

IMPORTANT NOTE: *This version is a translation of the original French version.*

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

N°: SDRCC 16-0288

In the matter of an arbitration between:

MAXIME ST-JULES

(CLAIMANT)

- AND -

SPEED SKATING CANADA

(RESPONDENT)

- AND -

BRENDAN COREY

(AFFECTED PARTY)

AWARD

ARBITRATOR: Andrew de Lotbinière McDougall

Appearing:

For the Claimant:

Maxime St-Jules

Elizabeth Fortin

For the Respondent:

Jennifer Cottin

Brian Rahill

Dr. Suzanne Leclerc

SUMMARY

Page

I.	INTRODUCTION	1
II.	THE PARTIES.....	1
	A. The Claimant.....	1
	B. The Respondent	1
	C. The Affected Party	2
III.	JURISDICTION OF THE PANEL.....	2
IV.	STATEMENT OF FACTS AND PROCEDURE.....	3
	A. Factual Background	3
	B. Procedural Background.....	4
V.	ISSUES TO BE SETTLED	6
VI.	SUBMISSIONS OF THE PARTIES	6
	A. Summary of the Claimant’s Position	6
	B. Summary of the Respondent’s Position.....	7
VII.	RULES APPLICABLE TO THE MERITS OF THE DISPUTE.....	8
VIII.	ANALYSIS.....	8
	A. On the matter of HPCST’s jurisdiction to make the contested Decision.....	9
	B. On the matter of the grounds for the contested Decision.....	9
IX.	COSTS	11
X.	DECISION.....	12

I. INTRODUCTION

1. The present award is rendered pursuant to a sports-related dispute¹ (the “**Dispute**”) between the athlete, Maxime St-Jules (the “**Claimant**”), and Speed Skating Canada (the “**Respondent**” or “**SSC**”) (collectively the “**Parties**”) whereby the Respondent removed the Claimant from the Canadian national junior short track team for the World Championships, set to take place in Bulgaria from January 29 to January 31, 2016 (the “**Selection**”).
2. The Dispute was managed by the Sport Dispute Resolution Centre of Canada (the “**SDRCC**”) and settled herein by a sole arbitrator (the “**Panel**”² or the “**Sole Arbitrator**”) under the Canadian Sport Dispute Resolution Code effective January 1, 2015 (the “**Code**”).

II. THE PARTIES

A. THE CLAIMANT

3. The Claimant³ is a Canadian short track speed skating athlete of 18 years of age and affiliated with Speed Skating Canada. Assisting him during the arbitration is his mother, Mrs. Elizabeth Fortin.
4. He is challenging the decision made by the High Performance Committee – Short Track (the “**HPCST**”) on behalf of the Respondent to remove him from the Selection on medical grounds and to replace him with the next ranked junior national athlete (the “**Decision**”).

B. THE RESPONDENT

5. The Respondent⁴ is the national sport organization⁵ governing speed skating in Canada. It is, among other things, responsible for managing national high performance programs and for carrying out the selection and training of teams that will represent Canada at

¹ As defined under Subsection 1.1(mm)(i) of the Canadian Sport Dispute Resolution Code.

² Term defined under Subsection 1.1(aa) of the Code.

³ Term defined under Subsection 1.1(h) of the Code.

⁴ Term defined under Subsection 1.1(kk) of the Code.

⁵ Term defined under Subsection 1.1(z) of the Code.

various international competitions. The Respondent is represented by Mr. Brian Rahill, High Performance Director, and Ms. Jennifer Cottin, Short Track National Team Manager.

C. THE AFFECTED PARTY

6. The Dispute affects Mr. Brendan Corey (the “**Affected Party**”⁶), the athlete who replaced the Claimant in the Selection further to the Respondent’s Decision.
7. The Affected Party was duly notified by the SDRCC of the existence of the arbitration and was informed by the Respondent of his right to participate, to be represented and to submit written and/or verbal observations before the Panel. However, the Affected Party did not appear during the proceedings.

