

IMPORTANT NOTE: *This version contains translated quotes which were originally inserted in French by the Arbitrator.*

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)

CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)

NO: SDRCC 21-0496

**PIERRE-OLIVIER BONTEMS (Athlete)
(Claimant)**

AND

**CANADIAN FENCING FEDERATION (CFF)
(Respondent)**

AND

**BLAKE BROSZUS
(Affected Party)**

Before:

The Hon. L. Yves Fortier, QC (Arbitrator)

Appearances and Attendances:

For the Arbitrator: Laurence Marquis, Assistant to the Arbitrator

For the Claimant: Pierre-Olivier Bontems, Claimant
Fidelia Ho, Claimant Representative

For the CFF: David Howes, Representative
Benjamin Mañano, Representative

For the Affected Party: Blake Broszus, Affected Party
Yvonne J. Broszus, Representative

Observers: Michelle Simpson, Resolution Facilitator
Yann Bernard, President of the CFF

Introduction

1. This decision concerns the establishment and application of the selection criteria to represent Canada as the Alternate Athlete on the Men's Foil Team. The sport is fencing and is governed in Canada by the Canadian Fencing Federation (the "CFF" or the "Respondent").
2. The dispute stems in part from the disruption that the global pandemic has caused for athletes and for sport itself. On 7 July 2020, the CFF adopted amended selection criteria in the Internal Nomination Procedure ("INP") for the Olympic Qualification for the Alternate Athlete on the Foil Team. Following the application of these new criteria, the Claimant was not selected to represent Canada at the Olympic Games. The Affected Party was selected.
3. I have been appointed as Arbitrator in these proceedings by the Parties.
4. A preliminary meeting was held by conference call on 28 April 2021 with the Parties and the Affected Party, and a hearing was scheduled for 11 May 2021. The hearing proceeded by videoconference as scheduled and at the hearing all parties submitted their evidence and arguments orally.
5. Prior to the hearing, the Claimant, the CFF and the Affected Party had provided written submissions and exhibits to assist me. The Claimant and the CFF also filed at my request a one-page summary of their respective position on the day following the hearing.

Context

6. The Claimant in this proceeding is Pierre-Olivier Bontems. The Claimant is appealing the CFF's decision of 31 March 2021 not to select him as the alternate to the Men's Foil Team for the 2020 Tokyo Olympics, to be held in 2021. The CFF selected Blake Broszus (the "Affected Party") as the Alternate Athlete.
7. On 1 April 2019, the qualifications for the Men's Foil Team for the 2020 Tokyo Olympics began.
8. In September 2019, the Claimant, after having obtained his Canadian citizenship, joined the national team.
9. On 7 July 2020, in order to take into account the changes caused by the postponement of the

Tokyo Olympic Games due to the global pandemic, the CFF approved an update of the INP¹, replacing the previous version approved on 1 April 2019.

10. The INP sets out its purpose and objectives:

Purpose

The purpose of this Internal Nomination Procedure is to set out the process and criteria that will be used by the Canadian Fencing Federation to select athletes and coaches to the Tokyo 2020 Olympic Games team.

Objectives

This Internal Nomination Procedure was developed with the objective of selecting athletes and coaches with the potential to win a medal. In the event that no athletes who are eligible for selection have demonstrated the potential to win a medal, the objective is the highest possible position of finish at the 2020 Olympic Games.

11. The INP sets out 5 criteria for the selection of alternate athletes:

Selection of alternate athletes

The selection of alternate athletes will be nominated in accordance to the following criteria:

- 1. Performance in the Team World Cups in the [sic] 2019/2020 and 2020/2021*
- 2. The athlete with the highest FIE ranking (calculated from August 27,2019 – March 8, 2020 and from a date to be determined to April 5, 2021 who has not already been nominated to the 2020 Olympic Team;*
- 3. The CFF High Performance Ranking*
- 4. The athlete's commitment to the program (see below Performance readiness)*
- 5. Demonstrated ability and willingness to work effectively and cooperate in a team environment*

[...]

