



## DECISION WITH REASONS

### I. INTRODUCTION

1. This is a team selection dispute.
2. On December 19, 2023, I was appointed by the Sport Dispute Resolution Centre of Canada (“SDRCC”) through its rotating list to act as Arbitrator under Article 6 of the Canadian Sport Dispute Resolution Code (“the Code”) to hear Leonarda Andric’s (“Andric” or “Claimant”) appeal of Taekwondo Canada’s (“TC”) decision not to nominate her for team selection to the Continental Qualification Tournament (“CQT”) to be hosted by the Pan American Taekwondo Union (“PATU”) from April 9-10, 2024, in Santo Domingo, DOM.
3. The Respondent, TC, hosted a Pre-Qualification Tournament for the Paris 2024 Olympic Games in Scarborough, ON, on November 17, 2023.
4. As per the Taekwondo Qualification System – Games of the XXXIII Olympiad - Paris (“TKWQS”), each country can enter a maximum of two (2) men and two (2) women with a maximum of one (1) athlete per weight division through the Continental Qualification Tournaments (“CQT”).
5. The CQT is the third pathway towards Games qualification, and available quota spots are reduced by the number of athletes a country has who meet either of the following two criteria: 1) World Taekwondo (WT) Olympic ranked Top 5 who directly qualify via their ranking; or 2) as winning a Grand Slam Series.
6. TC already has an athlete in the World Taekwondo (“WT”) Olympic ranked Top 5 in the F-57kg division; TC is not eligible to enter an athlete in that division at the CQT, and TC’s available quota spots are reduced by one (1). Therefore, TC can enter one female athlete in either the F-49kg, F-67kg, or F+67kg weight class.
7. Upon completion of the Pre-Qualification Tournament for the Paris 2024 Olympic Games, TC’s High Performance Director (“HPD”) conducted a review and evaluation to determine which of the eligible weight classes will be entered into the 2024 Pan American Qualification Tournament for the Paris 2024 Olympic Games.
8. By letter dated November 24, 2023, from the HPD to the Claimant, notice was given that the HPD has selected the female weight class of F-49kg and athlete Josipa Kafadar (“Kafadar”) to represent Canada at the CQT.

9. On November 29, 2023, the Claimant submitted a Request to the Ordinary Tribunal of the SDRCC under Section 6.1 of the Code to initiate an appeal proceeding following the Respondent's decision questioning the reasonableness of the interpretation and application of the criteria set out in Section 5 of the *Internal Nomination Procedures – 2024 Olympic Games* ("INP") by TC's HPD.
10. The parties have submitted that there is an urgency to resolve the dispute by no later than mid-January 2024, as TC and the athletes are in the process of planning preparation strategies, including training camps and event support for the CQT.
11. I find in favour of the Respondent. I have, therefore, denied the Claimant's appeal. I confirm the Respondent's selection of the female weight class of F-49kg and athlete Kafadar to represent Canada at the CQT.
12. This is my Decision with reasons pursuant to the Code (October 1, 2023). A short Decision was previously rendered by me on January 4, 2024.

## **II. PROCEDURE**

13. The parties to the arbitration waived the right to an oral hearing. The arbitration has proceeded based on the documentary record submitted by the parties as follows:
  - C-01 Request Form
  - C-02 Appendix C – Athlete Selection Final Decision by TC
  - C-03 Appendix D – TC Official Eligibility Criteria: Pre-Qualification Tournament for Paris 2024 Olympic Games
  - C-04 Appendix E – Extra Criteria (not Outlined in Official Package from Appendix D) Used by TC to Make Athlete Selection
  - C-05 Appendix F – World, Olympic, Pan-American Region Relative Athlete Ranking
  - C-06 World Taekwondo Rankings 1
  - C-07 World Taekwondo Rankings 2
  - C-08 World Taekwondo Rankings 3
  - C-09 World Taekwondo Rankings 4
  - C-10 SDRCC Submission – Final
  - C-11 Rebuttal

- R-01 SDRCC 23-0687 – 102 Answer – Ordinary Tribunal – Dec. 1, 2023
- R-02 Appendix C-INP-2024 Olympic Games – April 3, 2023
- R-03 Appendix D – WT Ranking Bylaw
- R-04 Appendix E – Respondent – Relative PATU Ranking
- R-05 SDRCC 23-0687 – SDRCC Response Submission – Final
- R-05 TC – Terms of Reference – Olympic Advisory Group
- R-05 – TC – Athlete Assistance Program (AAP) Carding Criteria for 2023-2024 Nominations
- Assorted Email Communications between the Claimant and Respondent
- Allan Wrigley, Ph.D. Curriculum Vitae

### III. ONUS OF PROOF

14. The Code Section 6.10 applies and provides as follows:

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

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

### IV. SELECTION CRITERIA

15. The relevant TC team selection criteria are found in the *Internal Nomination Procedures: 2024 Olympic Games* under Section 5.4.2 and Section 5.4.3 as follows:

5.4.2 After athlete selection has been completed at the Pre-Qualification Tournament, Taekwondo Canada will undergo a review and evaluation to determine which of the eligible weight classes will be entered into the 2024 Pan American Continental Qualification Tournament for the Paris 2024 Olympic Games. The following factors will be used in the selection of weight classes for entry (not in priority order):

- i. The ranking of the selected athlete in the corresponding WT Olympic Weight Class as of October 31st, 2023,

AND

- ii. The relative ranking of the selected athlete in the corresponding WT Olympic Weight Class when only other PATU athletes are included.

AND

- iii. Past performance history of the selected athlete. The past performance history will include (but is not limited to) results at past World Championships, WT Grand Prix Series events, Pan American Games, Pan American Championships, and match performance in the Olympic Weight Class.

