

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

**NO: SDRCC 24 – 0709/0710
(ORDINARY TRIBUNAL)**

**KIARA LYLYK
(Claimant)
VANESSA MONTRICHARD
(Claimant)
AND
CYCLING CANADA CYCLISME
(Respondent)
AND
DEVANEY COLLIER
LILY PLANTE
ANIKA BRANTS
NGAIRE BARRACLOUGH
JENNA NESTMAN
SKYLAR GOUDSWAARD
(Affected parties)**

Before:

James Minns (Mediator/Arbitrator)

Appearances and Attendances:

For the Claimants: Kiara Lylyk (Athlete)
 Heather Lylyk (Representative for Kiara Lylyk)
 Vanessa Montrichard (Athlete)
 Cyril Montrichard (Representative for Vanessa Montrichard)

For the Respondent: Kris Westwood (Representative)
Dan Proulx (Representative)

For the Affected Party: Devaney Collier (Athlete)
Michael Foley (Representative for Devaney Collier)

DECISION WITH REASONS

I. INTRODUCTION

1. This is my Decision With Reasons pursuant to the 2023 Canadian Sport Dispute Resolution Code (October 1, 2023) (“the Code”). I have previously rendered a short Decision on March 24, 2024.
2. On March 15, 2024, the Claimant, Kiara Lylyk (“Lylyk”), submitted a Request—Ordinary Tribunal, under Section 6.1 of the Code, to initiate an appeal following the release of the Respondent, Cycling Canada’s (“CC”), team selection decisions for track endurance disciplines on March 7, 2024. Lylyk has questioned the reasonableness of the interpretation and application of the team selection criteria set out in the *Cycling Canada 2024 Track Endurance Selection Policy (Final published Feb. 16, 2024)*.
3. Lylyk has appealed CC's March 7, 2024, team selection decisions for both the Pan American Championship (Pan Am Championship), to be held in Los Angeles, USA, from April 4-8, 2024, and the Milton Nations Cup III (Milton Nations Cup) to be held in Milton, CAN, from April 12-14, 2024.
4. Lylyk was named to the Pan Am Championship Team Pursuit Team but not as a starter for any of the bunch races (Madison, Omnium, Points Race, Scratch Race, or Elimination Race).
5. On March 15, 2024, the Claimant, Vanessa Montrichard (“Montrichard”), submitted a Request - Ordinary Tribunal, under Section 6.1 of the Code, to initiate an appeal following the release of the Respondent, Cycling Canada’s team selection decisions for track endurance disciplines on March 7, 2024. Montrichard has questioned the reasonableness of

the interpretation and application of the team selection criteria set out in the *Cycling Canada 2024 Track Endurance Selection Policy (Final published Feb. 16, 2024)*.

6. Montrichard is a cyclist who competes in track endurance disciplines. She has appealed CC's March 7, 2024, team selection decisions for both the Pan Am Championship to be held in Los Angeles, USA, from April 4-8, 2024, and the Milton Nations Cup III to be held in Milton, CAN, from April 12-14, 2024. Montrichard was not selected for either event.
7. Following a jurisdictional review hearing on March 21, 2024, Arbitrator Pound determined that the Lylyk and the Montrichard appeals would be heard together in a med/arb process.
8. On March 21, 2024, the Sport Dispute Resolution Centre of Canada ("SDRCC") appointed me through its rotating list to act as a neutral Mediator/Arbitrator under Article 6 of the Code to hear the appeals brought by Lylyk and Montrichard.
9. All parties agreed that the two appeals must be resolved by March 25, 2024, the beginning of the preparation camps for both the Pan Am Championship and the Milton Nations Cup events.

II. PROCEDURE

10. The parties to these two appeals elected to proceed by way of a mediation/arbitration ("med/arb") proceeding, with both the mediation and the arbitration to be conducted by way of oral hearings on the Zoom platform.
11. The representatives of Lylyk and Montrichard attended the mediation and arbitration, but the claimants, Lylyk and Montrichard, themselves did not attend. I draw no adverse inference from their decision not to attend the proceedings in person. Both Claimants were ably represented by a parent representative who I am satisfied had the authority to settle the disputes without consulting anyone not present.
12. Respondent CC's High-Performance Director, Kris Westwood, and Head Coach, Dan Proulx, represented CC during the mediation and arbitration.
13. Lylyk delivered a Request-Ordinary Tribunal under Section 6.1 of the Code, in which she identified Devaney Collier ("Collier"), Lily Plante ("Plante"), Ngaire Barraclough ("Barraclough"), and Anika Brants ("Brants") as potentially affected parties.
14. Montrichard delivered a Request-Ordinary Tribunal under Section 6.1 of the Code, in which she identified Collier, Plante, Jenna Nestman ("Nestman"), Brants, Barraclough and Lylyk as potentially affected parties.