III. JURISDICTION OF THE PANEL

8. According to Article 14.2 of SSC’s policy RES 100/Appeals Policy of September 10, 2011:

*The decision of the tribunal will be final and binding upon the parties and upon all members of Speed Skating Canada **subject to the right of any party to seek a review of the tribunal’s decision pursuant to the rules of the Sport Dispute Resolution Centre of Canada (SDRCC), as amended from time to time.***

[Emphasis added]

9. Furthermore, in a letter dated January 25, 2016⁷, SSC advised the Claimant of its intention to waive the internal appeal process and immediately grant jurisdiction to the SDRCC in the following terms:

Bypassing the internal appeal process involves two stages:

1. *The appellant must file a request directly with the SDRCC [...]*
2. *Both parties agree to waive the internal appeal process – **Speed Skating Canada supports the decision to file an appeal directly with the SDRCC.***

[Emphasis added]

⁶ Term defined under Subsection 1.1(a) of the Code.

⁷ **Exhibit R-01:** Letter from SSC to the Claimant dated January 25, 2016

10. Finally, despite the fact that the Respondent initially indicated its intention to challenge the jurisdiction of the SDRCC in its Response⁸, it did not do so in writing⁹ or during the hearing; it also confirmed that it had no objections with the proceedings during the hearing (see §22 *below*).

IV. STATEMENT OF FACTS AND PROCEDURE

A. FACTUAL BACKGROUND

11. During the qualification events for the Selection, the Claimant ranked 4th and thereby earned his spot for the Selection, which includes four athletes. The Affected Party ranked 5th, which did not qualify him for the Selection.
12. On January 16, 2016, while competing in the Canadian short track speed skating championships, the Claimant fell and sustained an injury to the left shoulder. He was not able to finish the competition due to a dislocated shoulder (the second of his career).
13. After the injury, the Claimant was examined and treated:
- Immediately, at the site of the accident;
 - On January 18th, by Dr. Suzanne Leclerc, SSC's High Performance Program Chief Physician, and by Mrs. Tiffany Hunting, physiotherapist at the regional training centre;
 - On January 19th, by Dr. Stéphane Bergeron, orthopedist at the Montreal Jewish General Hospital;
 - On January 26th, again by Dr. Leclerc for an X-ray.
14. On January 20, 2016, based on the medical information at hand regarding the status of the Claimant's injury, the SSC convened:
- Dr. Leclerc, as High Performance Program Chief Physician;

⁸ Term defined under Subsection 1.1(b) of the Code.

⁹ **Exhibit R-05:** Writ of responder

- Mr. Marc Gagnon, as Coach of the regional program and Head Coach accompanying the Selection to Bulgaria;
- Dr. Hugo Hébert, as Doctor at the regional training centre and physician accompanying the Selection to Bulgaria;
- Ms. Cottin, as High Performance Short Track National Program Manager; and
- Mr. Rahill, as High Performance Program Director.

These individuals unanimously agreed that the Claimant's medical condition did not allow him to participate in the Selection and thus recommended his substitution.

15. The same day, the HPCST acted on such recommendation in deciding to remove the Claimant from the Selection and replace him with the next ranked athlete, i.e. the Affected Party.
16. On January 24, 2016, the Claimant appealed this Decision to the Chief Executive Officer of SSC.
17. On January 25, 2016, given the urgency of the situation (the deadline for athletes to register for the Selection being at 11:00 am EST on January 27th) and the fact that no decision could be rendered by an internal appeal on such short notice, the Respondent advised the Claimant of its intention to forego the internal appeal process and suggested that he file a request directly with the SDRCC.

B. PROCEDURAL BACKGROUND

18. On January 26, 2016, the Claimant initiated an arbitration proceeding with the SDRCC for that Dispute, by filing a request pursuant to Article 3.4 of the Code. On the same day, the Respondent filed its answer in compliance with Article 3.7 of the Code, and Parties exchanged exhibits.
19. On the same day, due to the urgency for a ruling on the matter, the SDRCC appointed and confirmed Andrew McDougall as Sole Arbitrator for the Panel, as per Subsection 6.8(a) and 6.8(b) of the Code.

20. An administrative conference call took place that day at 11:30 am (EST) between the Sole Arbitrator (assisted by Mr. Nelson Dijoux Coquillas, a law student in training, without any of the Parties objecting to his presence); the Claimant, assisted by Mrs. Fortin; the Respondent, represented by Ms. Cottin and Mr. Rahill; and the SDRCC. The Parties agreed to the following:

- To conduct the proceedings in French;
- To expressly and jointly waive the mandatory Resolution Facilitation process under Article 4.3 of the Code;
- To the absence of objections with the presence or representation of the Affected Party during the upcoming hearing.