5.4.3 As the published WT Qualification System in Appendix A includes direct qualification processes that may occur after Taekwondo Canada's Pre-Qualification Tournament towards Pan American Continental Qualification for Paris 2024, athletes that earn quota spots through WT Olympic Ranking or the WT Grand Slam Champions Series will take priority over Taekwondo Canada's pre-qualification process. This may make an Olympic Weight Class no longer eligible for the 2024 Pan American Qualification Tournament for the Paris 2024 Olympic Games.

## V. ANALYSIS

### *Have the selection criteria been appropriately established?*

16. I now turn to consider whether the disputed decision has been made in accordance with the selection criteria adopted by TC. The onus remains on TC as the NSO to demonstrate that the disputed decision was made in accordance with such criteria.
17. The Respondent's submissions provide a history of the evolution and pedigree of the TC selection criteria adopted for the purpose of establishing the *Eligibility Criteria – Pre-Qualification Tournament for Paris 2024 Olympic Games* and the subsequent *Internal Nomination Procedures – 2024 Olympic Games*.
18. TC began the development of the *Eligibility Criteria – Pre-Qualification Tournament for Paris 2024 Olympic Games* and the subsequent *Internal Nomination Procedures – 2024 Olympic Games* in the spring of 2022.
19. TC's HPD has a standing Olympic Advisory Group ("OAG") that had its initial meeting to discuss the qualification system on May 16th, 2022.

20. As per the OAG Terms of Reference, the mandate of the OAG is to act as an advisory council within the High Performance program of TC. Its role is to provide advice and opinions on performance plans for the next year of the quadrennial, review longer-term planning towards Olympic performance, and ensure that key coaches in the performance pathway are engaged in a meaningful way and contributing to the TC high-performance planning process.
21. The OAG is comprised of all the following individuals: • Grandmaster Young Su Choung (Olympic Coach) • Master Jae Park (Olympic Coach) • Master Carla Bacco • Master Edward Fong (Olympic Coach) • Master Carlos Amezcua • Master Emilia Camastro • Yvette Yong (Olympic Athlete, Athlete Representative) • Brittany Rich (Taekwondo Canada).
22. Between an initial meeting in May 2022 through to the publication of the *Eligibility Criteria – Pre-Qualification Tournament for Paris 2024 Olympic Games* on October 18th, 2022 (updated and re-published December 15th, 2022), through to the subsequent publication of the *Internal Nomination Procedures – 2024 Olympic Games* on May 4, 2023, all OAG members were engaged in the development process.
23. The HPD presented draft criteria and received feedback on the appropriateness and application of the criteria, and the final agreement on the selection criteria was achieved through numerous subsequent phone calls with the OAG members.
24. According to the Respondent, all members of the OAG agreed that the finalized criteria were reasonable, developed in good faith, and provided a solution to the significant difficulty in comparing across weight divisions as opposed to within them.
25. There is a significant difficulty in the development of selection criteria for the sport of Taekwondo due to differing weight divisions adopted nationally and internationally for competitions.
26. The difficulty in comparing across weight divisions exists because the sport of Taekwondo operates under two different weight division ranking systems as described under Article 1 of the *World Taekwondo Ranking Bylaw*. Most of the World Taekwondo (WT) promoted events in any given calendar year follow the *World Weight Division* system consisting of 16 (8 per gender) senior weight divisions, while select events

(requires entry by National Team) utilize the *Olympic Weight Division* system consisting of 8 (4 per gender) senior weight divisions.

27. Athletes competing in World Weight events are free to choose the division in which they enter, with the only requirement being meeting the weight category. However, for Olympic Weight events, athletes are restricted in entry to their declared Olympic Weight Division which is confirmed with WT on an annual basis in January each year.
28. WT World Ranking points are earned by athletes within the specific World Weight division they enter, and it is possible for an athlete to be ranked in several categories. Conversely, the Olympic Ranking is built by accumulating points earned in the coinciding World Weight division, as well as two adjacent World Weight divisions, and an athlete can only be ranked in one Olympic Weight division (as an example, the WT Olympic Ranking for M-58kg is calculated by cumulating the points earned in M- 54kg, M-58kg, and M-63kg).
29. One concern raised through the OAG was how athletes tend to avoid fighting in the associated Olympic Weight at World Weight events, as the associated Olympic Weight divisions are typically stronger and more challenging to perform in. The OAG members advised on developing selection criteria that allowed for the comparison of athletes across divisions that consider how an athlete has worked towards accumulating ranking points and establishing their Olympic Ranking as it is an objective indicator of their potential to perform at the Olympic Weight.
30. With these critical distinctions between World Weight and Olympic Weight event performances in mind, and to ensure that TC was in alignment with other associated high performance criteria as well as established Sport Canada and Canadian Olympic Committee (“COC”) policies, it was important to ensure that the published evaluation criteria for the determination of the Olympic divisions for entry into the CQT factored in and distinguished between athletes that opt to fight in World Weight events at the associated Olympic Weight versus those that have accumulated ranking points by choosing to compete in the adjacent World Weight divisions.
31. The eligibility criteria to participate in TC's Pre-Qualification Tournament for the Paris 2024 Games were created with the primary goal of providing the greatest potential for TC to qualify additional athletes for the 2024 Paris Olympic Games.

