

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

**N°: SDRCC 23-0659**

**Ava Holmgren  
(Claimant)**

**and**

**Cycling Canada Cyclisme  
(Respondent)**

**and**

**Nora Linton  
(Affected Party)**

**Attendees at the Hearing:**

For the Claimant:

Robert Holmgren

For the Respondent:

Kris Westwood  
Dan Proulx  
Nigel Ellsay  
Richard Wooles

For the Affected Party:

Art Adams

**Arbitrator:**

James C. Oakley, K.C.

**DECISION WITH REASONS**

## **Background**

1. The Claimant, Ava Holmgren, disputes the decision by Cycling Canada Cyclisme (“CCC”), the Respondent, not to select her as primary team member for the 2023 Junior Women’s Road World Championships, and to select Nora Linton as one of the primary team members.
2. The Claimant filed a Request with the Sport Dispute Resolution Centre of Canada (“SDRCC”) on July 25, 2023, to resolve the sports related dispute under the Canadian Sport Dispute Resolution Code (the “Code”).
3. The Respondent filed an Answer dated July 25, 2023 stating that CCC followed its selection process carefully, did not make a biased decision, and considered all relevant information when making the selection decision. CCC asked that the claim be denied and the selection decision upheld.
4. On July 25, 2023, I was selected as Arbitrator to hear the dispute. I attended a preliminary meeting with representatives of the Claimant and the Respondent on July 27, 2023. At that time, the parties agreed that Nora Linton was a potentially Affected Party because the Claimant requested an order that she be selected as primary team member in place of Nora Linton. Notice of the hearing was sent to the Affected Party.
5. The Affected Party, Nora Linton, filed an Intervention Form dated July 30, 2023, stating that she wished to intervene because the proceeding would determine her participation in the 2023 Road World Championships, and stating that she had been selected in accordance with the selection criteria.
6. The matter was heard on an urgent basis because the 2023 Road World Championships were scheduled to commence August 4, 2023 in Glasgow, GBR. The parties agreed to proceed to arbitration by the SDRCC without following an appeal under the CCC Appeal Policy. The parties also agreed to waive the resolution facilitation prerequisite to an arbitration hearing in the Code, on the basis that the parties had attempted resolution facilitation under another proceeding, and the matter had not been resolved.
7. The arbitration hearing was heard on August 1, 2023. The parties requested that a Short Decision on the dispute be rendered by the Arbitrator by the end of day on August 2, 2023. I agreed to issue a Short Decision as requested, with Decision with Reasons to follow within 15 days, the time limit set out in the Code. The Short Decision, issued on August 2, 2023, denied the Claimant’s request and upheld the Respondent’s selection decision. This is the Decision with Reasons.

**Facts**

8. The CCC 2023 Road Selection Policy draft, published on January 13, 2023, updated on March 3, 2023, final on June 9, 2023, states as follows with respect to UCI Road World Championships:

Selection panel: Selections recommended by:

- Cycling Canada Coach Panel (see CC website)

Selections approved by:

- Head Coach - Dan Proulx
- High Performance Director - Kris Westwood
- Cycling Canada High Performance Committee

Selection criteria: Athletes will be selected in the following order of priority until the team is filled:

Junior Women's Road Race:

1. Top finisher in the 2023 Canadian Road Championship Junior Women's Road Race born 2005 - 2006
2. Athletes finishing top-3 (one-day, stage, or GC) in a European event on the UCI road calendar in the 12 months before the selection date.
3. Coach discretion based on Other Factors listed in Section D, Clause 3.

Up to 2 alternates will be nominated using the criteria above.

Junior Women's Individual Time Trial (selected from among Road Race starters):

1. Top Finisher in the 2023 Canadian Road Championship Junior Women's Individual Time Trial born 2005-2006
2. Coach discretion based on Other Factors listed in Section D, Clause 3.

Up to 2 alternates will be nominated using the criteria above.

...

Section D: GENERAL SELECTION POLICY

3. OTHER FACTORS THAT MAY BE CONSIDERED IN SELECTION

In addition to the Specific Selection Criteria, selection may take into consideration any one or more of the following additional factors, in no particular order:

- The rider's past performances and/or results in international competition.
- The rider's potential to contribute to future World Championship, Olympic or Paralympic performances.
- The rider's technical ability.