12. Performance Readiness, referred to in selection Criterion 4 above, reads as follows:

Performance Readiness

All nominations are conditional on the athlete following:

- The training, competition and training camp plan approved by the senior national team coach.*

¹ C-02. All updates are marked in red in the INP.

- *An athlete must participate in at least 6 FIE competitions between April 1, 2019 and March 8, 2020 and from a date to be determined to April 5, 2021. The 2019 Pan Am Championships and World Championships are not included in these 6 competitions.*
- *Participate, report and track the monitoring program (PUSH) for their weapon.*
- *Train at least 28 days in a CFF High Performance Training Center, or at the National Center (INS), or in an international training structure between July 1st, 2020 and April 5th, 2021.*

13. The Decision-Making Authority is defined in the INP as follows:

DECISION MAKING AUTHORITY

- *The High Performance Director (HPD), in consultation with the High Performance Advisory Committee (HPC), is responsible for developing and approving this Internal Nomination Procedure to determine which athletes will be nominated to the Canadian Olympic Committee (COC) for the 2020 Olympic Games.*
- *The Canadian Olympic Committee mandates the Canadian Fencing Federation to determine the Internal Nomination Procedures for the athletes and staff that will be nominated to the COC for the 2020 Games.*
- *The national team coaches are responsible to put forward nominations to the HPD of individual and team athletes in accordance with the criteria found in this Internal Nomination Procedure. All nominations, including alternates and staff, must be ratified by the HPD in consultation with the High Performance Advisory Committee, composed of Jean-Marie Banos, Igor Tikhomirov, Michael Pederson and Monica Peterson.*
- *The HPD is responsible for ensuring that the process outlined in this document is properly followed and that the nomination process is fair and equitable for all eligible candidates.*
- *The HPD has the final authority over the nomination of the team.*
- *Where there is a lack of clarity or if unanticipated circumstances arise that are not covered in this Internal Nomination Procedure, a final and binding decision will be made by the HPD, in consultation with the HPC.*
- *All Canadian Fencing Federation nominations are also subject to the approval of the COC. (My emphasis)*

14. On 31 March 2021, the Claimant was informed by his coach Julien Camus that he was not selected as the Alternate Athlete for the Foil Team:

[Translation]

I am writing to confirm what I told you during our last Zoom meeting and therefore to officialise that you will not be nominated as alternate athlete for the team event at the Tokyo 2021 Olympic Games. I made this decision in conjunction with the HP Director by following the selection rules of the alternate athlete from the “Internal Nomination Procedure (INP)” of the CFF for the Tokyo 2021 Olympic Games. You also have the possibility to appeal the decision. To do this, you will have to refer to the relevant section of the INP.

15. On 1 April 2021, the Claimant requested additional details and explanations from his coach regarding the application of the selection criteria:

[Translation]

Hello Julien and Benjamin,

Perhaps out of lack of cognitive bias, I am still having difficulty fully understanding the reasons for the selection of the 4th [athlete] on the team. In view of the impact of this decision on my life and in order to be able to move forward thereafter, I would like to obtain more details and justification on the reasons of your choice. I would, in particular, need to know for each criterion systematically (in the sections “selection of alternate athletes” and “performance readiness”), the arguments for/against that were discussed in order to decide between us, please.

16. On the same day, Mr. Camus provided the following explanations:

[Translation]

Hello Pierre Olivier,

Regarding your request, here are some explanations

1- Performance in the Team World Cups in the [sic] 2019/2020 and 2020/2021

Pierre Olivier, we compared yours and Blake’s performances on the only world cups in which you fenced the team event. (alternate in Paris, member of the starting lineup in Cairo). For example, in Cairo, you both fenced the same number of matches against the same opponents.

Pierre-Olivier -7 indicator (+8 on Chile, -9 on Italy, -6 on Poland, 0 on Belgium). On the day, Blake has an indicator of +6 (+2 on Chile, +2 on Italy, -13 on Poland, +15 on Belgium).

