

N°. SDRCC 20-0453

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

ALEXANDER MOORE

CLAIMANT

AND

WRESTLING CANADA LUTTE (WCL)

RESPONDENT

AND

ALEX BROWN-THERIAULT

CLAYTON PYE

AFFECTED PARTIES

REASONS FOR AWARD

(Hearing by Conference Call July 29, 2020)

Arbitrator: Larry Banack

I. OVERVIEW

1. The Claimant, Alexander Moore, appeals the decision of the Respondent, Wrestling Canada Lutte (**WCL**), and specifically its High Performance Director, Lúcas Ó’Ceallacháin, denying him a wrestle-off against one of the Affected Parties, and winner of the Canadian Olympic Team Trials in the 86kg weight category, Clayton Pye (the “**impugned decision**”).
2. The purpose of the wrestle-off is to determine who would compete at the next, and currently last, scheduled Olympic qualifying event for the opportunity to represent Canada at the Tokyo Olympic Games (“**Olympic Games**”), if the weight class is qualified for the Olympics.
3. The matter was heard by telephone conference call on July 29, 2020.
4. The Claimant was represented by Robert Moore (“**RM**”), the President of the Montreal Wrestling Club.
5. Mr. Pye was represented by Mr. Elliott Cheeseman.
6. Mr. Ó’Ceallacháin appeared on WCL’s behalf.
7. Written submissions were delivered in advance by Mr. Moore, WCL, and Mr. Pye, along with a fulsome evidentiary record. Mr. Moore, WCL, and Mr. Pye also made extensive oral submissions at the hearing. I have thoroughly reviewed and considered the comprehensive record in coming to my determination.
8. Although notified, the Affected Party Alex Brown-Theriault, the athlete who came in second place at the Olympic Team Trials in the 86kg weight category, did not file submissions nor did he participate in the telephone hearing.
9. Shortly after the matter was heard, I rendered a Short Decision dated August 5, 2020, which concluded:

I grant Mr. Moore a wrestle-off for the opportunity to represent Canada at the next Olympic Qualifying event in Sofia, Bulgaria in 2021. The details of the wrestle-off shall be determined in accordance with the balance of the INP.

10. By e-mail dated August 7, 2020, RM corresponded with the SDRCC on Mr. Moore's behalf seeking clarification concerning the scope of my determination. In particular, he sought to clarify whether the winner of the wrestle-off will be the person who will be eligible to represent Canada at the Olympic Games, should the weight class be qualified, and whether the winner of the wrestle-off will also be eligible to represent Canada at any other Olympic qualifying event for the Olympic Games, should there be additional Olympic qualifying events, or should there be another event in lieu of the current qualifying event scheduled in Bulgaria.
11. The Respondent and Affected Parties were given an opportunity to reply by August 14, 2020.
12. WCL replied on August 12, 2020. WCL refers to Section 7 of the Internal Nominating Procedures, defined below at paragraph 21, the Qualification System, and particularly the following paragraph:

INTERNATIONAL FEDERATION QUALIFICATION SYSTEM

The winner of the 2019 Canadian Wrestling Team Trials, pending injury provision and wrestle-offs, and where a quota spot has not already been earned, will be nominated to represent Canada at the remaining international qualification events.

13. WCL submits that should Mr. Moore win the wrestle-off and subsequently qualify a "quota spot" at the Olympic qualifying event, he would be nominated to represent Canada at the Olympic Games – assuming he maintains competition readiness and eligibility per the INP.
14. If additional events are added for qualification, WCL again relies on the INP, and specifically the following passage from Section 7:

In the event of a discrepancy between this document and the International Quota Qualification System, the International Quota Qualification System version will prevail. In the event of changes by the IOC, COC, or UWW to the selection and eligibility criteria for participation in the 2020 Olympic Games, WCL is bound to

comply with these changes, which may affect potential selection candidates, and will inform the WCL membership as soon as possible.

15. Neither Mr. Pye nor Mr. Brown-Therriault delivered any submissions in respect of Mr. Moore's clarification.
16. These are the reasons for my determination as well as in respect of the clarification sought by Mr. Moore.

