; and
  4. Failed to follow its own Policies and Procedures by (i) failing to calculate athletes' points in accordance with its carding policy and (ii) nominating an ineligible athlete (Mr. Sanford) for a Senior National Card.

## **III. POSITION OF THE RESPONDENT**

21. In the present case, the Respondent took the following positions with respect to each of the four items above:
  1. It did not deny that it was over 6 months late providing the Carding Criteria to all of the BC athletes (not just the Claimant). However, the "failure to meet the publishing deadline...did not preclude any particular athlete from equal access to the program";
  2. It nominated athletes in non-Olympic Weight Classes to reflect a desire to support programming for the 2024-2028 Olympic cycle;
  3. BC selects athletes for events based on previous performance and competitive readiness. Factors such as strength of field at a particular competition are sometimes taken into account. "The competitive opportunities of National Team athletes, as part of the regular business of the National Team, are assigned at the discretion of the coaching staff based on available starts, athlete readiness, and level of competition";
  4. BC acknowledged that it had "flaws in both the structure of the AAP criteria and the needlessly confusing processes that had been used to communicate the AAP ranking list to (our) athletes.". With respect to nominating Mr. Sanford, BC stated that "World Championships were not available to Canadian male athletes in 2021 or 2022 or 2023,

but were available to Canadian female athletes. Given this clear inequity Boxing Canada returned to the statement in Carding Criteria ‘if the athlete demonstrates progress within the Boxing Canada GMP and WS parameters and continuing improvement toward International Card status.’ and Mr. Sanford’s bronze medal at Commonwealth Games, along with GMP and WS data, suggest he is moving closer to International Card Criteria (top 8 at World Championships or Olympics).”

#### **IV. DOCUMENTS**

22. I feel it necessary to reproduce several provisions of the 2023-2024 Athlete Carding Program despite their length:

##### **4. ATHLETE ELIGIBILITY REQUIREMENT**

To be eligible for carding, the Athlete must meet the following Eligibility Requirements:

- Be an Open Class boxer who has competed in more than ten bouts;
- Compete in eligible IBA weight categories (see section 6).
- Meet the International Boxing Association (IBA) and International Olympic Committee (IOC) requirements to be eligible to represent Canada at major international events, including World Championships and the Olympic Games;
- Be named as a team member of the 2023-2024 High Performance Program (HPP), which is defined as the National Team;
- Must not be under suspension, or other sanction, for any doping or doping-related offences;
- Sign a fully executed Athlete Agreement as Boxing Canada requires and is required for Sport Canada carded athletes. No Carding application will be processed without the signed Athlete Agreement being filed with Boxing Canada;
- Be a member in good standing with their provincial boxing association (PSO) and Boxing Canada at the time of nomination and maintain this status until the completion of the Carding cycle. Unless otherwise authorized, in advance and writing, athletes must have paid all outstanding invoices to Boxing Canada at the nomination date.
- To be eligible for an SR1, SR2, SR, or D card, athletes born between January 1st, 1983, and December 31st, 2005, must train full-time at Boxing Canada’s High Performance Training Centre (HPTC) at INS Québec (Montréal, Qc).
- Youth (U19) Athletes (January 1st, 2004, and December 31st, 2005) with a D card have the option to be based at Boxing Canada’s HPTC in Montréal (Qc) or to remain in their daily training environment (DTE); if athletes choose to remain in their DTE, they must be supervised by a Boxing Canada designated High-Performance coach.

[...]

## **9. CARDING CRITERIA**

### **9.1. Senior International Card (SR1 / SR2)**

Criteria:

- As per Sport Canada policies and procedures, Carding is awarded to an eligible athlete placing in the top 8 and top half of the field at the 2022 Senior World Championships. Only weight classes on the program of the upcoming Olympic Games will be considered for this category.
- Eligible athletes who meet the international criteria may be nominated for carding for two consecutive years, with the first year referred to as SR1 and the card for the second year referred to as SR2. The second year of carding is contingent on the athlete meeting the eligibility requirements, being re-nominated by Boxing Canada, and maintaining a training and competitive program approved by Boxing Canada and Sport Canada. The athlete must also sign an Athlete Agreement, complete the Athlete Assistance Program (AAP) Application Form for the year in question and complete the online anti-doping courses.
- International Senior Cards provide two years of Carding:
  - SR1: Year one (\$1,765 per month/\$21,180 per year);
  - SR2: Year two (\$1,765 per month/\$21,180 per year).