- The rider's tactical ability.
  - The rider's physical ability / fitness.
  - The rider's suitability for the course / venue / environmental conditions of the event.
  - The rider's attitude, composure, and behavior in high-pressure competitive environments.
  - The results of any of the rider's sport science tests conducted by CCC, including biomechanical and physiological.
  - The rider's consistency and reliability in competition.
  - The ability of the rider to contribute to a team result.
  - The rider's attendance, performance, attitude and conduct in training whilst a member of national team program (DTE, training camp or competition).
  - The rider's level of communication with CCC. including sharing training programs and reports with the relevant National Coach.
9. The Claimant and the Affected Party are cyclists competing in the junior category (age 17-18). CCC made the decision based on the recommendation of the Coach Panel, comprising National Team Coaches Nigel Ellsay, Richard Wooles and Laura Brown, and reviewed by Head Coach, Dan Proulx and High Performance Director, Kris Westwood. The recommendations were approved by the CCC High Performance Committee ("HPC"). The HPC has 9 members, whose names were listed in the Respondent's submission, all having extensive cycling expertise, with the majority having road race expertise. The selection decision was sent to the athletes on June 30, 2023. Following an inquiry by the Claimant, the decision was sent back to the Coach Panel to review and to ensure the criteria were properly applied. The subsequent recommendations were submitted and approved by the HPC. The selection decision was then sent to the athletes on July 5, 2023.
10. CCC selected four athletes as primary team members (road race starters) for the World Championship Junior Women's Road Race. Alexandra Volstad was selected under the first priority as the top finisher in the 2023 Canadian Road Championship Junior Road Race. There were no athletes that met the criteria in the second priority of a top 3 finish in a European UCI event. The remaining three athletes were selected for the team according to Coach discretion based on other factors listed in Section D, Clause 3. The athletes were recommended by the Coach Panel in the following order of priority, 1. Eloise Camire, 2. Isabella Holmgren, 3. Nora Linton, 4. Ava Holmgren (first alternate) and 5. Annabelle Thomas (second alternate).
11. CCC submitted a description of the Coach Panel assessment for the Claimant and the Affected Party, that was made under Clause 3, as follows:

**Coach Panel assessments of athletes nominated under Priority 3:**

[. . .]

Nora Linton - recommended based on winning the time trial at the Canadian National Championships beating other riders with strong international results. Her win in the time trial also demonstrates a high fitness level. Nora finished 10<sup>th</sup> in the road race at Nationals.

Ava Holmgren - recommended for selection as the first alternate based on international race results. At the Canadian championships, she finished 5<sup>th</sup> in the time trial and 11<sup>th</sup> in the road race.

[...]

### **Athlete evaluation using Other Factors:**

#### **Nora Linton**

1. Did not meet priority 1; was not National Champion.
2. Did not meet priority 2; not top-3s in previous 12 months.
3. Considered under priority 3.
  - a. Past performances and results in international competition
    - i. The rider had no notable international performances and results
  - b. Potential to contribute to future WCs, Olympics, etc.
    - i. The rider has deemed to have a moderate likelihood to contribute to future. Note that this assessment is made with low confidence due to the age of the athlete.
  - c. Tactical ability
    - i. The rider was deemed to have moderate tactical ability
  - d. Physical ability
    - i. The rider was deemed to have high physical ability
  - e. Suitability to the course
    - i. The course was deemed as suitable for all-rounders. Nigel and Richard viewed the course in May 2023.
  - f. Attitude
    - i. The rider was deemed to have high attitude
  - g. Sport science
    - i. We do not have capacity to look at this for Juniors.
  - h. Consistency and reliability
    - i. We did not look at - we do not have enough data points on Junior riders.
  - i. Team result
    - i. We did not look at this because they are Juniors; this is a development category where athletes pay-to-play. We do not ask them to work together for an individual, so they may continue to go for it themselves.
  - j. Attendance, performance, attitude and conduct whilst a member of national team
    - i. Has not yet been a member of national team, is a first year Junior.
  - k. Communication with CC
    - i. The rider was deemed as moderate