II. BACKGROUND

A. ALEXANDER MOORE

17. Mr. Moore is a member of the Montreal Wrestling Club, and a decorated athlete in the world of wrestling. He has won nine national medals and is a seven-time Canadian champion.
18. In October 2019, Mr. Moore suffered a knee injury while competing at the 2019 Under-23 World Wrestling Championships.
19. Two days before the Canadian Olympic Team Trials on December 4, 2019 (the "**Team Trials**"), Mr. Moore, who was the #1 seed for the Team Trials, learned that he had a complete tear of the anterior cruciate ligament in his right knee, which required surgery and lengthy rehabilitation.
20. Mr. Moore notified WCL of his injury, but did not, at that time, request a wrestle-off against the winner of the Team Trials to preserve the opportunity to represent Team Canada at the Olympic qualifying events prior to the Olympic Games.
21. Specifically, Mr. Moore failed to provide the proper notice per the Internal Nominating Procedures – 2020 Olympic Games – September 2019 ("**INP**"), namely an "Inability to Participate Medical Form." Delivering the form would have allowed Mr. Moore to remain in consideration for the Olympic qualifying events, and if successful and if the weight class is qualified, the Olympic Games.

22. According to Mr. Moore, he did not request a wrestle-off prior to the Team Trials because he would not have been able to return to training or competition until August 2020, after the Olympic Games were to take place.
23. There is no dispute that Mr. Moore underwent knee surgery in February 2020, and to date, has been engaged in extensive, and successful, rehabilitation.

B. MR. PYE

24. Mr. Pye is also a gifted athlete who has overcome tremendous obstacles to win the Team Trials and compete at the Olympic qualifying events for the Olympic Games. Not least of which is a chest wound suffered after Mr. Pye was stabbed in 2017.
25. He has worked hard to successfully compete for the opportunity to represent Canada at the Olympic Games.
26. Both Mr. Pye and Mr. Moore have competed at one (albeit different ones) Olympic qualifying event. Neither athlete ranked high enough to compete at the Olympics, should the weight class be qualified.
27. Between the two athletes, however, Mr. Pye does not yet have the standing or historical success that Mr. Moore has achieved.

C. THE INP

28. The purpose of the INP is to outline “the process and procedures to be used by Wrestling Canada Lutte (WCL) for selecting the athletes, coaches, and staff that will be nominated to the C[anadian] O[lympic] C[ommittee] to represent Canada at the 2020 Olympic Games in Tokyo, Japan. The winner of the Canadian Team Trials will be nominated to the team, pending any wrestle-offs.”
29. Pursuant to section 10.2 of the INP, a wrestle-off is to allow “[a]ny athlete who is unable to compete at the 2019 Canadian Wrestling Team Trials due to injury...[to] still be considered for nomination...”.
30. The same section goes on to provide that “[f]inal approval for the wrestle-off is at the sole discretion of the High Performance Director.”

31. In order to be considered for a wrestle-off, paragraph A of section 10.2 of the INP requires the official WCL “Inability to Participate Medical Form” to be submitted to the High Performance Director no later than the Team Trials.
32. Paragraph B of section 10.2 sets out additional criteria, including specific rankings that must be achieved by the athlete seeking the wrestle-off, but Mr. Ó’Ceallacháin conceded that all of these criteria are met by Mr. Moore.
33. Lastly, section 10.3 of the INP stipulates that all wrestle-offs are to be held by June 15, 2020.

D. THE POSTPONEMENT OF THE OLYMPIC GAMES

34. Due to the global COVID-19 pandemic, the 2020 Tokyo Olympic Games have been postponed to 2021.
35. Prior to the postponement of the Olympic Games, Mr. Moore would have been rehabilitating from knee surgery during the 2020 Olympic Games. However, it is now anticipated that he has recovered from his injury and is healthy enough to compete during the rescheduled dates in 2021.
36. WCL held a member call on April 1, 2020 to discuss the postponement of the Olympic Games. It confirmed during this call that two out of three Olympic qualifying events had already been completed, the last event in Bulgaria was postponed to 2021, no new Olympic qualifying events would be scheduled, and WCL would not be hosting new Team Trials or qualification process.
37. Shortly thereafter, on April 29, 2020, RM, on Mr. Moore’s behalf, sent an e-mail to Mr. Ó’Ceallacháin requesting the wrestle-off against Mr. Pye, the current winner of the Team Trials, for an opportunity to represent Canada at the next Olympic qualifying event which has also been rescheduled to April 2021 in Sofia, Bulgaria. The qualifying event in Bulgaria is the last opportunity for any athlete to qualify to represent Canada at the Tokyo Olympics in 2021.