### **9.2. Development Card (D)**

Objective: To identify and support young boxers developing within the Boxing Canada Gold Medal Profile (GMP) and Winning Style (WS) parameters with a superior international potential earlier in their athletic development than is possible with the senior carding system. The program must allow for an enriched training and competitive schedule that will prepare selected athletes to gain skills critical for success at the senior level.

The Development Card U19 is valid for one year. Only athletes U19 are eligible for the D cards. Development Cards provide one year of funding. A maximum of one (1) male and one (1) female D card will be issued as the second level of Carding prioritization (Section 7.1). The fifth level of Carding prioritization (Section 7.1) will consider any remaining U19 athletes.

- D: Development Card level (\$1,060 per month/\$ 12,720 per year).

#### **9.2.1 IBA Youth Men's and Women's World Championship Criteria**

In years where IBA Youth Men’s and Women’s World Championships are held, U19 athletes in the top 8 with at least one (1) win will be considered for carding.

If there is a tie or too many eligible athletes for the remaining carding quota, athletes will be nominated based on their final rank on the youth card identification system, summarized below.

9.2.2. To rank athletes beyond the process noted in 9.2.1, the following will apply in priority order:

a) If there are two or more athletes with the same number of points, the athletes with the highest number of international points from the Boxing Canada Point System between May 1st, 2022 and March 15th, 2023, with Boxing Canada’s official National Team Program, will be ranked higher. (<https://boxingcanada.org/wp-content/uploads/2019/03/Boxing-Canada-Points-System-EN.pdf>).

### 9.3. Senior National Card (SR)

In general, Boxing Canada Senior Cards provide one year of funding but may be renewed for further years if the athlete demonstrates progress within the Boxing Canada GMP and WS parameters and continuing improvement toward International Senior Card status.

- SR: Senior Card level (\$1,765 per month/\$21,180 per year).

Senior Performance Carding Criteria (SR) are awarded to athletes for a year according to their ranking in the High Performance Program. Athletes must meet the following criteria to be eligible for a “Senior Performance” card nomination.

Years of involvement as a senior athlete in the HPP	Required Carding Standards *
1 to 4	Selection to Boxing Canada High Performance Program.
5 to 7	High Performance Program athletes must have placed at least once in the top 5 at the World Championship or Olympic Games within the past four years (i.e., during carding years 4, 5, 6 or 7).
8 and up	High Performance Program athletes must have placed at least once in the top 5 at the World Championship or Olympic Games within the past two years (i.e., during carding years 7 or 8).

*\* The purpose of the required carding standards is to provide a fair opportunity to all carded athletes to develop and establish themselves on the international scene while at the same time outlining high-performance expectations over time. The longer an athlete has been on the National Team as a carded athlete, the higher performance expectations become, both in terms of results and consistency.*

#### **9.4. Senior carding criteria prioritization**

As outlined in Section 7, Sport Canada has awarded Boxing Canada four (4) cards for women and four (4) cards for men. The same criteria will apply to each gender.

Carding will be allocated to eligible athletes using the system below in order of priority. If the number of eligible athletes should exceed the number of Sport Canada cards awarded for gender at a given order of priority, the next order of priority will be used as the tiebreaker for the remaining spots.

- 1- Athletes with the most points in international competitions for May 1st, 2022 – March 15th, 2023. among those ranked #1 at the 2023 Elite National Championships (February 2023).
- 2- Athletes with the most points in international competitions for May 1st, 2022 – March 15th, 2023. among those ranked #2 after the 2023 Elite National Championships assessment process (February 2023).