### **Ava Holmgren**

1. Did not meet priority 1; was not National Champion.
2. Did not meet priority 2; not top-3s in previous 12 months.
3. Considered under priority 3.
  - l. Past performances and results in international competition
    - i. The rider had notable results in September 2022, three fourth places at a Nations Cup. The rider has had no notable (ie. top 3 or top 5) road results in 2023 other than 5<sup>th</sup> place in the individual time trial at Canadian Championships.
  - m. Potential to contribute to future WCs, Olympics, etc.
    - i. The rider has deemed to have a high likelihood to contribute to future. Note that this assessment is made with low confidence due to the age of the athlete.
  - n. Tactical ability
    - i. The rider was deemed to have moderate tactical ability
  - o. Physical ability
    - i. The rider was deemed to have moderate physical ability
  - p. Suitability to the course
    - i. The course was deemed as suitable for all-rounders. Nigel and Richard viewed the course in May 2023.
  - q. Attitude
    - i. The rider was deemed to have high attitude
  - r. Sport science
    - i. We do not have capacity to look at this for Juniors.
  - s. Consistency and reliability
    - i. We did not look at - we do not have enough data points on Junior riders.
  - t. Team result
    - i. We did not look at this because they are Juniors; this is a development category where athletes pay-to-play. We do not ask them to work together for an individual, so they may continue to go for it themselves.
  - u. Attendance, performance, attitude and conduct whilst a member of national team
    - i. The rider was deemed to have high attitude
  - v. Communication with CC
    - i. The rider was deemed as moderate

### **Differences between Nora and Ava**

- ° Past performances
  - ° Nora did not compete internationally during the selection window, and she did not have the opportunity in 2022 because of her age (she was not yet junior). In 2023, she planned to compete post-selection window and pre-world championships.

- Last season, Ava had notable international results with three fourth places at the 2022 Watersley Nations Cup race. In the 2023 season, Ava has had no notable international race results.
- Potential to contribute to future WCs, Olympics, etc.
  - Ava was ranked high ability to contribute to future WCs and Olympic performances due to her placing fourth three times at international race in September 2022. Unfortunately, this level has not been demonstrated in 2023.
  - Nora was ranked moderate ability to contribute to future WCs and Olympic performances because she has not yet competed at an international level. However, there are strong fitness indicators to back-up her ability.
- Physical ability
  - This point was valued above all other factors by selections. In the previous two JW WCs, no Canadian rider has been in the front group after the first half of the race. This is not due to a lack of technical or tactical ability; or attitude and composure but fitness.
  - Ava was ranked a moderate level of fitness due to her demonstrated ability at Watersley in September 2022 but lack of demonstrated ability this 2023 season. This season, Ava has not demonstrated a high level of fitness. At Canadian Nationals, she was ill. Her 2023 season fitness is in question.
  - Nora was ranked a high level of fitness due to her demonstrated ability in the individual time trial at 2023 Canadian Road nationals where she beat all other Canadian Junior Women. Because this is an individual race, riders have an opportunity to demonstrate their fitness unhindered. Nora won the event by a clear margin over second place and very strong margin over the rest.

## **Party Submissions**

### *Introduction*

12. The parties filed extensive written submissions, and also made oral submissions at the arbitration hearing. At the hearing, National Team Coaches Nigel Ellsay and Richard Wooles discussed the reasons for the CCC selection decision, and answered questions from Robert Holmgren, the Claimant's representative.

### *Claimant Submissions*

13. The Claimant submitted that CCC made a biased decision because, (1) the selection criteria for automatic selection recognized only top 3 results in UTI road calendar events, and that the Claimant had achieved top 4 results before the criteria were established, (2) there was actual bias based on a meeting between Robert Holmgren and CCC representatives in November, 2022, who allegedly told Mr. Holmgren that his continued coaching into 2023 could impact selection of his children, including Ava Holmgren, for world championships, in an effort to

avoid perception of bias in their favour, and (3) there was a history of bias because the Claimant had never been selected to a team as a result of the application of discretionary criteria.