32. The Respondent has noted that as a point of clarification, actual athlete selection follows the published *Internal Nomination Procedures: 2024 Olympic Games*, not the eligibility criteria for the tournament. However, Section 8 of the Claimant's Appendix D is identical to Section 5, Article 5.4 in the INP. The critical difference is that the event eligibility criteria do not comprehensively cover the entire Olympic qualification process, whereas the INP under Section 5 has been approved by the COC as meeting their requirements for TC to nominate athletes for qualification to the Games. Therefore, athlete selection follows the INP as part of the larger qualification process.
33. Under Section 2 of the *Internal Nomination Procedures – 2024 Olympic Games*, it is clearly stated that the HPD has the full authority to select and nominate athletes as part of the Olympic qualification process.
34. Taekwondo, with its differing weight divisions of World Weight and Olympic Weight classes, is a sport that requires some reasonable flexibility in the selection criteria but, at the same time, can not be entirely arbitrary. In *Richer v. The Canadian Cerebral Palsy Sports Association (including Boccia Canada)*, SDRCC 15-0265, Arbitrator Pound noted that the “more difficult choices occur when there may be some element of judgment required regarding performance standards or a need to produce a team that will function most effectively in competition. The default position in such cases, absent reviewable error or proof of bias, is that those responsible for selection decisions are generally the most knowledgeable and experienced persons available, who attempt in good faith to produce the best possible outcomes in the particular circumstances.”
35. From the email exchanges tendered in evidence between the Claimant and the Respondent, I am satisfied that the Claimant and the Claimant's representative were aware of and understood the *Internal Nomination Procedures – 2024 Olympic Games* selection criteria from the publication of INP on May 4, 2023, and certainly from September 2023 in advance of the Pre-Qualification Tournament for the Paris 2024 Olympic Games in Scarborough, ON, on November 17, 2023.
36. Based on the foregoing, I am satisfied that on a balance of probabilities, TC has demonstrated that the selection criteria were appropriately established by the most knowledgeable and experienced persons available, who have attempted in good faith to



produce the best possible outcomes in the particular circumstances for the sport of Taekwondo.

***Has the disputed decision been made in accordance with the selection criteria?***

37. The Respondent makes the point that the selection criteria were applied in the same way for all four of the male and female divisions under consideration.

***Section 5.4.2 (i) The ranking of the selected athlete in the corresponding WT Olympic Weight Class as of October 31<sup>st</sup>, 2023***

38. The ranking of the selected athlete corresponding to the WT Olympic Class as of October 31, 2023, is what is described as an “absolute ranking.” It serves as a benchmark of the ordered ranking of all athletes within a defined category based on a set of criteria. The WT Olympic Ranking system is absolute, as all athletes that have points attributed to any given Olympic Weight division are ordinally ranked. It serves the purposes of WT by providing a standardized baseline for direct athlete comparison and by which relative ranking can be determined.

39. Specific to the three female divisions under consideration, the evaluation of this factor indicated that Andric at WT Olympic Ranked 44<sup>th</sup> was ahead of Rachel Fountain (“Fountain”) at 62<sup>nd</sup> and Kafadar at 77<sup>th</sup>.

***Section 5.4.2 (ii) The relative ranking of the selected athlete in the corresponding WT Olympic Weight Class when only other PATU athletes are included.***

40. This selection criterion is based on the “relative ranking” of the selected athletes, as discussed above.

41. The Respondent has explained that the application and use of relative ranking is a well-established and accepted process within the sport of Taekwondo. Every tournament that is sanctioned by WT follows the same relative ranking process based on the event entry requirements that are published in the associated event outlines. The absolute ranking is utilized to order all eligible athletes by which their relative ranking (colloquially called *Seeding*) can be determined to create the tournament brackets. Specific to the relative

PATU ranking utilized for this factor's evaluation, eligible athletes in each division must adhere to the outlined requirements in the TKWQS.

42. The relative ranking criterion requires a multi-step analysis.

43. The Respondent describes the relative ranking process as follows:

Tables 1 and 2 below display both the WT Olympic Ranking as well as the determination of the relative PATU ranking. Both tables begin with listing all of the PATU athletes based on their WT Olympic ranking until you reach the level at which the winner of the TC Pre-Qualification Tournament is situated. Once that first step is completed, you must then apply the TKWQS rule requirements that limit each country to one (1) entry per weight division and any WT Olympic ranked Top 5 athletes who are ineligible. Those athletes who fit these requirements are highlighted in RED. From a purely objective and fact-based approach adhering to the published rules, those athletes are strictly not eligible for the CQT based on the associated WT Olympic rankings. The next step in the process is to follow the remaining TKWQS rule requirement that limits countries to two (2) female entries. Here we must take a balance of probabilities approach and evaluate the other female entries for each country. This approach is supported by information received directly from the Brazilian and USA teams, as well as information received from the Mexican team through an OAG member who is a former member of the Mexican team. The ranking and inclusion decisions made during this process were also communicated to and reviewed by the OAG members on November 2nd, 2023, two weeks prior to the tournament. For the F-49kg division, Brazil has Pacheco -57kg, Santos -67kg, and Siqueira +67kg, and all are Top 20 athletes, so Brazil was removed from F-49kg (in YELLOW) as it is by far their weakest division with Olympic medal potential in the other three (3) divisions. Additionally, for the F-49kg division, Puerto Rico's best -49kg has never made weight in that division. All WT points are from -53kg, and the country has better athlete options in the F-67kg and F+67kg divisions, so Puerto Rico was removed (in YELLOW). The remaining BLUE highlighted athletes in both the F-49kg and F-67kg divisions do not meet the balance of probabilities approach. In both cases, the athletes have had strong results at the 2023 Pan American Games and factor into legitimate options for those countries to enter into the CQT. Each PATU country will be working towards qualifying as many athletes as possible, and strong results at an event like the Pan American Games less than one year out from the Olympics is a highly regarded and relevant assessment point. As it is not clear if those athletes will be entered or not, they have remained highlighted in the Relative PATU ranking data but do not count against the Canadian athlete seeding as it is an equally fair evaluation for both divisions.