Upon hearing the observations of the Parties on these points, the Sole Arbitrator determined the procedural timetable to file exhibits that had not yet been introduced for the proceedings and the date of the hearing on the merits.

21. The hearing on the merits took place the same day, by conference call at 7:00 pm (EST) on January 26, 2016. Present on the call were the Sole Arbitrator (assisted by Mr. Dijoux Coquillas); the Claimant, assisted by Mrs. Fortin; the Respondent, represented by Ms. Cottin and Mr. Rahill; the SDRCC; and Dr. Leclerc appearing as witness for the Respondent. The Affected Party, duly notified of the hearing, was not present or represented. At the outset of the hearing, the Parties agreed to admit exhibit C-13, produced by the Claimant beyond the deadline of the procedural timetable. The Sole Arbitrator proceeded to hear the arguments and rebuttal arguments of each Party on the Dispute and sought from Dr. Leclerc, before she was questioned by each Party, a commitment to provide a true and sincere testimony.

22. Once all Parties confirmed they had no objections to the process followed or to the conduct of the hearing, the Sole Arbitrator concluded the proceedings and advised the Parties that, given the extreme urgency of the matter at hand, a short decision would be issued within 4 hours of the close of the hearing, at 8:44 pm (EST), and that the reasons for the award would be provided at a later date, in accordance with the time limits stated in Subsection 6.21(c) of the Code.

23. On January 27, 2016 (CET), the Sole Arbitrator issued a short decision dismissing the Claimant's request. This award describes the reasons supporting the short decision.

V. ISSUES TO BE SETTLED

24. The issues before the Sole Arbitrator, in order to settle the Dispute, are as follows:

- Did the HPCST have jurisdiction to remove the Claimant from the Selection and to replace him with the Affected Party?
- If so, was this Decision justified?

VI. SUBMISSIONS OF THE PARTIES

A. SUMMARY OF THE CLAIMANT'S POSITION

25. The Claimant moves to annul SSC's Decision to withdraw him from the Selection and to replace him with the Affected Party.

26. His position is based on the following arguments:

- (a) The Decision is based on incorrect factual elements, whereby the Claimant was deemed to have a dislocated shoulder compounded by a fracture, the latter of which the Claimant denied the very existence from the outset;
- (b) The Decision is based on inoperative means whereby SSC insists on a prompt surgical treatment for the Claimant's condition, while according to the Claimant (i) surgery was not required but rather optional given the state of the injury, and (ii) a surgical procedure under the circumstances, requiring exams (an MRI for example) that could not be scheduled within a short window of six weeks, making it entirely possible for the Claimant to participate in the Selection to take place well before this waiting period;
- (c) The Decision is vitiated because it was made based on the recommendation of Mr. Gagnon who is coach of the regional program as well as coach to the Affected Party. The Claimant argues that Mr. Gagnon was in a conflict of interest given his interest in seeing the Affected Party replace him in the Selection;

- (d) The Decision is unfair because, among other athletes injured during the qualification events and designated in the Selection, he was the only athlete to be replaced. He argues that SSC kept Mr. Maxime Laoun in the Selection, despite a concussion sustained during qualification events;
- (e) Finally, the Decision is contradictory and inconsistent given Mr. Gagnon's statement¹⁰ that the Claimant could remain in the Selection if he was able to “*resume training by at least Thursday [January 21, 2016]*” and “*reach 100% capacity at relay pushes by next Monday*” [January 25, 2016], while the Decision to replace him was made despite the fact that the Claimant would meet these conditions upon resuming his training on January 20, 2016¹¹.

B. SUMMARY OF THE RESPONDENT'S POSITION

- 27. The Respondent moves to dismiss the Claimant's submissions.
- 28. Its position is based on the following arguments:
 - (a) The Decision is valid because it was made by HPSCT who has sole authority to do so;
 - (b) The Decision was necessary because the Claimant's fracture would logically prevent him from participating in the Selection and, even if the Claimant has only sustained a dislocation, he would be very unlikely to have sufficiently recovered from the ensuing inflammation in so little time;
 - (c) The Decision is not unfair because Mr. Laoun's medical exam confirmed that his symptoms disappeared, which was not the case with the Claimant;
 - (d) The Decision is justified because, even if the Claimant claimed to be able to execute relay pushes at 100% capacity with his coach since January 20th, the requirements of such pushes cannot be compared with the push training requirements for the Selection.