14. The Claimant submitted that CCC failed to adequately consider international results in UCI road events as set out in a list submitted with the Request. The results included a 4th place overall GC result in Watersley Ladies Challenge in September, 2022, 9th place overall GC result in EPZ Omloop van Borsele in April, 2023, and 17th place overall GC result in Tour de Gevaudan Occitanie Femmes in May, 2023. The Claimant referred to her contribution to the overall points for the Canadian team, effective May, 2023.
15. With respect to performance and potential to reach the podium, the Claimant referred to the fact she was identified by CCC into the Core Performance Pool for 2023, the only junior woman identified into a pool. The Claimant submitted that her result in the Canadian Road Nationals was affected by an upper respiratory tract infection that she had that week. She informed Mr. Ellsay of the illness. Despite the illness, she finished only 1 second behind Ms. Linton in the road race. The Canadian Road Nationals was the only race where the Claimant placed behind Ms. Linton.
16. With respect to the criteria of physical ability, the Claimant disputed CCC's rating of the Claimant as moderate and the rating of Ms. Linton as high. The rating system and the assessment was not explained satisfactorily by CCC. The Claimant had consistently demonstrated her physical ability, and should have been rated as high. The Claimant disputed the physical ability rating as not having taken into account all relevant information. Physical ability should not be based only on the results at Canadian Nationals.
17. The Claimant submitted that the CCC decision was unreasonable, because CCC had given less weight to the factors where the Claimant was rated superior to Ms. Linton, in particular past performances in international competitions, potential to contribute to future world championships (WC's) or Olympics, and attendance at team programs. The CCC decision was also unreasonable because it failed to consider the relevant information of the Claimant's excellent results in cyclocross and mountain bike, including an international mountain bike podium on June 15, 2023. The Claimant was the only known Canadian cyclist to have ever achieved top 5 results internationally in 3 different cycling disciplines within the same year. Cyclocross and mountain bike results were relevant to the rating of physical ability. The Claimant and her sister were the only 2 women to earn UCI points in 2023 and to contribute to Canada's overall ranking of 6th internationally. The Claimant had demonstrated the ability to ride and finish with the lead group of racers in every Nation's cup international race during the selection window. The Claimant noted that Ms. Linton had not achieved a top 5 result internationally, and had never demonstrated the ability to stay in the lead group at a junior women's Nation's cup road race. The Claimant questioned CCC giving Ms. Linton a moderate rating for potential to contribute to future WC's and Olympics, having regard to this information.
18. The Claimant submitted that she should be named as a starter at the junior women's road world championships and the request allowed.



*Respondent Submissions*

19. The Respondent submitted that the appeal raised four issues, and that all issues should be decided in favour of the Respondent. The issues were whether the decision was biased, whether CCC followed the selection policy, whether CCC considered all relevant information, and whether the decision was reasonable.
20. The Respondent submitted that any possibility of bias was mitigated by the procedure followed to develop the criteria and make the decision, and the fact that 14 persons, including a 9 member High Performance Committee, reviewed and approved the selection decision. The decision was based on the evidence, and not on any other factors.
21. Nigel Ellsay, National Team Coach, stated at the hearing, with respect to the criteria, that a draft was released in January, 2023, and there was no feedback. The policy stated 2 automatic selection criteria, neither of which applied to the Ms. Holmgren or Ms. Linton. The discretionary criteria were applied to events within the window of 12 months prior to the selection decision. The Coach Panel recommended 3 athletes, not including the Claimant, having regard to the three criteria of past performances in international competition, potential to contribute to future WC or Olympic performances, and physical ability. The Claimant was rated higher than Ms. Linton in past performances and potential, having regard to the Claimant's 4th place result in Watersley, in September, 2022. However, the Claimant had not achieved the same results in 2023. As a result, the coaches were left unsure of her road fitness at the time of the selection decision.
22. Mr. Ellsay stated that physical ability was considered to be the most important factor of all factors. This factor was important because, in the last two world championships, the Canadian junior women has been distanced in the first quarter of the race, and this did not achieve the objective, which was to be in contention to learn and develop. Current fitness level at the time of selection was considered important. The Coach Panel rated Ms. Linton to have a higher level of fitness based on Canadian Nationals, where she placed 1st in the time trials, with a result 53 seconds better than the Claimant, and she placed 10th in the road race, one second better than the Claimant, who placed 11th. Mr. Ellsay stated that the one second difference in the road race was a meaningful margin to the coaches when comparing physical ability.
23. The Respondent submitted that the Claimant's results in cyclocross and mountain bike were in disciplines that were not transferable to road. In the event that other disciplines were to be taken into account, then Ms. Linton's excellent results in track could also be considered. However the selection decision was based on road results, which was consistent with the criteria. The decision had been based on the available information at the time of the decision and was reasonable. The Respondent requested that the request be denied and the selection decision upheld.