2- The athlete with the highest FIE ranking

Blake ranked 5th worldwide

Pierre-Olivier ranked 224th worldwide

3- The CFF High Performance Ranking

Blake ranked #1

Pierre-Olivier ranked #4

4 The athlete's commitment to the program

A- Compliance with the training and competition plan approved by the coach

Blake and Pierre-Olivier Ok

B-Participation in 6 competitions

Blake and Pierre-Olivier Ok

C-Tracking and data report on PUSH

Blake and Pierre-Olivier Ok

D- Train a least 28 days in a CFF High Performance Training Centre, national centre or international training structure

Blake and Pierre-Olivier Ok

5 Demonstrated ability and willingness to work effectively and cooperate in a team environment

Regarding the ability to work effectively and cooperate in a team environment, Blake has more experience since he participated in 2 Pan Am championships, 2 world championships and 14 world cups with the team.

Pierre-Olivier has been part of the team on 2 world cups.

As for the willingness to work with the team, both have always demonstrated their desire to fence with the team.

17. On 28 April 2021, the High Performance Director (“HPD”) submitted in the record of the present arbitration a letter detailing the methodology followed and the reasons which lead to the application of the criteria for the selection of the Affected Party rather than the Claimant as the Alternate:

[Translation]

In order to support the selection of Blake Broszus over Pierre-Olivier Bontems as alternate athlete on the Men's Foil team for the Tokyo 2021 Olympic Games, I would like to demonstrate the methodology followed as well as the reasons which led to the decision.

Methodology

The selection process defined in the Internal Nomination Procedure (INP) for Tokyo took place according to the following steps:

- *Publication on the CFF website and distribution of Olympic selection criteria to all athletes of the CFF HP program in March 2019.*
- *Start of the Olympic qualification on April 1, 2019.*
- *Update and republication of these criteria in July 2020 following COVID-19, to the same athletes.*
- *End of the Olympic qualification on April 5, 2021.*
- *Communication of the decision, with supporting documentation, for the selection of the alternate athlete by Julien Camus, national coach, to the HP Director, Benjamin Mañano, on March 29, 2021, after the final qualifying event.*
- *Review of the decision by the CFF’s HP Advisory Committee on March 30, 2021.*
- *Decision communicated to the athletes on March 31, 2021.*

Following the review of the process and of the arguments put forward by Julien Camus for the selection of the alternate athlete, the CFF’s HP Advisory Committee, made up of Jean-Marie Banos, Monica Peterson, Chris Kalantzis and Benjamin Mañano, unanimously approved and supported (4 votes for / 0 against) the selection of Blake Broszus to the Men’s Foil team, as made by the national coach, Julien Camus.

Reasons

The CFF’s INP selection process consisted of 5 criteria. Here are the results:

	Blake Broszus	Pierre-Olivier Bontems
Performance in team events in world cups 19/20 and 20/21	Indicator: +6 Total Touches: 64 Efficiency: positive (9%) Proportion of team touches: 33,93%	Indicator: -10 Total Touches: 44 Efficiency: negative (-22%) Proportion of team touches: 31,65%
Best athlete in the FIE ranking after those already selected	55th worldwide	224 th worldwide
CFF HP ranking	3rd	4 th
Athlete’s commitment to the program	See “performance readiness” below	

Ability and cooperation in a team environment	<p>Determined, engaged, good teammate.</p> <p>14 selections in Team World Cups.</p> <p>Member of the Pan Am team and Worlds, which counted towards Olympic qualification.</p> <p>Since Pan Am and 2019 Worlds, he has never exited the team.</p>	<p>Determined, very engaged, good teammate.</p> <p>2 selections in Team World Cups (Cairo + Paris as alternate – 9 relays)</p>
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Performance readiness

	Blake Broszus	Pierre-Olivier Bontems
Training plan approved by the national coach	Yes	Yes
Participation in at least 6 FIE competitions	6 +	6 +
PUSH training tracking	Yes	Yes
Train at least 28 days in a CFF HP Training Centre, or at the INS or in an international training structure	Training in an international training structure all year (UPenn) + 14 days of camp at the INS in 2020/2021 + Zoom meetings every 3 weeks with the national coach	Training full-time at the INS in 2020/2021

Blake has a better record than Pierre-Olivier in 4 of the 5 criteria and they are tied on the 5th criterion (Performance readiness).