44. The result of the Respondent's relative ranking exercise was a determination that "Specific to the two female divisions under consideration (the relative ranking in

the F+67 division placed Fountain far outside the range of the other two athletes and divisions under consideration), the evaluation of this factor indicated that both Kafadar in the F-49kg division and Andric in the F-67kg division have the potential to have similar Seedings in the CQT. There is potential for either athlete to move one or two positions in relative ranking based on event performances at the start of the 2024 competition season, and as such, the determination was that both divisions would have athletes in comparable relative positions. As such, the HPD's evaluation of this factor was that it did not create a definitive distinction between divisions.”

***Section 5.4.2 (iii) Past performance history of the selected athlete. The past performance history will include (but is not limited to) results at past World Championships, WT Grand Prix Series events, Pan American Games, Pan American Championships, and match performance in the Olympic Weight Class.***

45. The Respondent describes this selection criteria as the most difficult as it requires a thorough review of performance data that must be objectively comparable across divisions.
46. TC used results from the 2022 and 2023 seasons due to the COVID-19 pandemic impacting the ability to compete internationally prior to the spring of 2022 and due to significant WT rule changes established for the start of the 2022 competitive season that altered the style of fighting at the high performance level.
47. The Respondent has provided a detailed explanation of the evaluation process to identify past performance history and specific details of the past results of the three female divisions under consideration at World Championships, WT Grand Prix Series events, Pan American Games, Pan American Championships, and match performance in the Olympic Weight Class events.
48. None of the athletes under consideration have won at a GP Series event; it is important to note that Kafadar is the only one to have earned entry and competed in a GP Series (Roma 2022 WT Grand Prix, June 3rd to 5th, 2022; finished 17th after losing her first fight). The next evaluation point listed is the Pan American Games, which none of the athletes under consideration competed at, followed by the Pan American Championships,

which only Fountain attended as a member of the Senior National Team in 2022. The final evaluation point that was listed in the INP is match performance in the Olympic Weight Class.

49. Following the well-established TC, Sport Canada, and COC guidelines and policies that were outlined in the *Establishment of Selection Criteria* section regarding competing in World Weight events as opposed to Olympic Weight events, it was determined that over the preceding 12-month period, only Kafadar and Fountain had earned points in World Weight divisions that are associated with the Olympic Weight division. It is important to make the distinction that these two athletes are the only ones to have earned points, as all three have competed in the associated World Weight class. Andric did compete at F-67kg at the Canada Open, held between February 24<sup>th</sup> and 25<sup>th</sup>, 2023, but lost her first fight and did not earn any points.
50. The Respondent created a table (below) titled “Evaluation of past performance history” to illustrate the 11-point comparative evaluation process to summarize the selection criteria evaluation results based on Sections 5.4.2 (i), (ii), and (iii):

	<b>-49kg</b>	<b>-67kg</b>	<b>+67kg</b>
WT Oly. Rank	77	42	62
Proj. PATU Seed*	5	5	9
Avg. PATU Rank**	45.9	21.6	31.1
2022 WC	---	---	17
2023 WC	---	---	17
GP Wins	---	---	---
PAG	---	---	---
2022 PAC	---	---	5
OLY Pts***	34.04	0	39.62
Avg. Loss 1yr****	32.5	45.0	
Avg. Win 1yr*****	181.5	191.3	
Record Against Notable PATU Opponents	Bazerra 1-0, Vargas 1-0, Souza 0-1	Santos 0-3, Gallardo 0-1	Siqueira 0-1

\*Based on one athlete per country and 2 athletes per gender.

\*\*Average WT Olympic rank of PATU athletes seeded higher in the division.

\*\*\*Points earned in the proceeding 12 months fighting the Olympic weight.

\*\*\*\*Avg. ranking of opponent that athlete lost to over the current season.

\*\*\*\*\*Avg. ranking of the last opponent the athlete defeated in each tournament over the current season.

51. The HPD has concluded that F-49kg is the one female weight division that has a proven performance history in the Olympic Weight over the past two seasons and has objectively demonstrated increased probability or potential to finish Top 2 at the CQT.
52. The Respondent submits that the published evaluation process was followed as intended, and the HPD's decision to select the M-58kg, M+80kg, and F-49kg should be upheld.
53. Based on the foregoing, I am satisfied that on a balance of probabilities, TC has satisfied the onus and demonstrated that the disputed TC selection decision was made in accordance with the selection criteria as adopted by TC.

***Once that has been established, [...that the criteria were appropriately established and that the disputed decision was made in accordance with such criteria...] the onus shall be on the Claimant to demonstrate that she should have been selected... in accordance with the approved criteria.***

54. I now turn to consider the question of whether the Claimant has demonstrated that she should have been selected in accordance with the approved criteria.
55. The Claimant's submissions have sent conflicting messages.
56. On the one hand, the Claimant has agreed that the selection criteria were appropriately established and that the disputed decision was made in accordance with such criteria but disagrees with the result as erroneous due to errors in the collection and/or the evaluation of the data or the weight given to various factors and criterion.
57. On other occasions, the Claimant has advocated for measures or interpretations which would change the selection criteria entirely.
58. Most importantly, the Claimant has argued that the disputed decision was not made in accordance with the selection criteria and that she should have been selected in accordance with either the approved criteria or, alternatively, her interpretation of the approved criteria.
59. I have reviewed all of the parties' submissions and the evidence and taken them into account, even if not specifically referred to below.