*Affected Party Submissions*

24. The Affected Party attended the hearing as observer. The Intervention filed by the Affected Party supported the CCC decision.

**Analysis***Introduction*

25. The Code states, in part, as follows:

Article 6 Specific Arbitration Rules for the Ordinary Tribunal

[...]

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.

6.11 Scope of Panel's Review

- (a) The Panel, once appointed, shall have full power to review the facts and apply the law. In particular, the Panel may substitute its decision for the decision that gave rise to the dispute or may substitute such measures and grant such remedies or relief that the Panel deems just and equitable in the circumstances.

[...]

26. Section 6.10 of the Code sets out a two part test. The first part of the test requires that the Respondent demonstrate, (1) that the selection criteria were appropriately established, and (2) that the selection decision was made in accordance with the criteria. After the Respondent has demonstrated the first part of the test, the onus then shifts to the claimant to demonstrate that the claimant should have been selected (Freeman, Heldman, Howden and Wood v. Canada Snowboard, (SDRCC 22-0558/0560)).
27. With respect to standard of review of selection decisions, the jurisprudence applies the standard of reasonableness. For example, the decision in Weaver v. Nordiq Canada (SDRCC 20-0481), states as follows:

39. In *Palmer v. Athletics Canada* (SDRCC 08-0080) Arbitrator Pound determined that the standard of review of decisions of national sports organizations is that of reasonableness, not correctness. In doing so, he concluded that arbitrators will be willing to interfere with a sport organization's decision in relation to that sport
- [...] only when it has been shown to their satisfaction that the impugned decision has been so tainted or is so manifestly wrong that it would be unjust to let it stand.
40. Provided that a National Sport Organization's (NSO) decision falls within a range of possible, acceptable outcomes that are defensible in light of the Selection Criteria and the facts, the Tribunal will not interfere with the decision. (see *O'Neill and Canoe Kayak Canada* (SDRCC 19-0415)).
28. The issue of deferral to a selection decision was discussed in *O'Neill v. Canoe Kayak Canada* (SDRCC 19-0415), as follows:
47. Provided that CKC's selection decision falls within a range of possible, acceptable outcomes that are defensible in light of the Selection Criteria and the facts, the Tribunal will not interfere with the decision. (see, for example, *Blais-Dufour* (SDRCC 11-0145), *Larue v. Bowls Canada* (SDRCC 15-0255) and *Maxime St-Jules v. Speed Skating Canada* (SDRCC 16-0288))
- [. . .]
50. The individuals on the selection committee have far better knowledge about the sport than an arbitrator and will be afforded significant deference:
- The default position in [selection cases], absent reviewable error or proof of bias, is that those responsible for selection decisions are generally the most knowledgeable and experienced persons available, who attempt in good faith to produce the best possible outcomes in the particular circumstances. (*Richer v. the Canadian Cerebral Palsy Sports Association* (SDRCC 15-0265))
29. I will consider the following issues (1) were the selection criteria appropriately established, (2) was the selection decision made in accordance with the criteria, (3) was the selection decision biased against the Claimant, (4) did the Respondent fail to consider relevant facts or criteria, and (5) was the decision reasonable.
- Were the selection criteria appropriately established?*
30. The selection criteria, entitled Road Selection Policy, were first prepared in draft form by CCC in January, 2023. CCC did not receive any feedback objecting to the selection criteria. The selection criteria were approved on June 9, 2023. The selection criteria stated that there were three priorities, and that the selection would follow automatically if either one of the first two

priorities was met. The criteria stated that selection based on the third priority would be subject to coach discretion based on other factors listed. CCC submitted that it followed a procedure to prepare and approve the selection criteria that was consistent with the procedure followed in previous years and that the procedure allowed for input. I find that the procedure followed to publish the draft criteria, with sufficient time for input, was appropriate.