38. By e-mail dated May 4, 2020, Mr. Ó'Ceallacháin denied the request on the basis that, contrary to the INP, Mr. Moore had not submitted the Inability to Participate Medical Form by the Team Trials on December 4, 2019. In particular, Mr. Ó'Ceallacháin wrote:

It is my understanding that Alex would only be returning from injury [sic] in August/September 2020. This is after the published dates in the INP for Tokyo 2020 in relation to Wrestle Offs (Section 10 – June 15th 2020). As communicated to the Athletes and Coaches following the postponement of the Tokyo 2020 Olympic Games, WCL intends to maintain and respect the original INP and associated results of the Canadian Team Trials.

As per the INP, the request for a Wrestle Off should be submitted prior to the Canadian Team Trials with the correctly completed Inability to Compete Medical Form (signed by a recognised physician) .

As a result of the above factors, we will not be granting a wrestle off. If you wish to discuss this further please let me know.

39. Mr. Moore then delivered the Inability to Participate Medical Form to Mr. Ó'Ceallacháin on May 8, 2020 along with a request to reconsider granting the wrestle-off.

40. Following a series of e-mails exchanged between Mr. Moore and Mr. Ó'Ceallacháin, Mr. Ó'Ceallacháin confirmed WCL's decision by e-mail dated May 14, 2020, which set out the following:

Thank you for your emails of Sunday and Tuesday and apologies for the delay in responding. As per the Internal Nomination Procedures:

10.2 Final approval for the wrestle-off is at the sole discretion of the High Performance Director.

I have considered the request which was not submitted before the event with the correct paperwork and also examined the fact that Alex would be unable to complete a Wrestle Off by June 15th 2020. While I appreciate the fact that the Games have been postponed, we have communicated that there will be no changes to our Canadian Team Trials results. If you wish to appeal and need direction on how to do so, please let me know so I can direct you accordingly.

Please note that any Wrestle Off includes the alternate at the weight also, so it does not affect only Clayton Pye. You are free to contact Clayton and his coaches as you see fit.

41. Notwithstanding that the parties exchanged further e-mails, the two e-mails excerpted above set out the reasons for WCL's decision.
42. The parties agreed to refer the matter to the SDRCC for binding arbitration on May 19, 2020 and Mr. Moore delivered his Request to the SDRCC on May 28, 2020.

III. POSITION OF THE PARTIES

A. THE CLAIMANT

43. Mr. Moore acknowledges the INP and his agreement to comply with it pursuant to his Athlete Agreement dated May 17, 2019. He states that he did not deliver the requisite notice for a wrestle-off in December 2019, because he was scheduled for surgery in February 2020 and knew there was no chance that he would be rehabilitated in time to compete at the Olympic Games, let alone a wrestle-off by June 15, 2020.
44. According to Mr. Moore, once the Olympic Games were postponed, what he calls an exceptional event, the INP became obsolete. Mr. Moore submits that Mr. Ó'Ceallacháin ought to have exercised his discretion guided by the mandate of WCL to put forward the best athlete with the highest chance of success to compete at the Olympic Qualifying Event. As the #1 seed at the Team Trials and the athlete with the most medals, he has earned his right to a wrestle-off for the opportunity to compete at the last Olympic qualifying event in Bulgaria in 2021. To conclude otherwise is unfair.

45. Lastly, Mr. Moore requests that I grant the following in respect of the wrestle-off:
- a. Dispense with the requirement that he wrestle-off against the second place athlete from the Team Trials;
 - b. Dispense with the normal rules that in a best out of three wrestle-off, the winner of the Team Trials be credited with a win; and
 - c. Require that both he and Mr. Pye agree on the referees for the wrestle-off.
46. Mr. Moore made personal comments at the hearing, stressing that he is not looking for a spot on the Canadian Team, but rather an opportunity to earn his spot, now that he will be healthy enough to compete prior to the Olympic Games. Mr. Moore highlights that the common goal is to have the best possible athlete represent Canada at the Olympic qualifying event, which is over a year away and therefore a decision to grant the wrestle-off is of minimal impact on the successful athlete's training.