***Section 5.4.2 (i) The ranking of the selected athlete in the corresponding WT Olympic Weight Class as of October 31st, 2023***

60. There is a controversy between the parties as to the interpretation of Section 5.4.2 (i) “October 31st, 2023,” effective date for the ranking data. The Claimant submits that the published ranking data from the month of October 2023 should be used. The Respondent submits that the *World Taekwondo Ranking Bylaw, Article 9* states that the ranking will be updated on the last day of the month, and the new ranking is valid and published on the first day of the following month.
61. For the purpose of applying the Section 5.4.2 (i) criteria, the Respondent used the October 31, 2023, ranking data published on November 1, 2023. If the Claimant’s argument were correct, then the October 31, 2023, ranking data would have been the data from Sept. 30, 2023, published on October 1, 2023.
62. The Respondent has applied October 31, 2023, ranking data published November 1, 2023, to align with the date for the evaluation of the WT Olympic Ranking based on the date of recalculation of both earned and deducted ranking points that would be reflected in the November WT Ranking.
63. Nothing seems to turn on this issue. The Claimant has failed to demonstrate a difference in the two proposed data sets, nor how this issue would have changed the resulting application of the Section 5.4.2 (i) criterion.
64. The parties agree that in the past, the World Olympic ranking was the major criterion used by TC to rank athletes for selection. Based on the historical significance of this criterion, the Claimant submits that Section 5.4.2 (i) criteria should be given the most weight between the criteria under subsections (i), (ii) and (iii).
65. In reply, the Respondent relies on the clear wording of the introductory language of Section 5.4.2, which states that the factors listed under the section are not in priority order and submits that how athlete selections were done in the past is not relevant to the current selection process.
66. I find that to accept the Claimant’s arguments would amount to redefining the selection criteria itself. To do so would offend the guiding principles from previous Tribunal decisions and usurp the role and authority of the NSO to set the selection criteria.

***Section 5.4.2 (ii) The relative ranking of the selected athlete in the corresponding WT Olympic Weight Class when only other PATU athletes are included.***

67. The intent of Section 5.4.2. (ii) is to move from an absolute ranking of WT Olympic Weight Class athletes to a relative ranking of only PATU Olympic Weight Class athletes.
68. The Claimant notes that as there is no official Pan AM ranking, the only way to find the Pan American ranking relative to the world ranking is to parse through the World ranking and only list the athletes from Pan American region countries.
69. Completing this first step of the exercise, the Claimant concludes that Andric has a Pan Am ranking of 7 and Kafadar has a Pan Am ranking of 15 based on the results as of October 31, 2023.
70. The Claimant contends that this is the only relative ranking that is specified under Section 5.4.2 (ii), and the analysis must, therefore, stop here.
71. If the Claimant's position is correct, then what we are left with is essentially two absolute ranking lists – one absolute list of Olympic Weight Class athletes and one absolute list of PATU Olympic Weight Class athletes.
72. Section 5.4.2 (ii) calls for the “relative ranking” of the selected athlete and not the “absolute ranking” of the WT Olympic Weight Class within the more narrowly defined list of PATU athletes. This first step in the exercise provides a sub-set of PATU athletes as a standardized baseline for direct athlete comparison by which relative ranking can then be determined.
73. Nonetheless, it is the Claimant's submission that the HPD went beyond the specified wording of Section 5.4.2 (ii) by adding the following four amendments to the original criteria.
74. Amendment #1 - All Canadians who did not qualify for the “Pre-Qualification Tournament for Paris 2024 Olympic Games” are to be removed from the relative ranking. After this added amendment, Andric still has a higher ranking of 6th place, while Kafadar is in 13th place. This is a difference of 7 positions in the Pan Am ranking relative to the World Olympic ranking.
75. Amendment #2 - Removing athletes because they have chosen to fight in a different weight category in which they had never competed. This amendment raised Kafadar's ranking by one more position, now placing her in 12th place.
76. Amendment #3 - TC stated that they know which weight divisions every country will send to the Pan Am Qualification Tournament. TC has based its decision on the

assumption that every country will send its Top 2 highest-ranked athletes according to the World Olympic ranking as of October 31st, 2023. In making this assumption, TC excluded athletes not ranked within the Top 2 of their country from the relative ranking, leading to a further increase in Kafadar's ranking.

77. Amendment #4 - Removing athletes who will automatically qualify for the Olympics. It's crucial to note that athletes in the Top 5 ranking automatically qualify for the Olympics. The Claimant contends that the determination of the Top 5 ranked athletes in each division, securing the Olympic quota for their country, can only be made on December 3rd, 2023, following the Grand Prix Final, as outlined in the "*Pre-Qualification Tournament for Paris 2024 Olympic Games*." This final tournament of the year offers the opportunity to accumulate up to 100 ranking points. The rankings after this event will decide if an athlete finishes in the Top 5, thereby meeting the Olympic quota.
78. In summary, the Claimant contends that TC made the following amendments to the Section 5.4.2 (ii) criteria:
- 1) All Canadian athletes who did not qualify for the "*Pre-Qualification Tournament for Paris 2024 Olympic Games*" were removed from the relative ranking.
  - 2) All athletes on the list who have a higher-ranked athlete within their own country were removed (assuming they will be sending the higher-ranked athlete).
  - 3) Removed all athletes who have two higher-ranked athletes in alternate divisions, assuming they will not be picked.
  - 4) Removed all athletes who are currently Top 5 World Olympic ranked using the new dataset of Nov. 17th, 2023, as opposed to the Oct 31st dataset, which was used elsewhere in the documentation.
79. The Claimant argues that the timing of the amendments is unfair and clearly disadvantageous for Andric.
80. The Claimant submits that the amended criteria were also not properly applied. TC's application of the amendments resulted in the two athletes (Andric and Kafadar) becoming tied in terms of their ranking.
81. At the conclusion of Section 5.4.2 (ii) analysis, the Respondent finds that Andric and Kafadar each ranked 5th in their respective divisions.