31. The automatic selection under the second priority in the selection criteria required a top three placement in a European event on the UCI road calendar in the 12 months before the selection date. The Claimant did not qualify under this second priority because she did not have a top three placement in international races in the selection window. Her 4th place at Watersley did not qualify. The Claimant submits that the requirement in priority 2 for a top three result was intended to exclude her 4th place result. However, the same criteria were applied to all athletes. CCC submitted that a top three placement was appropriate to justify automatic selection. There was no evidence that the criteria were prepared with the intent to disadvantage the Claimant. The criteria were published in draft form in January, 2023. The Claimant did not object to the draft criteria and competed in international races after the draft criteria were published. I find that the process to approve the selection criteria was appropriate, and was a process that resulted in selection criteria that were not influenced by bias against the Claimant.
32. There was no procedural unfairness to the Claimant when the criteria were established. The Claimant had an opportunity to object to the draft criteria and raised no issue. The rationale for the criteria has been justified by the Respondent. I find that the criteria were appropriately established.

*Was the decision made in accordance with the criteria?*

33. In the decision to select Nora Linton, the Affected Party, and not to select Ava Holmgren, the Claimant, priority 1 and 2 of the selection criteria did not apply. The discretionary criteria under Section D Clause 3 were applied. There are 12 discretionary factors listed. CCC rated the athletes by applying the discretionary factors. Five of the factors were not rated or not applicable for one or both athletes, and for four of the factors, the athletes were rated equally. The athletes were rated differently on the remaining three factors. On the factor of physical ability, Ms. Linton was rated “high”, and Ms. Holmgren was rated “moderate.” On the factor of potential to contribute to future WC and Olympics, Ms. Holmgren was rated “high” and Ms. Linton “moderate.” On the factor of international race results, Ms. Holmgren had notable performances, and Ms. Linton did not have any at the time of the selection decision.
34. Coach Panel member Nigel Ellsay stated at the arbitration hearing that physical ability was the primary factor considered by the Coach Panel, and approved by the Respondent. The reason stated by the Respondent to consider physical ability the most important factor was that the junior women in the last two world championships were left a considerable distance behind the lead group in the first quarter of the race, and were therefore out of contention early in the race. This did not meet the objective of gaining experience in the lead group in the race. Physical ability, demonstrated by fitness level at the time of selection, was considered critical to address this issue.

35. The list of discretionary factors does not state the weight to be given to any particular factor, or that all factors must be weighted equally. Therefore, it was acceptable, in accordance with the criteria, for the Respondent to give greater weight to the factor of physical ability, based on the reasonable explanation stated by Mr. Ellsay.
36. CCC rated Ms. Linton higher than Ms. Holmgren in physical ability based on her superior result to Ms. Holmgren in the Canadian National Road Race Championships and Time Trials. Ms. Linton's time was better than Ms. Holmgren by 53 seconds in the Time Trials and by one second in the road race. The Respondent acknowledged that it was unfortunate that the Claimant was ill at the time of the Canadian Nationals, but nevertheless fitness level at the time of the selection in July, 2023 was critical, given that the World Championships were scheduled for early August, 2023. The Respondent also considered the factors of potential in future WC's and Olympics and past international results. In this regard, the Respondent rated the Claimant as superior to Ms. Linton on the basis of the results she achieved in the September, 2022 UCI event in Watersley. However, the Respondent noted that Ms. Holmgren did not produce the same international results in 2023. The Respondent noted that the Ms. Holmgren's strongest and most relevant result was in September, 2022, and was not recent.
37. The Claimant questioned the Coach Panel rating of the athletes on physical ability and disputed the weighting of the factors. The Claimant referred to the results achieved in international races by the Claimant, as listed in the written submissions. The Claimant submitted that only Ava Holmgren and her sister had contributed to ranking points for Canada. The Claimant referred to results obtained in 2023 in mountain bike and cyclocross events, as listed in the Claimant's submission. The Claimant suspected the selection decision had been based on only one event, the Canadian National Championships, and did not adequately take into account other events. The Respondent replied that the Coach Panel had carefully considered all factors, that both Ms. Holmgren and Ms. Linton were excellent candidates to be selected, but the Coach Panel had recommended Ms. Linton for the reasons stated and the HPC had agreed.
38. I find that the selection decision was made in accordance with the established criteria. The Coach Panel made a recommendation based on the discretionary factors considered to be relevant and rated the athletes on the factors. The Coach Panel placed greater weight on the criteria of physical ability, and stated justifiable reasons for giving this factor a greater weighting. The selection criteria did not require any particular relative weighting. The Respondent stated reasons for the ranking of the Claimant and Ms. Linton on the criteria. The procedure followed was that the Coach Panel made a recommendation that was reviewed by Mr. Westwood and Mr. Proulx and then approved by the High Performance Committee. The HPC members had extensive background and experience in the sport of cycling, with the majority having extensive experience in road racing. I find that the decision was made in accordance with the criteria.