15. Respondent CC delivered an Answer-Ordinary Tribunal under Section 6.4 of the Code, in which CC identified Collier, Plante, Brants, Barraclough, Nestman, and Skylar Goudswaard (“Goudswaard”) as potentially affected parties.
16. SDRCC sent an email letter on March 21, 2024, to all of the potentially affected parties identified by Lylyk, Montrichard and the CC, as indicated above. The letter advised the potentially affected parties that they had been named as potentially affected parties and provided information regarding their right to participate under the Code as an Affected Party. The potentially affected parties were advised that if they wished to participate, they would have to complete and submit an Intervention Form (103.e) available on the SDRCC website.
17. The only potentially affected party to complete and file an Intervention Form (103.e) was Collier.
18. Collier attended the mediation hearing in person but was not available to attend the arbitration hearing. Michael Foley (“Foley”) represented Collier during the mediation and the arbitration hearings.
19. None of the other potentially affected parties filed an Intervention Form (103.e), and none attended the mediation or arbitration.
20. During a Preliminary Meeting conducted on March 22, 2024, a schedule was established for the filing of written submissions from each of the parties. Montrichard was late in filing a submission and was the last to do so. Montrichard continued to submit further revised written submissions until the morning of March 23, 2024. On consent, the mediation and arbitration proceeded on the basis of the 3rd and final written submission from Montrichard received on the morning of March 23, 2024.
21. During the med/arb proceeding and in her written submissions, Lylyk abandoned her appeal of the Milton Nations Cup team selection decision. Her appeal proceeded only to address the Pan Am Championship team selection decision.
22. During the med/arb proceeding and in her third and final written submission, Montrichard abandoned her appeal of the Pan Am Championship team selection decision. Her appeal proceeded only to address the Milton Nations Cup team selection decision.
23. In her third and final submission, Montrichard specifically named Nestman and Goudswaard as the two potentially affected athletes whose selection she was contesting on appeal.

24. The mediation of the Lylyk and Montrichard appeals took place jointly on the morning of March 23, 2024. The parties were not able to reach a full and final resolution of all of the issues on either appeal. However, they were able to narrow the issues by reducing the events for which they were contesting the team selection, as indicated above. It was resolved that the balance of the issues subject to appeal should proceed to arbitration during the afternoon of March 23, 2024.
25. The arbitration of the Lylyk and Montrichard appeals took place jointly on the afternoon of March 23, 2024, using the Zoom platform.
26. At roughly 4:00 p.m. in the afternoon, during the course of the arbitration, the potentially affected party, Goudswaard, requested entry to the Zoom meeting and asked to participate in the arbitration.
27. Goudswaard's request to participate was based on her just learning that Montrichard had specifically named her as a targeted, potentially affected party in the third Montrichard written submission.
28. Goudswaard acknowledged that she had received the email notice from SDRCC indicating that she had been named as a potentially affected party. She acknowledged that she had not filed an Intervention Form (103.e). Goudswaard could offer no explanation for her failure to participate in the appeal proceedings other than to say that she did not think she would be affected.
29. Foley, Collier's representative, was present throughout the mediation and arbitration proceedings. He graciously offered to serve as Goudswaard's unofficial representative for the balance of the arbitration hearing.
30. After consulting with the parties, I decided not to allow Goudswaard to attend the balance of the arbitration on Zoom. It was very late in the day, and I deemed it too disruptive of the proceedings and unfair to the other parties in attendance and to the other potentially affected parties who had elected not to attend. Goudswaard was then excluded from the balance of the hearing.
31. With the parties' consent, the arbitration proceeded based on the entry into evidence of the documentary record of all of the Party Filings located on the SDRCC Case Management Portal website under file 24-0709/0710.

III. ONUS OF PROOF

32. 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. TEAM SELECTION CRITERIA

33. The relevant CC team selection criteria are found in the *2024 Track Endurance Selection Policy, Final published Feb. 16, 2024*, as follows:

Pan American Championship Team Selection Criteria

Project	Pan American Track Championships
Prep camp dates:	March 25-29
Departure date:	March 30
Competition dates:	April 3-7
Location:	Los Angeles, USA
Objective:	The intent is to use this event for athlete development. However, it may be necessary to enter Performance teams in the Team Pursuits and/or the other events, based on coach assessment of Canada’s Olympic and World Championship qualification status. This assessment will be made upon the completion of Nations Cup II (March 18, 2023).
Min. team size:	4 women plus 1 alternate 4 men plus 1 alternate
	1 non-travelling alternate may be nominated for each team. If nominated, this athlete will attend the selection camp but will not travel to the competition.