Boxing Canada Point System available at: <https://boxingcanada.org/wp-content/uploads/2019/03/Boxing-Canada-Points-System-EN.pdf>





## BOXING CANADA POINTS SYSTEM

### Domestic Competitions:

*(National Championships, Final Team Selection)*

Each win	1 point
Bronze medal	1 additional point – (one win is required)
Silver medal	2 additional points – (one win is required)
	3 additional points – (two wins are required)
Gold medal	2 additional points – (one win is required)
	3 additional points – (two wins are required)
	4 additional points – (three wins are required)

### Training Camp:

*(Training camp that are part of the National Team Program and approved by Boxing Canada)*

Participation	2 points
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### Dual Matches:

*(Dual matches that are part of the National Team Program and approved by Boxing Canada)*

Participation	2 points
Each win	2 points

### International and Continental Tournaments:

*(International and Continental Tournaments that are part of the National Team Program and approved by Boxing Canada)*

Participation	2 points
Each win	2 points
Bronze medal	1 additional point – (one win is required)
Silver medal	2 additional points – (one win is required)
	3 additional points – (two wins are required)
Gold medal	3 additional points – (one win is required)
	4 additional points – (two wins are required)
	5 additional points – (three wins are required)

### Major Games and World Championships:

*(Olympic Games, Pan American Games, Common and World Championships that are part of the National Team Program and approved by Boxing Canada)*

Participation	3 points
Each win	3 points
Bronze medal	3 additional points – (one win is required)
Silver medal	3 additional points – (one win is required)
	4 additional points – (two wins are required)
Gold medal	5 additional points – (one win is required)
	6 additional points – (two wins are required)
	7 additional points – (three wins are required)

## V. THE CANADIAN SPORT DISPUTE RESOLUTION CODE

23. The Tribunal has held that carding nomination appeals are akin to judicial review, as opposed to appeal or de novo hearings, and that deference is owed to the expertise and experience of sporting authorities. (Mehmedovic et al v. Judo Canada SDRCC 12 0191/92) The applicable standard of review is that of reasonableness, not correctness.
24. The Supreme Court of Canada's decision in Canada (Minister of Citizenship and Immigration) v. Vavilov (2019 SCC 65) does not change this standard of review.
25. In Vavilov, the Court held that a reasonableness review is a robust form of review in which the reasons of the decision maker must demonstrate that he or she has considered the facts and governing scheme relevant to the decision as well as any past practices.
26. While deference is owed to the experience and expertise of sporting authorities, a National Sport Organization must nevertheless follow its own rules making carding or team selection decisions. Where a sport organization has made a decision that is not in accordance with its own rules, that decision cannot be found to be reasonable or to fall within a range of possible outcomes, and the Tribunal has the power to correct such errors. (See Kraayeveld v. Taekwondo Canada, SDRCC 15 0253; Larue v. Bowls Canada Boulingrin, SDRCC 15 0255 and Carruthers v. Speed Skating Canada, SDRCC 16 0309).
27. The Code states as follows with respect to the burden of proof:

### 6.10 Onus of Proof in Team Selection and Carding Disputes

If an athlete is a Claimant in a team selection or carding dispute, the onus will be on the Respondent to demonstrate that the criteria were appropriately established and that the disputed decision was made in accordance with such criteria. Once that has been established, the onus shall be on the Claimant to demonstrate that the Claimant should have been selected or nominated to carding in accordance with the approved criteria. Each onus shall be determined on a balance of probabilities. [emphasis added]

28. Arbitrator Poulin discussed the standard of review for an SDRCC arbitrator in Boisvert-Lacroix and Graham v. Speed Skating Canada, SDRCC 21-0523/24.

### The standard of review

[27] The standard of review for an SDRCC arbitrator is the reasonableness standard, as Arbitrator Pound stated in *Larue*,<sup>1</sup> citing the leading case of *Dunsmuir v. New Brunswick*.<sup>2</sup>

[28] More recently, in 2019, the Supreme Court clarified the approach to judicial review in *Vavilov*,<sup>3</sup> where it considers, among other things, the applicable standard of review and the concept of *reasonableness* in relation to decision-making.

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<sup>1</sup> Larue v. Bowls Canada Boulingrin, SDRCC 15-0255.

<sup>2</sup> Dunsmuir v. New Brunswick, [2008] 1 S.C.R. 190; to the same effect, see the decision of Arbitrator Roberts in Fergusson v. Equestrian Canada, SDRCC 20-0455.

<sup>3</sup> Canada (Minister of Citizenship and Immigration) v. Vavilov 2019 SCC 65.