B. WCL

47. WCL asserts that Mr. Moore is essentially asking for a re-write of the INP policy, a document published after a robust review process and significant consultation with coaches.
48. After the Olympic Games were postponed, WCL asserts that it advised its members that it would not be hosting new Team Trials. As a result, when Mr. Moore requested a wrestle-off, WCL simply applied the policy as set out in the INP, which Mr. Moore agreed to in his Athlete Agreement, executed May 17, 2019.
49. WCL highlights the importance of having a clear and transparent policy that is applied consistently in respect of all athletes.
50. WCL states that it creates a dangerous precedent to allow a wrestle-off after the Team Trials have concluded, particularly where this is founded on the athlete who is requesting the wrestle-off's belief that s/he is the "best" athlete to represent Canada. WCL highlights the efforts of all athletes who competed at the Team Trials. It underscores that the importance of complying with the process set out in the INP is to provide ample notice to the successful athletes at the Team Trials of their potential requirement to

wrestle-off against another athlete for the ultimate opportunity to represent Canada at the Olympic qualifying event.

51. WCL acknowledges that, but for the failure to provide the requisite notice and complete the wrestle-off by June 15, 2020, Mr. Moore meets the criteria for a wrestle-off. It further recognizes that the deadline for the wrestle-offs is to provide the injured athlete with as much time to rehabilitate prior to the wrestle-off while meeting the deadline to provide the names of nominees to the Canadian Olympic Committee (“COC”). According to Mr. Ó’Ceallacháin, the deadline to provide names to the COC has been pushed out to July 1, 2021.
52. WCL disagrees that any special procedure be used for the wrestle-off, if granted.

C. MR. PYE

53. Mr. Pye made submissions personally as well as through his representative. He does not agree to the wrestle-off and focuses on the importance of the INP process to the preparation and training of the successful athlete at the Team Trials.
54. To call the INP obsolete is, according to Mr. Pye, a disservice to all of the athletes that relied on it as the guide for the nominations process. He also stresses the consultative nature of the document, and the fact that it was first released in February 2019, but not finalized until September 2019.
55. According to Mr. Pye knowing whether he had to compete in a wrestle-off to secure a spot at the Olympic qualifying events changes the way he would prepare and/or train following the Team Trials. He has focused his training on the Olympic qualifying event because at the Team Trials he was told that there were no requests for a wrestle-off, and since then, he was told by WCL that he solidified a spot on Team Canada for the 86kg weight category.
56. While Mr. Pye acknowledges that these are unprecedented times, he disputes that this justifies challenging the established structure and policies. He relied on the rules, and followed them, winning his spot as the best athlete to represent Canada in the weight class. He contends that if he had been told that someone had filed a notice for a wrestle-

off he would be preparing for the wrestle-off as opposed to the Olympic qualifying event.

57. Moreover, Mr. Pye stresses that granting the wrestle-off is of consequence as there is always a risk of injury at the wrestle-off, compromising his ability to compete at the next Olympic qualifying event.

58. According to Mr. Pye, granting Mr. Moore a wrestle-off is allowing Mr. Moore an entirely different procedure than any other athlete. He was the Team Trials winner and therefore he was given the opportunity to compete at two Olympic qualifying events – one in March 2020 and the last one in Bulgaria, now postponed to April 2021.

IV. STANDARD OF REVIEW

59. The applicable standard of review in the present case is one of reasonableness.

60. Mr. Moore referred me to the following excerpt from Arbitrator Pound’s decision in *Palmer v Athletics Canada*, SDRCC 08-0080:

The standard of review in such matters, in my view, is one of “reasonableness.” Mere incorrectness of a decision ... is not sufficient for me to substitute my view as to what should have been the correct decision in the circumstances. Reasonableness, for purposes of judicial review is whether the impugned decision can stand up to a “somewhat probing examination.”

61. I note that the Supreme Court of Canada recently revisited the standards of review in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. Specifically, in determining whether a decision is reasonable, the focus “must be on the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (see paragraph 83).

62. Moreover, the Supreme Court noted that “the particular context of a decision constrains what will be reasonable for an administrative decision maker to decide in a given case. This is what it means to say that

“[r]easonableness is a single standard that takes its colour from the context”
(see paragraph 89).