*Was the decision biased?*

39. I have discussed the issue of bias with respect to the issue of whether the criteria were appropriately established. I find that bias against the Claimant was not a factor when the criteria were established.
40. On the issue of bias in the selection decision, the Claimant's father and representative, Robert Holmgren, referred to a meeting in November, 2022. Mr. Holmgren alleges that CCC representatives told him that in the event he continued to coach into 2023, then the Claimant and her brother and sister could be negatively impacted in future selection decisions. CCC responds by acknowledging that the meeting occurred, but states that the purpose of the meeting was to caution Mr. Holmgren that his participation in selection decisions could result in a perception of bias in the event his children were selected. However, Mr. Holmgren did not coach after his contract ended in February, 2023. There was no evidence that the selection decision at issue, made in July, 2023, was influenced by bias against the Claimant, as a result of her father's past position as coach.
41. The facts do not establish that the Respondent was biased against the Claimant when making the selection decision. The Claimant was selected as an alternate and was rated higher than Ms. Linton in some criteria, but was rated lower than Ms. Linton, the athlete selected, on the important factor of physical ability. The Respondent considered the criteria of physical ability to be the most important factor for the reasons stated. The facts do not establish bias as a result of the coach position formerly held by the Claimant's father, or as a result of the history of prior selections. The Respondent denies any bias against the Claimant. The Respondent states that the selection was based on the application of the selection criteria, and this assertion is supported by the facts. The decision was reviewed and approved by a total of 14 persons, including the 9 person High Performance Committee, which supports the finding that there was no influence of bias in the decision.

*Did the Respondent fail to consider relevant facts or criteria?*

42. The Claimant submits that the Respondent failed to consider relevant facts, including results obtained in international races, in road, cyclocross and mountain bike, and the contribution to ranking points for the Canadian team. The Respondent submits that it did take all international road results into account when assessing the criteria, including physical ability, and stated how it evaluated these results. The Respondent stated that it did not consider cyclocross and mountain bike results, as these were different disciplines, and such results were not included in the selection criteria. The Respondent submits that if other disciplines were to be considered, then it would open up consideration of Ms. Linton's excellent results in track, but these track results were also not considered in the selection, because they were not included in the selection criteria. I accept the Respondent's submission that results in cyclocross and mountain bike are not included in the selection criteria. I find that the evidence does not establish that the Respondent failed to consider relevant facts or criteria. The parties do not agree on the relative weight to give the discretionary factors, or the rating of the athletes on the factors. However, the evidence establishes that the Respondent did not fail to consider relevant facts or criteria when deciding the weight to give the factors, or when rating the athletes on the factors.

*Was the decision reasonable?*

43. I find that the selection decision was made in accordance with the established criteria, considered relevant factors and was not based on irrelevant factors. It is appropriate that I defer to the experts in the sport, in this case, on the issues of the weight to give to the criteria and the rating of the athletes based on those criteria. The Respondent's reasons have demonstrated expertise. The Respondent has given an explanation for the decision and the process followed to make the decision. The important fact relied on by the Respondent, in favour of selecting Ms. Linton, was her superior result to the Claimant in the recent Canadian Nationals, in both road race and time trials.
44. I find that the Respondent has stated satisfactory reasons, based on the selection criteria, to select Ms. Linton. The decision was within the range of acceptable and justifiable outcomes based on the facts. The decision was reasonable. There is no basis to overturn the decision. I find that it is consistent with the Code, and the principles discussed, that I uphold the decision.

### **Decision**

45. For the reasons stated, the Respondent's selection decision is upheld and the request by the Claimant is denied.
46. I have not made any order as to costs at this time. In the event of an application for an order as to costs, the application shall be submitted no later than August 16, 2023 and the reply no later than August 23, 2023. However, I will note at this time that in a case of this nature, I would need to be persuaded why an order of costs should be made.
47. I wish to extend my appreciation to the parties and their representatives for their cooperation and participation in the arbitration proceedings.

Dated this 10<sup>th</sup> day of August, 2023.



---

James C. Oakley, K.C.  
Arbitrator