[29] The Court held that the reasonableness standard applies in most cases, including situations where a decision-maker is interpreting its own enabling statute.<sup>4</sup> The Court noted that, despite the goal of intervening minimally and only where truly necessary to “safeguard the legality, rationality and fairness of the administrative process”, the reasonableness standard remains a robust standard of review.<sup>5</sup>

[30] In the following terms, the Supreme Court emphasizes that it is important that administrative decisions have justification:

[15] In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. [...]<sup>6</sup>

[31] On the basis of the reasonableness standard, the Court specifies:

[85] Developing an understanding of the reasoning that led to the administrative decision enables a reviewing court to assess whether the decision as a whole is reasonable. As we will explain in greater detail below, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision.

[86] Attention to the decision maker s reasons is part of how courts demonstrate respect for the decision-making process: see *Dunsmuir*, at paras. 47-49. In *Dunsmuir*, this Court explicitly stated that the court conducting a reasonableness review is concerned with the “qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes”: para. 47. Reasonableness, according to *Dunsmuir*, “is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process”, as well as “with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *ibid*. In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis. [emphasis added]

[32] The Court continues by specifying the appropriate method for analysing a provision:

[117] A court interpreting a statutory provision does so by applying the “modern principle of statutory interpretation, that is, that the words of a statute must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: [...]Parliament and the provincial legislatures have also provided guidance by way of statutory rules that

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<sup>4</sup> Canada (Minister of Citizenship and Immigration) v. Vavilov, supra note 3 at para. 7.

<sup>5</sup> Canada (Minister of Citizenship and Immigration) v. Vavilov, supra note 3 at para. 13.

<sup>6</sup> Canada (Minister of Citizenship and Immigration) v. Vavilov, supra note 3.

explicitly govern the interpretation of statutes and regulations: see, e.g., *Interpretation Act*, R.S.C. 1985, c. I-21.

[118] This Court has adopted the “modern principle” as the proper approach to statutory interpretation, because legislative intent can be understood only by reading the language chosen by the legislature in light of the purpose of the provision and the entire relevant context: Sullivan, at pp. 7-8. Those who draft and enact statutes expect that questions about their meaning will be resolved by an analysis that has regard to the text, context and purpose, regardless of whether the entity tasked with interpreting the law is a court or an administrative decision maker. An approach to reasonableness review that respects legislative intent must therefore assume that those who interpret the law whether courts or administrative decision makers - will do so in a manner consistent with this principle of interpretation.

[...]

[120] But whatever form the interpretive exercise takes, the merits of an administrative decision maker’s interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. In this sense, the usual principles of statutory interpretation apply equally when an administrative decision maker interprets a provision. Where, for example, the words used are “precise and unequivocal”, their ordinary meaning will usually play a more significant role in the interpretive exercise: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10. Where the meaning of a statutory provision is disputed in administrative proceedings, the decision maker must demonstrate in its reasons that it was alive to these essential elements.

[121] The administrative decision maker’s task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. It cannot adopt an interpretation it knows to be inferior - albeit plausible - merely because the interpretation in question appears to be available and is expedient. The decision maker’s responsibility is to discern meaning and legislative intent, not to “reverse-engineer” a desired outcome.

[122] It can happen that an administrative decision maker, in interpreting a statutory provision, fails entirely to consider a pertinent aspect of its text, context or purpose. Where such an omission is a minor aspect of the interpretive context, it is not likely to undermine the decision as a whole. It is well established that decision makers are not required “to explicitly address all possible shades of meaning” of a given provision: *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, [2012] 3 S.C.R. 405, at para. 3. Just like judges, administrative decision makers may find it unnecessary to dwell on each and every signal of statutory intent in their reasons. In many cases, it may be necessary to touch upon only the most salient aspects of the text, context or purpose. If, however, it is clear that the administrative decision maker may well, had it considered a key element of a statutory provision’s text, context or purpose, have arrived at a different result, its failure to consider that element would be indefensible, and unreasonable in the circumstances. Like other aspects of reasonableness review, omissions are not stand-alone grounds for judicial intervention: the key question is whether the omitted aspect of

the analysis causes the reviewing court to lose confidence in the outcome reached by the decision maker. [emphasis added]

[33] In principle, if a selection decision is justified, then in accordance with the teachings of our country's highest court,<sup>7</sup> an arbitrator should rarely interfere with such a decision, provided the Respondent followed its own rules, as Arbitrator Mew states in *Bastille v. Speed Skating Canada*.<sup>8</sup>