82. The Claimant contends that this finding, based on the updated criteria, was only possible by removing two higher-ranked individuals from Andric's PATU ranking and ten individuals from Kafadar's Pan Am ranking, which is not appropriate at this stage of the qualification process.
83. The Claimant suggests that the removal of athletes' names from the ranking is typically done when their respective National Sports Organization (NSO) announces the selected athletes. As of now, only the pre-qualified athletes (Top 5) are known, and the selection of others cannot be validated. TC's adjustments involve a series of assumptions and best guesses in removing names from the relative ranking.
84. Implicit in this statement is an acknowledgement that "...removal of names from the ranking is typically done when..." implying that this is a step in the relative ranking process that the Claimant accepts but questions the timing of the implementation.
85. The Claimant submits that the relative ranking for both the F-49kg and F-67kg divisions on the official PATU Instagram page is not equivalent to the TC relative ranking. Specifics of the alleged discrepancy and the significance of the differences, if any, are not presented in the Claimant's submissions.
86. The Respondent disputes the Claimant's contention that the foregoing were amendments to the Section 5.4.2 (ii) criteria. The Claimant has provided no evidence that TC announced "amendments" to the criteria. Rather, the Respondent has explained that what the Claimant describes as amendments are nothing more than the well-established process for determining relative ranking within the sport of Taekwondo.
87. The Respondent explains the Claimant's alleged amendments as follows:
- Amendment #1 is an application of the relative ranking determination process. It is a common practice employed at all WT sanctioned events in order to determine tournament seeding.
  - Amendment #2 is an application of the balance of probabilities approach as a well-established approach used as part of TC's ongoing high performance planning and consultations with the OAG.
  - Amendment #3 is an application of the balance of probabilities approach as a well-established approach used as part of TC's ongoing high performance planning and consultations with the OAG.

- Amendment #4 is an application of the published TKWQS requirements.

88. I agree with the Respondent's contention that "the Claimant is conflating the concepts and principles of absolute versus relative ranking where the selection criteria for this factor clearly states relative ranking will be utilized."

***Section 5.4.2. (iii) Past performance history of the selected athlete. The past performance history will include (but is not limited to) results at past World Championships, WT Grand Prix Series events, Pan American Games, Pan American Championships, and match performance in the Olympic Weight Class.***

89. The Claimant states that Andric and Kafadar have not made the National Team over the past two years and were not able to compete at the specified events enumerated under Section 5.4.2 (iii).
90. Assuming the Claimant is correct, this leaves the "...past performance history will include (but is not limited to) results at past... match performance in the Olympic Weight Class." as the only evidence to be considered under this selection criteria.
91. When considering past performance in the Olympic Weight Class, the Claimant maintains the importance of prioritizing results from National Championships over unspecified International G1 and G2 opens in the context of Taekwondo athlete selection. The Claimant then offers 2022-2023 comparative data for the performance of Andric and Kafadar at the Canadian National Championships and National Team Trials and lists five reasons in support of the contention that Andric is a more suitable selection candidate.
92. The Respondent indicates that, to the contrary, Kafadar has qualified for and competed at a WT Grand Prix event in 2022 as part of a National Team, placing Kafadar within the ambit of the first part of the Section 5.4.2 (ii) criteria as having participated in a specified event.
93. The Claimant makes a number of statements critical of the Respondent's application of the Section 5.4.2 (iii) selection criteria and offers alternative arguments indicating how the Section 5.4.2 (iii) criterion should be applied. The following analysis adopts the numbering sequence used by the Claimant in her submissions and adds the Respondent's reply to each of the Claimant's arguments:

- 3.1 The National Championship and National Team trials should be valued higher than International Opens. The Claimant then goes on to offer a rationale for ranking or prioritizing one category of event over another.
- 3.2 Claimant then provides the results at all 2022 and 2023 National Championship and National Trials events comparing Andric and Kafadar, with the results favouring Andric ahead of Kafadar.

The Respondent states Items 3.1 and 3.2 need to be completely dismissed. The arguments presented are entirely incorrect and not related to the selection criteria itself.

- 3.3 Criteria added to “Determination of Weight Classes for Entry Into the 2024 Pan American Qualification Tournament for Paris 2024 Olympics.” Here, the Claimant objects to the 11-point Olympic Divisions Summary chart (aka Evaluation of past performance history chart) produced by the Respondent, suggesting the chart introduces criteria not previously published and altering the “Pre Qualification Tournament for Paris 2024 Olympic Games” to an altered “Proj. PATU Seed” criteria. The Claimant also challenges the timing of the disclosure.

The Respondent replies that this is a misrepresentation and mischaracterization of the information provided. As clearly outlined under the *Application of the Published INP for Selecting Weight Divisions for Entry into the CQT*, each item in the Respondent’s table is directly related to the chosen evaluation process as exercised under the HPD’s authority to evaluate and compare the eligible divisions.

- 3.4 The Claimant submits several discrepancies are found in the TC 11-point comparison chart. Here the Claimant states that she has not been able to verify the accuracy of the data underlying the comparison chart due to TC’s refusal to disclose the data and formulas used for the calculation. The denial of access to

requested data is contrary to the TC core value of transparency. The Claimant then conducts independent research and has obtained numbers significantly different from those presented by TC. The Claimant also objects to the introduction of the term “Projected PATU ranking” to allow for assumptions and guesses, potentially influencing the exclusion of individuals from the ranking.

The Respondent states that Item 3.4 is a misrepresentation and mischaracterization of the information provided. Andric was provided with her complete athlete results tracking information on Sept. 11, 2023, and again on Oct. 3, 2023. What TC declined to provide was the complete athlete monitoring and tracking database that contains not only performance data but also personal information on many athletes. TC has developed advanced analytical tools and assessment processes that are outlined in this database and are not intended to be widely shared. TC’s HPD did provide the parameters for how the information was collected so that the results could be independently verified.

3.5 Average PATU rank – Average WT Olympic rank of PATU athletes seeded higher in the division. The Claimant submits that Andric has a higher ranking than Kafadar using this criterion, suggesting Andric is likely to achieve even greater success when competing against non-PATU athletes at the Olympic Games.