¹⁰ **Exhibit C-12:** Exchange of emails between the Claimant's father and Mr. Gagnon.

¹¹ **Exhibit C-13:** Affidavit from Mr. Steve Robillard, the Claimant's coach.

VII. RULES APPLICABLE TO THE MERITS OF THE DISPUTE

29. As per Article 6.17 of the Code:

(a) The Panel shall have full power to review the facts and apply the law. In particular, the Panel may substitute its decision for:

(i) the decision that gave rise to the dispute; [...]

[A]nd may substitute such measures and grant such remedies or relief that the Panel deems just and equitable in the circumstances.

(b) For the avoidance of doubt, the Panel shall have the full power to conduct a procedure de novo where:

(i) the [national sport organization] did not conduct its internal appeal process [...]

30. In addition, Article B3-103 of SSC's by-laws states:

SSC authorization is required for a skater to enter and participate in an international competition. Authorization may be implicit or explicit as required by the nature of the event. All events requiring the designation of an official team to represent Canada require formal authorization in accordance with the guidelines and procedures set forth by the appropriate High Performance Committee.¹²

31. Finally, the August 2015 HPCST Selection Process Bulletin #167 states (p. 4):

Naming of Teams

[...] For each Team, the HPCST will name an alternate athlete in the event that a replacement is required. The selection of the alternate is at the sole discretion of the HPCST.

Replacement of Skaters

The HPCST reserves the right to replace a skater if medical advice is such that competing in the event may be potentially injurious to the selected skater or that the skater has not recovered sufficiently from an existing injury¹³.

VIII. ANALYSIS

32. Upon hearing the Parties and Dr. Leclerc and studying the exhibits, the Sole Arbitrator reached the following conclusions.

¹² **Exhibit R-08:** Speed Skating Canada by-laws, June 2015 [English version filed as exhibit].

¹³ **Exhibit R-03:** Selection Process Bulletin #167, August 2015 [English version filed as exhibit].

A. ON THE MATTER OF HPCST’S JURISDICTION TO MAKE THE CONTESTED DECISION.

33. Article B3-103 of SSC’s by-laws states that “*SSC authorization is required for a skater to enter and participate in an international competition*” and delegates the authority to grant this authorization to the relevant high performance committee. Where the Claimant is concerned, a short track speed skating athlete, the relevant committee is HPCST.
34. In this matter, HPCST decided on January 20, 2016 to remove the Claimant from the Selection and to replace him with the Affected Party¹⁴.
35. The argument raised by the Claimant whereby the Decision is vitiated because it is based on Mr. Gagnon’s recommendation, being allegedly in a conflict of interest, cannot be pursued further. Firstly, there is no preponderance of evidence that Mr. Gagnon was in a conflict of interest. The Claimant did not produce tangible evidence of the alleged conflict of interest other than the situation whereby Mr. Gagnon happened to coach the Affected Party: this fact alone is insufficient to convince the Panel. In addition, although Mr. Gagnon attended the meeting which led to the recommendation acted upon by the HPCST, this recommendation was unanimously adopted by the five attending participants and later confirmed by the HPCST. Even if Mr. Gagnon had been in a conflict of interest (which has not been demonstrated), nothing proves that the SSC’s final Decision would have changed in the absence of Mr. Gagnon or that his opinion had more weight.
36. Finally, in declaring that HPCST should not have rendered such a Decision under the circumstances, the Claimant failed to indicate who should have had the power to do so.
37. Accordingly, the HPCST did have jurisdiction to make this contested Decision and the procedure cannot be deemed vitiated.

B. ON THE MATTER OF THE GROUNDS FOR THE CONTESTED DECISION

38. The Panel cannot substitute its judgement for that of SSC without limitation. In fact, it must assume that the Respondent acted in good faith and its power is limited to

¹⁴ **Exhibit C-05:** Email from Mr. Brian Rahill to the Claimant dated January 20, 2016.

determining if the Decision at hand is reasonable¹⁵. A decision is reasonable when it can “stand up to a somewhat probing examination”: in this case, so long as the decision “falls within a range of possible, acceptable outcomes which can be regarded as defensible in respect of the facts and law”, the Panel must be reluctant to interfere¹⁶. Conversely, an unreasonable decision, made in bad faith, in an arbitrary or discriminatory manner¹⁷, or otherwise under a vague, arbitrary, partial or unfair policy¹⁸, does not withstand scrutiny and becomes subject to the Panel’s censure.