V. ANALYSIS

63. The parties do not dispute the facts. Mr. Moore is a gifted athlete and he did not follow the proper notice provisions set out in the INP because he would not have been physically fit to compete for a spot at the 2020 Olympic Games.
64. The INP established necessary, fixed, time limits anticipating the Olympic Games would occur in 2020. For example, Mr. Ó’Ceallacháin advised that the deadline for a potential wrestle-off was June 15, 2020 to provide the injured athlete as much time to rehabilitate prior to the wrestle-off while complying with the deadline to advise the COC of the successful athletes by July 1, 2020.
65. However, the Olympic Games have been postponed to 2021. Accordingly, there is no longer a need for the wrestle-off to have been held by June 15, 2020 as the deadline to provide nominees to the COC is now July 1, 2021.
66. I find that in coming to its decision, WCL fettered its discretion in favour of the rigid application of the INP. The INP was drafted at a time when no one could have contemplated the postponement of the Olympic Games due to a global pandemic. At the point in time that the High Performance Director was asked to rule on the wrestle-off request from Mr. Moore, the circumstances had dramatically changed the timing considerations in the INP and import of the deadlines set out therein.
67. The question is whether WCL acted reasonably in doing so.
68. I find that it did not.
69. The postponement of the Olympic Games is sufficiently exceptional to require an exercise of discretion by the High Performance Director granting Mr. Moore a wrestle-off for the opportunity to compete at the Olympic qualifying event, presently scheduled to be held in Bulgaria in April 2021.

70. There can be no dispute that the COVID-19 viral pandemic is an unprecedented event. While not in the record, I take notice of the fact that the postponement of the Olympic Games is an exceptional and rare decision throughout the Games' lengthy history.
71. While I am not bound by precedent, I find it helpful to refer to the decision in *Tulk v WCL*, SDRCC 19-0394, concerning the factors that may be assessed when asked to consider whether exceptional circumstances permit the exercise of discretion.
72. In particular, at paragraph 26, Arbitrator Lawless considers the following:
- a. The importance of the matter;
 - b. The necessity of finality (i.e. for creating start lists or booking tickets, etc.);
 - c. The age of the applicant;
 - d. The degree of "fault" of an applicant and any explanation for the failure;
 - e. The steps an applicant took to correct the mistake or timeliness of any application for redress; and
 - f. The relative prejudice to the applicant, the organization, and other participants/affected persons.
73. Obviously the INP was not crafted contemplating it possible that the date of the 2020 Tokyo Olympic Games would be altered. No one can be faulted for that. However, now that we are faced with that very situation, I must consider the reasonableness of strict adherence to a policy made in ignorance of the present exceptional state of affairs.
74. Applying the *Tulk* factors to the present case, I conclude that the postponement of Olympic Games to 2021 is sufficiently exceptional to exercise the discretion to grant Mr. Moore a wrestle-off in accordance with section 10.2 of the INP. WCL's decision to the contrary is not reasonable in light of these exceptional circumstances and the mandate of WCL to put forward the best possible athlete.
75. However, I do not believe it is my place to determine at this stage the procedure for the wrestle-off, which is addressed at section 10.3 of the INP and in a separate wrestle-off

policy that was not in the record before me. Therefore, the details of the wrestle-off shall be determined by WCL, in accordance with the balance of the INP.

A. THE IMPORTANCE OF THE MATTER

76. The issue of who can compete at the Olympic qualifying event in Bulgaria in April 2021 is clearly important to any athlete. This event determines who, if anyone, can represent Canada at the 2021 Olympic Games, an opportunity that athletes dedicate their lives to achieving.
77. I find that this opportunity is equally important to both Mr. Moore and Mr. Pye, I find it important to highlight that who represents Canada at the 2021 Olympic Games is also an important factor for WCL, and integrally connected with its mandate.
78. In its own words, WCL is responsible for selecting and preparing Canada's teams that participate in international competitions, like the Olympic Games. One of its stated values is competing to win, and its "vision" is "[t]o be a leading wrestling nation through the growth and development of wrestling in Canada and through consistent international podium success." Additionally, its "mission" is to provide "leadership and support to athletes, coaches, officials and support staff in the pursuit of national and international podium success."
79. Having the best athlete compete for Canada in an attempt to qualify for the Olympic games is therefore critical to the mandate of WCL and the process by which it determines its nominees for Team Canada.
80. A strict application of the INP in the face of such radically changed circumstances would inappropriately limit WCL's quest to achieve its stated "vision" and "mission."
81. Given Mr. Moore's historical performance, and in particular his being the #1 seed at the Team Trials, it is consistent with WCL's mandate to afford Mr. Moore the opportunity to compete for a spot on Team Canada at the last Olympic qualifying event.
82. I reiterate that Mr. Moore is by no means guaranteed a spot to compete at the Olympic qualifying event in Bulgaria, let alone to compete at the Olympic Games. My determination only affords him a wrestle-off for the opportunity to represent Canada at