In reply, the Respondent says Item 3.5 is a misunderstanding of what has been outlined in the Respondent’s submission. While the Claimant is correct in that the average WT Olympic Ranking will invariably be higher for a division that is comparing athletes higher than 44th vs 77th, the averages and overall interpretation are supported by the fact that the F-49kg division would likely only have one Top 20 athlete while the F-67kg would likely have two Top 10 athletes entered. Objectively, this would make it far harder for a Canadian to achieve the necessary Top 2 finish in the F-67kg division as compared to the F-49kg division.

3.6 Points earned in the preceding 12 months fighting the Olympic Weight. Here the Claimant submits the calculations used to determine points earned contain errors. Irrespective of whether the points collection is based on the Olympic Weight divisions or the World Weight divisions that the athletes compete in, Andric has collected significantly more points than Kafadar. The Claimant asserts that Andric should have 71.52 points in row nine of the Olympic Divisions Summary table and not zero.

The Respondent states that Item 3.6 has been addressed through the development process of drafting the selection criteria. Respondent has previously indicated that an important issue that TC and the OAG sought to address was the distinction between World Weight and Olympic Weight event performances: “With these critical distinctions between World Weight and Olympic Weight event performances in mind, and to ensure that TC was in alignment with other associated high performance criteria as well as established Sport Canada and COC policies, it was important to ensure that the published evaluation criteria for the determination of the Olympic divisions for entry into the CQT factored in and distinguished between athletes that opt to fight in World Weight events at the associated Olympic Weight versus those that have accumulated ranking points by choosing to compete at the adjacent World Weight divisions.”

The Respondent has noted elsewhere in its’ submissions that all of Andric’s points were not earned at the F-67kg Olympic Weight, but rather they were earned at the World Weight F-62kg weight category. This criterion is only looking at Olympic Weight points.

3.7 Average loss 1yr \*\*\*\* (Aver. Ranking of opponent that athlete lost to over the current season for Andric). The Claimant contends that the calculations used by TC contain errors. The Claimant selectively collects data and performs calculations supporting Andric’s position. The objection here is not with the criteria itself.

- 3.8 Average loss 1yr \*\*\*\* (Aver. Ranking of opponent that athlete lost to over the current season for Kafadar). The Claimant selectively collects data and performs calculations supporting Andric's position. The objection here is not with the criteria itself.
- 3.9 Average Win 1yr \*\*\*\* (Avg. ranking of the last opponent the athlete defeated in each tournament over the last season) the Claimant submits this criterion is not relevant and is biased. Here, the Claimant simply questions the relevance of this criterion to athlete selection.

The Respondent submits that the Claimant's submissions under Items 3.7, 3.8, and 3.9 are using incorrect ranking information. TC, in contrast, has used the ranking information provided by each event organizer with a list of registered athlete rankings based on the closing date of event registration and event format (i.e., World Weight Ranking vs Olympic Weight Ranking depending on the event). The relevant ranking to compare would be associated with the WT ranking under the event's format.

- 3.10 "Record against notable PATU opponents" and not "Record against all PATU opponents is flawed." The Claimant contends that there are discrepancies in the TC data. Again, the Claimant selectively collects data and performs calculations supporting Andric's position. The objection here is not with the criteria itself.

The Respondent indicates that at no time did the HPD state that "*This was one of the main reasons why Josipa Kafadar was selected over Leonarda Andric.*". As stated, the HPD's evaluation of the divisions has provided a clear indication that the F-49kg, M-58kg, and M+80kg divisions have objectively demonstrated an increased probability and potential to finish Top 2 at the Qualifier after evaluating all factors in their totality.

- 3.11 Camila Bezerra was removed from the list of athletes TC projects who will attend the Pan Am Olympic Qualifier; however, is still included in the list of "Record

Against Notable PATU Opponents.” The nature of the Claimant’s objection is unclear other than to object to a lack of consistency in the data collection and evaluation process.

The Respondent offers a detailed rebuttal of the Claimant’s interpretation of the comparative results of other athletes, such as Bezerra. The Respondent takes the position that the Claimant’s arguments equate to redefining the selection criteria itself. “It is not up to the athlete to write the criteria and determine which events are important and the weight they should be given.”

3.12 Only tracking “Record against notable PATU opponents” and not “Record against all PATU opponents.” The Claimant submits that losses to extremely low-ranked PATU ranking athletes should be listed, as well as losses to high-ranked athletes. The reason for this is that low-ranked people will also be at the Pan-American Olympic Qualifier. Being able to beat lower-ranked athletes is just as important as being able to beat the higher-ranked ones. The point here is that Andric’s results are better than Kafadar’s results when tracking “Record against all PATU opponents.”

The Respondent has indicated that, as noted in the description of the evaluation process for selecting the divisions, while not a determining factor in the decision-making process, an evaluation of the athlete performance tracking database also provided the HPD with a cursory overview of how each of the three athletes have performed in head-to-head matchups against other PATU athletes listed under the relative ranking.

3.13 Summary - Generally, the Claimant argues that it was not specified in the “Pre-Qualification Tournament for Paris 2024 Olympic Games” criteria that all 109 G1 and G2 events in 2022 and 2023 would be a criterion in selecting the athlete and is only loosely covered by using the term “is not limited to” for this selection. This loosely based criterion should not be more important than Criteria #1

(Section 5.4.2 (i)) and Criteria #2 (Section 5.4.2 (ii)), which were clearly stated and not subject to opinion and interpretation.

Respondent submits that entertaining these arguments would equate to redefining the selection criteria itself. It is not up to the athlete to write the criteria and determine which events are important and the weight they should be given, and Section 5.4.2(iii) clearly indicates which events are to be considered (even if the list is not exhaustive). Further, the Respondent has explained why the events over 2022 and 2023 are the only ones being considered (the intervention of COVID-19 in the spring of 2022 and the WT rule changes established for the start of the 2022 competitive season that altered the style of fighting at the high performance level). This provides the most reasonable and fair evaluation across all athletes and all divisions.