The following points also argue in favor of Blake's selection:

- *Has taken a #2 role with the team since the 2019 Pan Am*
- *Acts as team stabilizer*
- *Has 14 selections on the team, 2 international medals in team events*
- *Contributed as a principal element to the Olympic qualification of the Men's Foil team.*

Therefore, and especially with regards to the way the national coach has built his team for 5 years now, and since the beginning of the Olympic qualification, it is logical that Blake Broszus obtain the alternate spot for the team event at the Tokyo 2021 Olympic Games.

18. On 3 May 2021, the CFF filed its submission. Of particular relevance to the present case, the CFF disclosed in its submission that, with respect to Criterion 5, the four following “factors” were used to compare the athletes:

We used the following data to compare the athletes:

- a. Performance in the team since 2018 for each participating athlete.*
- b. Athlete participation, commitment, and effectiveness at training camps*
- c. Athlete participation, commitment and efficiency during competitions*
- d. Athlete technical analysis tools*

19. On 4 May 2021, after a meeting with the Resolution Facilitator the previous day, the Parties submitted the following Joint Statement of agreed facts:

- a. The Respondent appropriately established the Criteria for #1, 2 and 3.*
- b. The Affected Party succeeds on Criteria #1 & #3:*
 - i. Criterion #1: Performance in the Team World Cups in the 2019-2020 and 2020-2021*
 - ii. Criterion #3: CFF High Performance Ranking*
- c. The Claimant succeeds on Criterion #2:*
 - i. Criterion #2: The athlete with the highest FIE ranking (calculated from August 27, 2019-March 8, 2020 and from a date to be determined to April 5, 2021) who has not already been nominated to the 2020 Olympic Team.*

20. With respect to Criterion 2, I note in this Joint Statement that “the Claimant succeeds” whereas, in his email to the Claimant of 1 April 2021, Julien Camus had informed him that the Affected Party had succeeded.

21. At the hearing, Benjamin Mañano, the HPD, testified that he had made a mistake in his appreciation of Criteria 2 on 30 March 2021 which, when corrected, resulted in the Claimant ranking ahead of the Affected Party.

Submissions by the Parties

Claimant

22. The Claimant requests that I determine the following issues: “(1) whether criteria #4 and #5 were appropriately set; (2) whether they were properly applied; (3) how are all 5 criteria to be weighed in the absence of explicit guidance in the INP?”
23. **With respect to Criterion 4: the athlete’s commitment to program (performance readiness)**, the Claimant argues that the CFF has not applied this criterion as a selection criterion but rather as an eligibility criterion.
24. The Claimant considers that the CFF should have compared the athletes using the performance readiness factors. The CFF maintains that a comparison would be unfair because of the pandemic and because of their policy that does not require centralized training. The Claimant pleads that this does not function for an eligibility criterion.
25. In addition, submits the Claimant, Criterion 4 measures individual performance.
26. While the parties agree that the pandemic has influenced the athletes’ performances, they disagree about how to weigh events during the qualifying period. The CFF argues that the Claimant places disproportionate weight on the beginning of the qualifying period and discounts everything after March 2020 when the lockdowns occurred, whereas the Claimant claims this is the most relevant period to determine performance readiness.
27. The Claimant refers to the SDRCC guidelines on best practices which suggest that more weight should be given to recent events.² The last 8 competitions show the Claimant’s positive progression as well as a higher rank in the last three events (Doha, Cairo, Turin).³
28. The Claimant emphasizes that he met the target PUSH hits, as recognized by Mr. Mañano: “Tu as fais du très bon boulot dans ton entraînement cet automne (malgré une prise de data de touches HP un peu défaillante au début)! Bravo!”⁴
29. Finally, the Claimant maintains that his uninterrupted training since the INS reopened in June

² C-06, Claimant’s Record, Exhibit 1, p.8.