39. In this matter, the above-mentioned SSC internal procedures, including Bulletin #167, state that HPCST has discretion to substitute a skater “if medical advice is such that competing in the event may be potentially injurious to the selected skater or that the skater has not recovered sufficiently from an existing injury”¹⁹. The facts show that the Claimant sustained at a minimum a dislocated left shoulder on January 16, 2016, which is less than two weeks prior to the championships for which he was selected.
40. Although the medical evidence supporting a fracture, in addition to a dislocation, has been challenged by the Claimant before and during most of the hearing on the merits, (i) the Claimant and Mrs. Fortin ultimately acknowledged its existence at the conclusion of the proceedings when questioned by the Sole Arbitrator on this matter, and (ii) the accumulation of evidence provided SSC with reasonable grounds to prevent the Claimant from participating in the championships in his best interest. Even in the absence of a fracture (which is not the medical opinion of Dr. Leclerc, which has been retracted by the Claimant at the conclusion of the hearing on the merits, and which the Panel does not believe based on the evidence), the dislocation (which is not contested) implies an acute inflammatory phase from which the Claimant was statistically unlikely to have recovered in so little time after its occurrence, as confirmed by Dr. Leclerc’s testimony during the hearing.

¹⁵ ADR 02-0011, *Rolland vs. Swimming Canada*.

¹⁶ SDRCC 12-0178, *Marchant and DuChene vs. Athletics Canada*.

¹⁷ *Idem*; see also SDRCC 12-0182, *Veloce vs. Canadian Cycling Association*.

¹⁸ SDRCC 12-0191/92 *Mehmedovic and Tritton vs. Judo Canada*; SDRCC 13-0199, *Beaulieu vs. Speed Skating Canada*.

¹⁹ **Exhibit R-03**: Selection Process Bulletin #167, August 2015 [English version filed as exhibit].

41. In this context, the evidence of the Claimant showing that he resumed training by January 20, 2016 and his ability to perform relay pushes at 100% does not demonstrate that SSC's Decision was unreasonable or unjustified: (i) firstly, the conditions under which relay pushes were conducted with the Claimant's coach can reasonably be considered different from those in training and competition for the World Championships, and (ii) furthermore, they do not eliminate the risk of sustaining another injury during the Championships at the slightest contact with his still fragile shoulder, a risk greatly increased by this second dislocation during the Claimant's career.
42. In addition, it makes little sense for the Claimant to contend that, on the grounds that a surgical treatment cannot be implemented before several weeks, it was quite possible for him to compete in the World Championships occurring only a few days after the hearing: the Respondent's Decision was not based on time constraints but rather on the Claimant's physical condition which is a known fact to date, regardless of whether the surgery would take place and of its outcome in several months.
43. Finally, the Decision affecting the Claimant is not deemed unfair or discriminatory: if Mr. Laoun, another athlete in the Selection, was also injured during qualifications yet remained on the team, it was because his condition had improved and did not pose a risk, according to the Respondent, either medically or to the team's performance. Since the Claimant did not produce evidence to the contrary, the Sole Arbitrator finds no grounds to view this as a false statement; as a result, SSC's Decision is neither unfair nor discriminatory against the Claimant.
44. Furthermore, the Claimant did not claim that SSC's selection policy, on which the Respondent based its decision-making process, was vague, arbitrary, partial or unfair.
45. Consequently, the contested Decision in this case is not unreasonable and falls within a range of possible, acceptable and defensible outcomes. The Sole Arbitrator finds no ground to overrule the Decision.

IX. COSTS

46. Neither Party stated their intention to request costs. The Panel does not see the need to award costs.

47. However, under Subsection 6.22(b), Parties have until 4:00 pm (EST) on February 11, 2016 to file submissions on costs with the SDRCC, as they see fit.

X. DECISION

48. Based on the aforementioned reasons, it is ruled that:

- (i) The Panel has jurisdiction to hear and settle the Dispute submitted by the Claimant;
- (ii) The Claimant's request is dismissed.

Dated February 4, 2016 in Paris, France.

Andrew de Lotbinière McDougall
Sole Arbitrator