94. The Respondent also indicates that, to the contrary, Kafadar has qualified for and competed at a WT Grand Prix event in 2022 as part of a National Team, placing Kafadar within the ambit of the first part of Section 5.4.2 (ii) criteria as having participated in a specified event.
95. In her own defence, the Affected Party Kafadar has filed a submission indicating that she clearly understood the distinction between competing in an Olympic Weight category as opposed to competing in a World Weight category.
96. Kafadar understood that she was required to fight Olympic Weight events to prove a match performance history in the Olympic Weight class. Kafadar indicates that only she has fought in a major international event which ran only Olympic weights, being two Grand Prix events at the Youth Pan-Am Games, and the Pan-American Olympic Qualifier. Andric has competed in two F-67kg events in her career, earning zero medals, while Kafadar has earned four metals in the F-49kg weight class.

## **VI. CONCLUSION**



97. This proceeding started with a Request filed by the Claimant questioning the reasonableness of the interpretation and application of the criteria set out in Section 5 of the *Internal Nomination Procedures – 2024 Olympic Games* (“INP”) by TC’s HPD.
98. My review began with an acknowledgement of the onus and burden of proof under the Code, Section 6.10, with the initial onus on the Respondent to demonstrate that the selection criteria were appropriately established and that the disputed decision was made in accordance with such criteria.
99. I have found that, on a balance of probabilities, TC has demonstrated that the selection criteria were appropriately established by the most knowledgeable and experienced persons available, who have attempted in good faith to produce the best possible outcomes in the particular circumstances for the sport of Taekwondo.
100. A review of the history of the development of the TC selection criteria has highlighted both the difficulty of reconciling two different World Weight and Olympic Weight classes and the importance TC placed in the relative ranking of Olympic Weight ranking results against comparable World Weight ranking results at the same weight class.
101. Additionally, I have found that, on a balance of probabilities, TC has satisfied the second part of the onus and demonstrated that the disputed TC selection decision was made in accordance with the selection criteria as adopted by TC.
102. The onus then shifts to the Claimant to demonstrate on a balance of probabilities that she should have been selected in accordance with the approved criteria.
103. In paragraph 18 of *Browne v Nordiq Canada*, SDRCC 19-0404/05, Arbitrator Fortier made the following summary of the principles in respect of appeals by athletes of team selection decisions:
- 1) Generally, arbitrators should defer to the decisions of the NSOs who are comprised of men and women experienced in the sport in question, highly qualified to exercise good judgment and very knowledgeable about the athletes competing for selection.
  - 2) Only in exceptional situations where bias is proven or the selection process is conducted unfairly or the decision is made in an arbitrary or discriminatory way or in bad faith, should an arbitrator set aside the decision of the NSO.

104. The standard of review in a team selection or carding appeal is that of reasonableness and not correctness. This standard requires the reviewing body to exercise deference to the decision-making body below.
105. Arbitrator Pound cited the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 for the proposition that reasonableness is a deferential standard, concerned with the existence of justification, transparency, and intelligibility within the decision-making process. It is concerned with whether the decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. Deference in the context of a reasonableness standard, therefore, implies that the courts will give due consideration to the determination of decision-makers, recognizing processes and determinations that draw on particular expertise and experiences.
106. In the more recent SCC decision in *Canada v Vavilov*, 2019 SCC 65, the court simplified the process for determining the applicable standard of review. Vavilov abolishes the "contextual" approach prescribed by Dunsmuir, noting this analysis is overly complex and has often overshadowed a review of the merits of the actual decision. Instead, the presumption in all cases is that the more deferential "reasonableness" standard should apply, unless the legislature has expressly prescribed a different standard of review by statute, or the issue on judicial review falls into one of three categories which call for less deference to be shown: constitutional questions, general questions of law that are important to the legal system as a whole, and the jurisdictional boundaries between administrative bodies.
107. As I have indicated previously in these reasons, I find that the Claimant's submissions have sent conflicting messages.
108. The Claimant has agreed that the selection criteria were appropriately established. No evidence was tendered by the Claimant challenging the creation of the selection criteria or the credentials of the persons involved in the process of establishing the criteria.
109. At alternate points in the Claimant's submissions, the Claimant has:
- 1) Disagreed with the result as erroneous due to errors in the collection and/or the evaluation of the data.
  - 2) Challenged the ordered weight given to various criteria.

- 3) Submitted alternative data that supports the Claimant and emphasizes criteria favourable to the Claimant.
  - 4) Openly advocated for measures or interpretations which would change the selection criteria entirely.
  - 5) Pleaded a lack of transparency on the part of the TC and the HPD in failing to fully disclose data requested by the Claimant.
110. In many instances, what the Claimant describes as errors in the collection and/or evaluation of data is really nothing more than an argument that the Claimant does not agree with the data collected by TC and the HPD and a preference for alternative data that supports the Claimant.
111. The Respondent has answered each of the criticisms raised by the Claimant to my satisfaction.
112. It is noteworthy that the same selection criteria and methodology were used to select the F-49kg, M-58kg, and M+80kg divisions.
113. I find on the evidence before me that the Claimant has failed, on a balance of probabilities, to establish that the Claimant should have been selected in accordance with the approved criteria. The decision of TC and the HPD is reasonable and based on a chain of analysis that is coherent and rational and is justified in relation to the relevant facts and the laws applicable to the decision-making process.

## **VII. DECISION**

114. I find in favour of the Respondent. I have, therefore, denied the Claimant Andric's claim. I confirm the Respondent's selection of the female weight class of F-49kg and athlete Josipa Kafadar to represent Canada at the CQT.

Signed this 11<sup>th</sup> day of January 2024.



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James Minns, Arbitrator