## VI ANALYSIS AND DECISION

29. Since the appeal was brought by the athlete, the initial onus of proof falls on the Respondent, as stated in Section 6.10 of the Code to demonstrate that the criteria were appropriately established and that the disputed decision was made in accordance with such criteria.
30. There is no evidence before me that the Respondent failed to appropriately establish reasonable criteria for selecting athletes to nominate to Sport Canada for the AAP. There is no question that the criteria for carding were delivered later than planned by BC or expected by the Claimant (and all of the other boxers). However, this is a different issue than the establishment of reasonable criteria for selection. The Claimant acknowledged that the lateness of delivery of the 2023-2024 Athlete Carding Program was not in any way designed to specifically exclude him nor impair his selection for carding.
31. The Claimant rightly acknowledged that the Respondent was entitled to set the criteria for 2023-2024 and that he understood that BC had done so within BC's purview to set "strategic directives and carding criteria". The Claimant also acknowledged that "the failure to post the criteria (later than planned/expected) itself is not a reason to select Mr. Parina for carding..."
32. The Respondent must therefore show that the decision it made complies with the criteria in the 2023-2024 Athlete Carding Program; if so, the onus of proof shifts as provided in Section 6.10 of the Code to the Claimant to demonstrate that the Claimant should have been selected or nominated to carding in accordance with the approved criteria.
33. The Respondent submits that its decision was made in accordance with the criteria set out in the 2023-2024 Athlete Carding Program. Specifically, the Respondent submits that the Claimant did not accumulate sufficient points in national and international events, and that, as a result, it was justified in selecting the Affected Parties for nomination to Sport Canada for the AAP program ahead of the Claimant.
34. The Respondent asks that I find that its decision falls within the range of possible outcomes having regard to the selection criteria in the 2023-2024 Athlete Carding Program, and that I conclude that the decision is reasonable.
35. The Claimant contests this position and asserts that, in the present case, BC made four errors and omissions (see *supra* under II. **POSITION OF THE CLAIMANT**). The Claimant argues that this makes the Respondent's decision unreasonable, since it is inconsistent with the criteria in the 2023-2024 Athlete Carding Program.

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<sup>7</sup> Canada (Minister of Citizenship and Immigration) v. Vavilov, *supra* note 3.

<sup>8</sup> *Bastille v. Speed Skating Canada*, SDRCC 13-0209.

36. Before proceeding any further, it is important to specify the role of arbitrators called upon to consider an appeal from a selection decision. In this regard, I cite with approval what Arbitrator Pound stated in *Larue*.<sup>9</sup>

In the present case, there are three considerations that should guide me. The first is that, absent cogent evidence of error, I should adopt a deferential assumption that the Team Selection Committee, composed, as it was, of experienced experts in bowls, knows its business. Second, my role as Arbitrator is not to re-write BCB's High Performance policy or its team selection criteria with any view of "improving" either, or to substitute my personal view of what they could or ought to contain. The operating consideration is that BCB knows the sport of bowls better than any arbitrator. Third, my role is simply to determine whether the outcome of the team selection process was made in accordance with the selection criteria and whether that outcome falls within a range of possible, reasonable, outcomes defensible in light of the facts and the team selection criteria (i.e., the applicable "law" in this matter). [emphasis added]

37. Therefore, in the present case, I must identify the 2023-2024 Athlete Carding Program selection criteria and, as needed, interpret the 2023-2024 Athlete Carding Program to determine what they are. It is not my role to rewrite them, improve upon them or make them clearer. Nor is it my role to substitute my opinion in order to determine what the criteria should have been.
38. I will go through each of the Claimant's challenges to the Respondent's decisions regarding the 2023-2024 Athlete Carding Program criteria.

**As set out earlier in this Decision, the first allegation by the Claimant was that the Respondent:**

- 1. Failed to post the Carding Criteria in Accordance with the High Performance Athlete Agreement (i.e., 8 months before the start of the AAP eligibility cycle for boxing).**

39. As mentioned earlier, this complaint is not with respect to the selection criteria *per se* nor their implementation. It was with respect to the timing of same. I have no evidence before me that the provision of the 2023-2024 Athlete Carding Program later than planned/expected resulted in a failure by the Respondent to properly and reasonably apply the criteria for carding in the 2023-2024 Athlete Carding Program.
40. The Claimant rightly states in his materials that the late delivery of the 2023-2024 Athlete Carding Program "prevented Mr. Parina from knowing what criteria he had to meet to receive a card from Boxing Canada." However, the Claimant was in no better or worse position than any other athlete with BC.
41. On a balance of probabilities, I am satisfied that the late delivery of the 2023-2024 Athlete Carding Program had no impact on the selection process within the selection criteria on the Claimant.