³ *Ibid*, Exhibits 3 & 4.

⁴ *Ibid*, Exhibit 6.

2020 should be compared with the Affected Party's training which was disrupted from mid-December 2020 until early January 2021 due to COVID-19 restrictions.

30. **With respect to Criterion 5**, the demonstrated ability and willingness to work effectively and cooperate in a team environment, the Claimant submits that the 4 objective factors the CFF established in March 2021 and used to apply this criterion were not included in the INP or ever conveyed to the athletes.
31. The Claimant argues that the CFF places too much weight on the Affected Party's experience earlier in the qualification period. He also notes that "team performance" is only one factor in the application of this criterion.
32. The Claimant says that, while he attended all training camps before and after the pandemic lockdowns, not only the one mandatory camp in March 2021 to prepare for Doha, the Affected Party missed the Paris 2020 camp.
33. The Claimant stresses that the results of the "athlete technical analysis tools" were never included in the record.
34. The Claimant concludes that 3 of the 5 criteria (# 2, 3, 4) measure individual performance while the CFF maintains that the most important criteria are those measuring team performance (#1, 5). But the INP does not provide any hierarchy of the criteria. Furthermore, the INP does not specify how the criteria should be weighed.

The Canadian Fencing Federation

35. **With respect to Criterion 4**, the national coach's assessment, ratified by the HPD and the High Performance Committee ("HPC"), was that both athletes met all factors set out in this criterion.
36. The caption of Performance Readiness, "All nominations are conditional" implies that this criterion is an eligibility criterion and not a selection criterion. Accordingly, it would not be appropriate to make comparisons between the two athletes.
37. The CFF recalls that there are no mandatory centralized training plan and that the national coach and the HPD approved the Affected Party's training program in California and

Pennsylvania.

38. **With respect to Criterion 5**, the CFF maintains that the only way to compare the two athletes in order to avoid any subjectivity is by their experience with the team. The CFF notes that the Affected Party has competed with the team in 14 Team world cups, 2 Pan-American championships and 2 World Championships, whereas the Claimant has competed in only 2 Team world cups.
39. The CFF submits that, in accordance with the criteria outlined in the INP, the coach, Julien Camus, put forward the nomination of the Affected Party as the Alternate Athlete and the nomination was ratified by the HPD in consultation with all members of the High Performance Advisory Committee.
40. The CFF requests that the decision to nominate the Affected Party as the Alternate Athlete be confirmed.

Affected Party

41. **With respect to Criterion 4**, the Affected Party submits that his commitment to the program has been well demonstrated despite the fact that he did not train in Montreal until March 2021.⁵ He took “a gap year during the Olympic qualification period” and participated, in the past five years, in 43 international tournaments.⁶
42. **With respect to Criterion 5**, the Affected Party stresses that the Claimant’s own coach recommended that he be nominated as the Alternate, a decision ratified by the HPD and a unanimous 4-0 vote by the HPC.⁷
43. The Affected Party submits that he has been a member of the team for many years and was an important contributor to the team’s performance throughout the entire Olympic qualification process.
44. In conclusion, the Affected Party requests that his selection by the CFF as the Alternate Athlete for the 2021 Olympic Men’s Foil Team be confirmed.

⁵ AP-02, para 24.

⁶ *Ibid* para 26.

⁷ *Ibid*, para 44.

Witnesses

45. The following testified during the hearing: Mr. David Howes, Executive Director of the CFF, Mr. Benjamin Mañano, High Performance Director, the Claimant, Mr. Pierre-Olivier Bontems and the Affected Party, Mr. Blake Broszus.
46. I found all witnesses very credible. They each offered relevant and helpful evidence. I am grateful to all of them for having been very forthcoming and assisting me in the execution of my remit.
47. I only mention in this section of my decision the essential elements of their testimony in relation to the principal issues which are disputed.