the next Olympic qualifying event, only after which, if he is successful, and if the weight class is qualified, may he be nominated to represent Canada at the Olympic Games.

B. THE NECESSITY OF FINALITY

83. I agree with WCL's submission that clarity and transparency in the nomination process is important.
84. I also accept Mr. Pye's submission concerning the importance of early notice in accordance with the INP regarding a potential wrestle-off, due to the impact on an athlete's training and preparation.
85. I do not grant the wrestle-off without significant consideration of its impact on the nomination process, Mr. Pye, and the second place athlete, Mr. Theriault, but give weight to the fact that:
- a. the last Olympic qualifying event has been postponed to April 2021 nearly 9 months away,
 - b. the deadline to provide nominees to the COC is now July 2021, and
 - c. Mr. Moore is not in fact being provided an opportunity that other athletes did not have.
86. There is no evidence that any other athlete had been unable to compete at the Team Trials due to injury and similarly unable to rehabilitate prior to the originally scheduled Olympic Games, but now finds themselves healthy enough to compete prior to the 2021 Olympic Games.
87. I am not providing Mr. Moore with "a second kick at the can" and therefore disagree that this could open the floodgates to other athletes claiming a similar opportunity. None have been drawn to my attention.
88. Mr. Moore did not have the option to compete at the Team Trials, as he was injured. While WCL stresses that he should have submitted the requisite form to preserve the option to wrestle-off against the winner of the Team Trials, I find that while consistent with the formal terms of the INP, this position supports form over substance. It appears

admitted that if the Inability to Participate Medical Form had been filed, Mr. Moore would have been allowed a wrestle-off.

89. In December 2019, prior to anyone's knowledge of COVID-19 and its potential impact on the Olympic Games, Mr. Moore was advised by doctors that he required major surgery followed by a lengthy rehabilitation process. He had absolutely no reason to believe that he would be in the physical condition to compete at the Olympic Games, let alone at a wrestle-off in advance of those games, and therefore there was no reason to preserve a right he had no prospect of exercising.
90. He is not asking to rectify what in hindsight WCL is treating as an error in judgment, because Mr. Moore did in fact have surgery in February 2020 and was correct in his conclusion that he was not well enough to compete by the time the 2020 Olympic Games were scheduled to have taken place.
91. Rather, COVID-19 intervened resulting in the exceptional postponement of the Olympic Games to July/August 2021 and the COC nominations process to July 1, 2021.
92. Mr. Moore is therefore unexpectedly available to compete for a spot on Team Canada and as soon as he realized as much, requested the wrestle-off against the winner of the Team Trials and submitted the requisite form.
93. I am empathetic to the impact on Mr. Pye and Mr. Theriault, and while in a perfect world, Mr. Moore would have filed the requisite form in advance, to account for these exceptional circumstances, I do not fault him for failing to do so. No one, including WCL, Mr. Pye, and Mr. Theriault, anticipated these circumstances, and it would be unfair to expect Mr. Moore to have done so. Further, if the form had been filed in a timely manner, Mr. Pye would have had no more than approximately 6 months' notice of the wrestle-off, and therefore would have been in exactly the same position as I now determine in ordering a wrestle-off approximately 9 months in advance of the next Olympic qualifying event.