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<sup>9</sup> *Larue v. Bowls Canada Boulingrin*, supra note 1 at page 12.

**As set out earlier in this Decision, the second allegation by the Claimant was that the Respondent:**

**2. Nominated athletes in non-Olympic Weight Classes (contrary to the carding criteria for cycle 2020-2021).**

42. The Claimant acknowledged that this argument is based upon the assumption that “only athletes in Olympic weight classes would be considered for this carding cycle given that it is also an Olympic year.” And that “Given that Boxing Canada did not attend the World Championships in 2023 and there are no World Championships in 2024, it is reasonable to assume that for 2023–2024-year Boxing Canada would focus on Olympic weight classes.”
43. The Respondent explained the broader (i.e., beyond just looking to the 2024 Olympics) criteria in the 2023-2024 Athlete Carding Program as follows:

This change was made to reflect a desire to support programming for the 2024-28 Olympic cycle. The generally poor results of the program in achieving Sport Canada’s AAP goals, as evidenced by their reduction in the number of cards, suggested an opportunity to support a wider variety of athletes in the first two years of the LA quadrennial. This would permit athletes who had failed to achieve top-8 WCH and OLY results, but who had achieved lower levels of success in both Olympic and non-Olympic weight categories, to be supported. This strategy of wider-support would then be revisited for the second-half of the quadrennial where athletes could choose to focus on Olympic categories.

44. On a balance of probabilities, I am satisfied that the Respondent appropriately established the criteria regarding inclusion of non-Olympic weight classes in the 2023-2024 Athlete Carding Program and applied those criteria reasonably.

**As set out earlier in this Decision, the third allegation by the Claimant was that the Respondent:**

**3. Failed to invite the Claimant to the Eindhoven Cup event.**

45. The Claimant argues that BC should have invited him to the 2022 Eindhoven Cup and that, at a minimum, he would have received a minimum of two additional points for his attendance at this event.
46. However, it is clear from the 2022-2023 High Performance Program Athlete Agreement under SECTION II: GENERAL PURPOSE AND OVERVIEW that athletes do not have any guarantee of being invited to any particular event by BC. The section reads as follows:

Boxing Canada is a National Sport Organization with responsibility over the High Performance Program. Boxing Canada's primary mandate and objective through the High Performance Program is the achievement of top medals and performance at major international competitions, including the Olympic Games, World Championships, Pan Am Games and Commonwealth Games.

*Being an athlete in the Boxing Canada HPP does **not** mean that you will be selected to represent Canada at **any** particular international event or other Boxing Canada Program. Boxing Canada is **not** obligated to send complete teams (all available weight divisions) to any particular event or international competition. *Boxing Canada will select athletes from the HPP to attend particular Events.* In some cases, written selection protocol will be developed and communicated by Boxing Canada in advance, which will set out the manner in which selection to a particular event or program will be made.  
[Emphasis added]*

47. There is no evidence before me that the decision by BC to not send the Claimant to the 2022 Eindhoven Cup event was made capriciously or for any ulterior purpose (i.e., to have a negative effect on his eligibility to be nominated for carding). The above section gives broad discretion to BC on who to send to “any particular international event or other Boxing Canada Program.” Again, there is no evidence before me that this discretion was used improperly in any way.
48. On a balance of probabilities, I am satisfied that the failure by the Respondent to invite the Claimant to the 2022 Eindhoven Cup event was within the discretion of the Respondent and had no impact on the selection process within the selection criteria.