Mr. Benjamin Mañano

48. With respect to Criterion 4, he and the coach considered it as an eligibility criterion.
49. He explained that all athletes had been informed that the PUSH App data would not be considered in their evaluation as it had just been introduced and they considered it would be unfair to include this data as some athletes' training was impacted by COVID-19.
50. He confirmed that the only mandatory training camp was in Doha, that the athletes had been so informed and that both the Claimant and Affected Party had attended.
51. He also confirmed that, together with Julien Camus, they had established and applied 4 factors to evaluate Criterion 5. He presented these factors to the HPC at the March 2021 meeting.
52. He admitted that the athletes were never informed of these factors.
53. Mr. Mañano testified that he and the coach considered that Criteria 1 and 5 were “the most important” as they focused on team performance. However, the coach never weighed the different factors.
54. With respect to the first and second factors of Criterion 5, “Performance in the Team since 2018 for each participating athlete”, the HPD and the coach considered that it was absolutely essential in order to attain the objective of the INP (“the potential to win a medal”) to consider and assess the contribution of the Affected Party in 2018.

55. Finally, while all athletes were always told that if they had any questions with respect to the criteria, they could ask him or the coach. The Claimant never did.

Mr. David Howes

56. Mr. Howes also testified that the Claimant had never asked any question about the selection criteria despite the fact that the INP was published 3 years ago and all athletes had often been told that they could make inquiries or ask for explanations.

57. He emphasized the importance of the evaluation of the Claimant by his own coach: “He knows his abilities better than anyone else”.

58. In addition, said Mr. Howes, when selecting an athlete for the Olympics in a team event, the most important factor to consider is performance in competition with the team which is what the coach and the HPD did.

The Claimant

59. The Claimant recalled that the selection criteria were presented to the athletes at a meeting at the end of August 2020. He complained about the lack of information with respect to the criteria, which, according to him, resulted in a “big misunderstanding”.

60. However, he admitted that he never asked any question with respect to the establishment or application of the selection criteria. “I should have”, he testified.

61. He agreed that he worked very closely with his coach and that “Julien was the best person to evaluate [his] skills.

62. “I trust his expertise as a coach and his evaluation, but not the result”, he answered to the question of the Affected Party’s Representative.

63. In a dialogue with Mr. Mañano, he acknowledged that having only obtained his Canadian citizenship in September 2019, he came in late and “took [his] chance”. He knew that events since 1 April 2019 would be taken into account.

64. The Claimant requests “that the selection of men’s foil team alternate be varied to Pierre-Olivier Bontems”.⁸

65. Lastly, he testified that he did not know that Criterion 5 would take into account results from 2018 and that it was not fair to do so.

The Affected Party

66. The Affected Party testified that he trained with very good fencers in California and Pennsylvania.

67. He attended all the mandatory training camps except the one in Paris for which he received an exemption.

68. “Julien and Benjamin told me”, he testified, that the fact that he was studying and training in the United States would “never be held against [him]”.

69. He maintained that it was an advantage for him to have competed with the Team during the qualifications.

Analysis

70. This dispute concerns the selection of the Alternate Athlete for the Men’s Foil Team for the 2020 Olympic Games.

71. There are two fencers vying for the nomination as the Alternate Athlete. They are Blake Broszus, the Affected Party, who was nominated by the Respondent, the Canadian Fencing Federation, and Pierre-Olivier Bontems, the Claimant who requests that he be nominated.

72. The Claimant submits that there are three issues which I need to determine: “(1) whether criteria #4 and #5 were appropriately set; (2) whether they were properly applied; (3) how are all 5 criteria to be weighed in the absence of explicit guidance in the INP?”

73. I will address each one of these issues in turn.

74. With respect to the first issue raised by the Claimant, I have no hesitation in finding that criteria

⁸ C-06, Claimant’s Record, para 90(b).

4 and 5, on their face, were appropriately set and established by the Canadian Fencing Federation.

75. Criterion 4, read together with the Performance Readiness provision, can only be construed, as the CFF submits and as was done by the coach and the HPD, as an eligibility criterion.