C. THE REMAINING FACTORS

94. I do not find the age of the Claimant to be a determinative factor in this case. Unlike in the *Tulk* matter, Mr. Moore is not a minor, and nothing in the circumstances turns on his (or anyone else's) age.
95. I have addressed the degree of "fault" of Mr. Moore and the explanation for his failure to file the Inability to Participate Medical Form above. Similarly, I note that Mr. Moore requested the wrestle-off shortly after the member-call held by WCL on April 1, in which it detailed the organization's response to the postponement of the Olympic Games, including the decision not to redo the Team Trials. That WCL determination was not contemplated in the INP as no one, neither WCL nor any athlete, could have forecast the situation which has arisen.
96. Mr. Moore filed the Inability to Participate Medical Form promptly, on May 8, 2020, and the parties agreed to refer their dispute directly to the SDRCC on May 19, 2020.
97. I find that Mr. Moore took reasonable and prompt steps to request the wrestle-off and appeal the decision of WCL once WCL's position was first disclosed on April 1, 2020.
98. In respect of the prejudice to Mr. Pye or Mr. Theriault and WCL, in addition to my reasons above, I conclude as follows:
- a. I accept that there is a chance that Mr. Pye will lose the wrestle-off and therefore his opportunity to compete at the Olympic qualifying event in Bulgaria. While this is not insignificant, it cannot be determinative. Had Mr. Moore filed the Inability to Participate Medical Form as required by the INP, there would have been a wrestle-off. Mr., Pye is therefore no worse off and should not be advantaged because of the unanticipated delay in the Olympic Games. The purpose of the Team Trials is to determine the best athlete to compete for the opportunity to represent Canada at the Olympic Games. This is similarly the purpose of the wrestle-off, which is entirely consistent with the mandate of WCL.
 - b. Mr. Theriault, despite being invited, did not participate in the process and delivered no submissions. Notwithstanding this, I accept that there may be

prejudice to him if a wrestle-off is granted, but this again cannot determine the issue for the reasons outlined above.

- c. The INP guidelines for the determination of who is the best athlete to compete for the opportunity to represent Canada at the Olympic Games was drafted and undertaken in 2019, long before anyone could predict COVID-19 or its impact on the Olympic Games. I do not expect the document to have been drafted in a manner to account for such exceptional circumstances, and I therefore conclude that it is unreasonable for WCL to so rigidly apply the policy in circumstances to which it could not have conceivably been intended to apply.
- d. In my view, this is exactly why the High Performance Director is provided the sole discretion to determine if a wrestle-off is granted and in the circumstances, such discretion was fettered in favour of a strict application of the rule.
- e. Such fettering of discretion is unreasonable in the circumstances.
- f. There is no question that Mr. Moore meets the criteria for the wrestle-off and that the only reason he did not submit the requisite notice is due to the timing of his medically supported surgery and rehabilitation schedule. Once the Olympic Games were rescheduled, a wholly unpredictable and unprecedented occurrence, it would be short-sighted to rigidly enforce the INP to deny Mr. Moore, who otherwise meets all the requisite criteria, a chance to compete, and to deny WCL the opportunity to send the best athlete to represent Canada at the Olympic qualifying event in Bulgaria in April 2021.

99. I note Mr. Moore in his submissions made certain allegations of bias directed toward WCL and Mr. Ó'Ceallacháin as High Performance Director. I find no support for those allegations, and notwithstanding my conclusion that the decision to deny the wrestle-off is unreasonable, I am confident that WCL and Mr. Ó'Ceallacháin were, at all times, intending to apply its policies in a fair and consistent manner for all of its members.

100. For the foregoing reasons, I conclude that the postponement of the Olympic Games to 2021 is sufficiently exceptional to require the exercise of discretion to grant Mr. Moore a wrestle-off in accordance with section 10.2 of the INP. WCL's decision to

the contrary is not reasonable in light of the High Performance Director's explicit authority to exercise his discretion in awarding a wrestle-off in these exceptional circumstances, and the mandate of WCL to put forward the best possible athlete.

101. I do not believe it is my place to determine at this stage the procedure for the wrestle-off, which is addressed at section 10.3 of the INP and in a separate wrestle-off policy that was not in the record before me. Therefore, the details of the wrestle-off shall be determined by WCL, in accordance with the balance of the INP.

102. This determination concludes that Mr. Moore is entitled to a wrestle-off for the opportunity to attend future qualifying events in respect of the Olympic Games. WCL is to be guided by this determination requiring the wrestle-off in accordance with the balance of the INP, even if there is either a delay or relocation of the next Olympic qualifying event, currently scheduled in Sofia, Bulgaria in 2021.

Dated at Toronto this 21st day of August, 2020.



LARRY BANACK