**As set out earlier in this Decision, the fourth allegation by the Claimant was that the Respondent:**

**4. Failed to follow its own Policies and Procedures (i) failing to calculate athletes’ points in accordance with its carding policy and (ii) nominating an ineligible athlete (Mr. Sanford) for a Senior National Card.**

49. The first part in the above allegation relates to sections 9.3 and 9.4 of the 2023-2024 Athlete Carding Program. The Claimant’s argument was set out as follows:

First, Boxing Canada failed to comply with section 9.4 of the 2023-2024 carding criteria by awarding athletes points for domestic competitions, including the 2023 national champions, and training camps (see athletes ranking points table sent from Mr. Devlin on April 24, 2023, attached hereto as Exhibit “O”; see also Mr. Lindsay’s acknowledgement that athletes were awarded points for training camps in his email dated May 10, 2023 (attached hereto as Exhibit “B”). Under section 9.4 of the carding criteria, Senior National Cards should be given first to athletes with the most points in international competitions. Domestic competitions and training camps are not international competitions and should not be included in an athlete’s total points for the purposes for carding.

50. The difficulty with this argument is that it ignores the fact that the Boxing Canada Points System (see *supra* at page 9) specifically anticipates the awarding of points for domestic competitions (examples given such as ‘National championships, Final Team Selection’) and Training Camps that may all be ‘domestic competitions’.
51. The Claimant argues that domestic competitions and training camps “should not be included in an athlete’s total points for the purposes of carding.” He relies on section 9.4 of the 2023-2024 Athlete Carding Program for this assertion. However, section 9.4 appears to at least be



intended to be used for *prioritizing* athletes where there are more eligible athletes than there are cards. For ease of reference, I have reproduced section 9.4 again here:

Carding will be allocated to eligible athletes using the system below in order of priority. *If the number of eligible athletes should exceed the number of Sport Canada cards awarded for gender at a given order of priority, the next order of priority will be used as the tiebreaker for the remaining spots.*

- 1- Athletes with the most points in international competitions for May 1st, 2022 – March 15th, 2023. among those ranked #1 at the 2023 Elite National Championships (February 2023).
  - 2- Athletes with the most points in international competitions for May 1st, 2022 – March 15th, 2023. among those ranked #2 after the 2023 Elite National Championships assessment process (February 2023). [Emphasis added]
52. It makes little sense to award points for Domestic Competitions and Training Camps and then completely ignore those points when assessing the overall points of individual athletes for the purposes of eligibility and prioritization for carding. Why award points for Domestic Competitions and Training Camps if they will have no bearing on prioritization for carding?
53. The use of the words “the next order of priority... for the remaining spots” can only be interpreted to mean that what follows will be an additional formula for prioritizing eligible athletes after some cards (spots) have already been awarded. Why else use the words for the remaining spots”? Section 9.4 only makes sense if it is read as relating to priorities or “tie breakers” for eligible athletes where the points accumulated by two or more athletes according to the Boxing Canada Points System are equal and BC needs a way of “breaking a tie.”
54. I interpret section 9.4 to be a means of providing two sequential tie-breakers if there are two or more athletes tied in points for *remaining* cards after clear winners (on points) have been nominated. **By way of example**, in the following table (where 4 cards were available), section 9.4 would be used as a tiebreaker as between Bob Black and Robert White.

John Smith	20
Jack Jones	19
Jim Brown	18
Bob Black	17
Robert White	17
James Strange	16

55. Although the wording could be clearer in section 9.4, this interpretation of section 9.4 is the only one that makes sense in the totality of the 2023-2024 Athlete Carding Program (Exhibit “H”).

56. The second part in the above allegation relates to section 9.3 of the 2023-2024 Athlete Carding Program and Mr. Wyatt Sanford’s nomination for carding. The Claimant’s argument was set out as follows:

... section 9.3 of the 2023-2024 carding criteria states that an athlete who has been involved in the High Performance Program for 5-7 years “must have placed at least once in the top 5 at the World Championship or Olympic Games within the past four years (i.e., during carding years 4, 5, 6 or 7)” in order to receive a Senior National Card. One of the athletes nominated, Wyatt Sanford, does not meet those criteria and should not have been nominated for a Senior National Card.

[...]

Further down this section, it requires that “Athletes must meet the following criteria to be eligible for a “Senior Performance” card nomination.” Reading this section as a whole, it is clear that for an athlete to have his or her senior card renewed beyond the one year of funding they must “demonstrate progress within the Boxing Canada GMP and WS parameters and continuing improvement toward International Card status” by meeting the requirements for the years in the program.”