76. The caption of the four elements of the Performance Readiness article that “all nominations are conditional” (my emphasis) leaves no doubt that Criterion 4 is an eligibility criterion and not a selection criterion and I so find.

77. Accordingly, with respect to Criterion 4, the coach and the HPD were perfectly justified to apply it as they did. I note that, as a result, both the Claimant and the Affected Party were found to have met all four conditions.

78. I now turn to Criterion 5.

79. My analysis of this criterion and the way it was applied by the CFF is informed by the fact that, as is very clear from the INP, the selection of the Alternate Athlete consists in the selection of an athlete who, if called upon, will join and compete with the Canadian Olympic Fencing Team.

80. Accordingly, it is not unreasonable for the national team coach, in considering candidates for selection as the Alternate Athlete, to consider and attach particular importance to their performance in competition with the Team.

81. I note that Criterion 5 focuses on “the ability and the willingness of the candidate to work effectively and cooperate in a team environment”. (My emphasis)

82. It thus stands to reason that, in its application of this criterion, the CFF should focus on the candidates’ performance in team competitions.

83. The evidence reveals that the Affected Party has competed with the Canadian Fencing Team in 14 Team world cups, 2 Pan-American championships and two world championships while the Claimant has competed in only 2 Team world cups.

84. The HPD testified that both candidates demonstrated an ability and willingness to work effectively and cooperate in a team environment, as mandated by Criterion 5. However, where

the Affected Party ranked ahead of the Claimant was the all-important competition experience with the Team.

85. I do not find the application of this criterion by the coach to be unreasonable.

86. However, this is not the end of the matter.

87. As noted earlier⁹, the CFF, in its submission of 3 May 2021, disclosed for the first time that, with respect to Criterion 5, the HPD and the coach established four factors to compare the athletes:

- a. Performance in the team since 2018 for each participating athlete.*
- b. Athlete participation, commitment, and effectiveness at training camps*
- c. Athlete participation, commitment and efficiency during competitions*
- d. Athlete technical analysis tools*

88. Mr. Mañano, the HPD, admitted that these four factors were never communicated to the athletes.

89. I must admit that this failure of the CFF to disclose to the Claimant and the Affected Party these four factors which the coach and the HPD used and took into consideration to evaluate and compare the athletes has given me pause.

90. It is the Federation's responsibility to develop a selection process with well-defined criteria which the athletes know will be used in their evaluation. There is no explanation, indeed none was offered, which can excuse the Federation's failure to disclose to the athletes the data that would be used to evaluate and compare them.

91. However, as I look carefully at the data in question, I am convinced that no athlete could pretend that any one of them was unreasonable or inappropriate as a means to evaluate and then compare the athletes.

92. Furthermore, neither the Claimant nor the Affected Party was in any way prejudiced by the use of any one of these four factors.

⁹ *Supra* para 18.

93. Specifically, with respect to the first factor, “Performance on the Team since 2018”, the Claimant acknowledged that he knew when the CFF issued an update of the INP in July 2020 that earlier events would be taken into account. In his words, “I came in late and I took my chance”.

94. In summary, I find that Criteria 4 and 5, adopted by the Respondent, were appropriately established and properly applied.

95. I now come to the last issue raised by the Claimant in support of his request that he be nominated as the Alternate to the Men’s Foil Team for the Tokyo Olympics in the place and stead of the Affected Party.

96. This issue is phrased as follows by the Claimant’s counsel in her summary of 12 May 2021: “How are all 5 criteria to be verified in the absence of explicit guidance in the INP?”

97. In her lengthy and detailed submission of 30 April 2021, Ms. Ho summarized her arguments as follows:

*The CFF is unable to show that it properly applied its own criteria. If it had applied its own criteria fairly and reasonably and considered all the evidence as outlined above and given it proper weight, it is more likely than not that PO would have been selected as alternate.*¹⁰

98. I find that the following paragraph in that submission captures very well Ms. Ho’s central position:

*Instead, one is left with the impression that the CFF chose Blake because it wanted to. It didn’t follow the criteria when it made its initial selection; it didn’t follow the criteria when justifying the selection after the fact. The CFF uses minimum criteria where the evidence would otherwise favour PO, and it refers to outdated results where it can additionally advantage Blake. All this points to a certain lack of neutrality, that the CFF’s mind was closed.*¹¹

99. For the following reasons, I cannot agree with the Claimant. I have formed the view that the CFF has discharged its burden of proof and established to my comfortable satisfaction that the selection criteria are reasonable and were reasonably applied.¹²

¹⁰ C-06, Claimant’s Record, para 84.

¹¹ *Ibid*, para 89.

¹² See Section 6.10 of the Canadian Sport Dispute Resolution Code (2021).

100. There was no explicit guidance in the selection criteria as to how they should be weighted but that is no unusual.
101. That process is left to the discretion of the HPD who has the final authority, as explicitly mentioned in the INP, over the nomination of the Team.
102. That discretion must be exercised fairly and equitably informed by the objective of “selecting athletes with the potential to win a medal.”
103. This is precisely what was done.
104. The evidence adduced before me is clear and persuasive. It overwhelmingly demonstrates that the Claimant and the Affected Party were both evaluated by Julien Camus, the national coach, in accordance with the selection criteria for the Alternate Athlete set out in the updated INP. The Affected Party was selected at the conclusion of this process by the decision-making authority and not “because it wanted to” as alleged by the Claimant’s counsel.
105. As the HPD testified and as the CFF wrote in its Summary of 12 May, “the decision [was] a close one”. I find no evidence whatsoever that the decision, close as it was, was unfair or unreasonable.
106. I agree with the Respondent that “when selecting an athlete for the Olympic team in a team event, the most important thing to consider is performance in competition with the team”.¹³
107. The Canadian Men’s Foil Team qualified for the Tokyo Olympics at the beginning of 2020. The Team, for the majority of the events which lead to the qualification, included the Affected Party.
108. It was entirely reasonable and appropriate in these circumstances for the national coach to select the Affected Party.
109. As Julien Camus wrote to the Claimant in his email of 1 April 2021:

¹³ Respondent’s Summary, Emphasis in summary.

[Translation]

Regarding the ability to work effectively and cooperate in a team environment, Blake has more experience since he participated in 2 Pan Am championships, 2 world championships and 14 world cups with the team.

Pierre-Olivier has been part of the team on 2 world cups.

110. The Claimant testified very candidly that he had practised with Julien Camus “very closely during the last two years”, that the coach was “the best person to evaluate his skill level” and that while he trusted his evaluation, he “did not trust the result”.

111. The coach recommended the Affected Party as the Alternate Athlete. His recommendation was ratified by the HPD, Benjamin Mañano, and then approved unanimously by the High Performance Advisory Committee.

112. I have no hesitation in concluding that the process outlined in the INP was properly followed and that the nomination process was fair and equitable for both the Claimant and the Affected Party.

113. This is definitively not a case where the arbitrator should substitute his judgment to that of the experienced decision-makers.¹⁴

114. I understand the disappointment of the Claimant who was granted early Canadian citizenship in September 2019 because he “[wanted] to make an Olympic run”.¹⁵ I was very impressed by his demeanor and his obvious commitment when he testified.

115. Although he started late, he almost made the grade as an Alternate on the Team selected for the Men’s Foil Team for the 2020 Tokyo Olympics. He finished a close second and, in the words of the CFF, “we do not question [his] level and his commitment ... because he was faultless”.¹⁶

116. In closing, I would like to thank all the parties for their professionalism and the quality of their written and oral submissions.

¹⁴ See SDRCC 21-0487 Nicolas Rivest v Karate Canada, p. 11 and ADR 03-0016 Pascale Blais v. Taekwondo, p. 5.

¹⁵ Affidavit of Pierre-Olivier Bontems at para 6.

¹⁶ Respondent’s Summary, para 33.

IV. ORDER

117. The Claimant's appeal is dismissed.

Signed in Montreal this 18th day of May 2021

The Hon. L. Yves Fortier, QC, Arbitrator