For ease of reference, I repeat the extract from section 9.3 that has specific criteria that must be met:

Years of involvement as a senior athlete in the HPP	Required Carding Standards *
1 to 4	Selection to Boxing Canada High Performance Program.
5 to 7	High Performance Program athletes must have placed at least once in the top 5 at the World Championship or Olympic Games within the past four years (i.e., during carding years 4, 5, 6 or 7).
8 and up	High Performance Program athletes must have placed at least once in the top 5 at the World Championship or Olympic Games within the past two years (i.e., during carding years 7 or 8).

57. The Respondent took the position that:

World Championships were not available to Canadian male athletes in 2021 or 2022 or 2023, but were available to Canadian female athletes. Given this clear inequity Boxing Canada returned to the statement in Carding Criteria “if the athlete demonstrates progress within the Boxing Canada GMP and WS parameters and continuing improvement toward International Card status.” (sic) and Mr. Sanford s bronze medal at Commonwealth Games, along with GMP and WS data, suggest he is moving closer to International Card Criteria (top 8 at World Championships or Olympics).

58. I agree with the Claimant that the Respondent failed to read section 9.3 of the 2023-2024 Athlete Carding Program as a whole and as a result failed to apply the criteria set out in the table above appropriately to Mr. Sanford. I do not have any evidence from BC that Mr. Sanford met the above criteria in the above table; it is clear from BC's response to the Claimant in Exhibit B that BC took the position that Mr. Sanford's progress within the Boxing Canada GMP and WS parameters and continuing improvement toward International Card status and Mr. Sanford's bronze medal at the Commonwealth Games were sufficient reason for them to nominate him for carding. Unfortunately, BC did so without adhering to the requirement in section 9.3 of the 2023-2024 Athlete Carding Program that says "Athletes **must** meet *the following criteria* to be eligible for a 'Senior Performance' card nomination." [Emphasis added].
59. On a balance of probability, I find that BC did not follow the criteria in the 2023-2024 Athlete Carding Program with respect to the nomination of Mr. Sanford for carding. Mr. Sanford did not meet the criteria and ought not to have been nominated for a Senior Performance card.

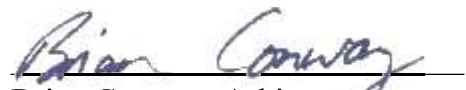
## VII. SUMMARY

60. I have found that, on a balance of probability that:
1. the late delivery of the 2023-2024 Athlete Carding Program had no impact on the selection process within the selection criteria on the Claimant;
  2. the Respondent appropriately established the criteria regarding inclusion of non-Olympic weight classes in the 2023-2024 Athlete Carding Program and applied those criteria reasonably;
  3. the failure by the Respondent to invite the Claimant to the 2022 Eindhoven Cup event was within the discretion of the Respondent and had no impact on the selection process within the selection criteria; and
  4. BC did not follow the criteria in the 2023-2024 Athlete Carding Program with respect to the nomination of Mr. Sanford for carding. Mr. Sanford did not meet the criteria and ought not to have been nominated for a Senior Performance card.
61. Finally, the Claimant also provided (in response to a question posed by the Arbitrator) documentation setting out various tables as to how the points of various athletes may have been adjusted if the Claimant's arguments were accepted. One particular table provided 6 additional points to the Claimant for the "international" King of the Rings tournament. It is unnecessary for me to decide whether the Claimant is correct in his position, as the 6 points would have put him just short of the top four positions in light of my findings. Importing these findings into the points accumulated by athletes considered by BC, it would still leave the Claimant short of the top four places. I have combined the information from the four tables provided by the Claimant in Exhibit C-28 with my findings above and the following final table is the result:

	Athlete	Weight Class (kg)	Points
1.	Keoma Ali Ahmadih	60	24
	Wyatt Sanford	63.5	22
2.	Jerome Feujio	92+	20
	Kevin Beausejour (declined card)	80	19
3.	Jonathan Hannah	75	18
4.	Jonathan Bourget	60	14
5.	Justin Parina	51	13
6.	Junior Petanqui	71	12
7.	Dylan Martin	75	11
8.	Hunter Lee	71	11

62. The Appeal is therefore dismissed.

DATED: August 07, 2023, Calgary, Alberta

  
 Brian Conway, Arbitrator