	<i>Cycling Canada reserves the right to increase, decrease or reconfigure the team size per Clause 5 of the General Selection Policy.</i>
Selection dates:	<ul style="list-style-type: none"> • March 5 – Coach Panel submits recommendations to Head Coach and DHPS • March 7 – Selection decision made; athletes informed; appeal period starts* • March 15 – Appeal deadline; selections final <p>* Anyone not named in the selection decision must appeal by the deadline or they lose their right to appeal.</p>
Selection panel:	<p>Selection recommendation made by:</p> <ul style="list-style-type: none"> • Cycling Canada Track Endurance Coach Panel (see CC website) <p>Selection decision made by:</p> <ul style="list-style-type: none"> • Head Coach – Dan Proulx • Director of High Performance Services – Kris Westwood
Eligibility:	<p>Per UCI rule 3.2.001, riders must be at least 18 years old on Dec. 31, 2024. Any rider representing Canada must participate in the full preparation camp prior to each event they will compete in (see camp dates above and the Appendix).</p> <p>If Cycling Canada chooses a development focus for this event, priority will be placed on U23 and second-year junior athletes (born 2002-2006).</p>
Selection criteria:	<p>Cycling Canada reserves the right to modify the selection criteria for these events based on an overarching strategy to support medal winning performances and support Cycling Canada’s qualification strategies for the 2024 Olympic Games and 2024 Elite Track World Championships.</p>

Team Pursuit**Development**

If Cycling Canada chooses a Development focus for the team pursuit, the team will be selected using the same criteria as the Nations Cup III Development Team.

Performance

If Cycling Canada chooses a Performance focus for the team pursuit, the team will be selected using the same criteria as the Nations Cups I and II Performance Teams.

Per Clause 3 of the General Selection Policy, the starting composition for each competition round shall be determined on site by the coach of that event.

Bunch Races

To be considered for selection, results must be achieved between Jan. 1, 2023, and the applicable selection date. Results must be in the top half of athletes registered for the event.

Based on the coaches' expert assessment of Canada's qualification status for the Olympic Games and World Championships after Nations Cup II, Cycling Canada will determine whether to place a Development or Performance focus on each of the bunch races.

For bunch races with a Development focus, starters and up to 1 alternate for each event will be selected in the following order of priority:

1. The top-ranked athlete from among riders selected to the Team Pursuit* on the UCI ranking in that discipline on the selection date;
2. The best result in that discipline in World Championships or Nations Cups from among riders selected to the Team Pursuit*;
3. The 2024 Canadian champion in that discipline from among riders selected to the Team Pursuit*;
4. Riders born 2005-2006 who finished top 8 in the Individual Pursuit, Omnium, Madison, Elimination Race, Points Race or

	<p>Scratch Race at the 2023 UCI Junior World Championships, from among riders selected to the Team Pursuit*.</p> <p>5. Coach Panel discretion considering Clause 3 of the General Selection Policy.</p> <p>For bunch races with a Performance focus, starters and up 1 alternate for each event will be selected from among riders entered in the Team Pursuit* in the following order of priority:</p> <ol style="list-style-type: none"> 1. Top 8 finisher at the Elite UCI World Championships. 2. Top 8 finisher at a UCI Nations Cup 3. Top 12 finisher at the Elite UCI World Championships 4. Top 12 finisher at a UCI Nations Cup 5. Coach Panel discretion considering Clause 3 of the General Selection Policy. <i>Any ties will be broken by best individual result. If there is still a tie it will be broken by Coach Panel discretion.</i> <p>Up to 2 Individual Pursuit starters and 1 alternate will be selected from among riders selected to the Team Pursuit* in the following order of priority:</p> <ol style="list-style-type: none"> 1. Fastest Individual Pursuit time in training or competition between Jan. 1, 2023 and the applicable selection date 2. Coach Panel discretion considering Clause 3 of the General Selection Policy. <p>* This provision does not apply if Canada enters a Development Team Pursuit Team in the Pan Am Championships: in that case, Canada may enter athletes in these events who were not selected to the Team Pursuit Team.</p>
Self-funding:	Athletes are responsible for project fees and certain costs as outlined in the Athlete Fees Policy published on the Cycling Canada website. These costs will be communicated to the athlete at the time of selection. All outstanding project fees must be paid prior to the beginning of the project.

Milton Nations Cup Team Selection Criteria

Project	Track Nations Cup I	Track Nations Cup II	Track Nations Cup III
Prep camp dates:	Jan. 11-25 (WTE and MTE)	Feb. 22-March 7	March 27-April 11
Departure date:	Jan. 26	March 8	No travel required
Competition dates:	Feb. 2-4	March 15-17	April 12-14
Location:	Adelaide, AUS	Hong Kong, CHN	Milton, CAN
Objective	Performance (Olympic qualification points)	Performance (Olympic qualification points)	Development; Performance (Olympic qualification points)
Team size:	4 women plus 1 alternate 4 men plus 1 alternate	4 women plus 1 alternate 4 men plus 1 alternate	Development Teams: 4 women plus 1 alternate 4 men plus 1 alternate Performance Teams: 4 women plus 1 alternate 4 men plus 1 alternate
	<p>1 non-travelling alternate may be nominated for each team. If nominated, this athlete will attend the selection camp but will not travel to the competition.</p> <p><i>Cycling Canada reserves the right to increase, decrease or reconfigure the team size per Clause 5 of the General Selection Policy.</i></p>		
Selection dates:	<p>Track Nations Cup I – Performance</p> <ul style="list-style-type: none"> • Dec. 18 – Coach Panel submits recommendations to Head Coach and DHPS • Dec. 20 – Selection decision made; athletes informed; appeal period starts* • Dec. 27 – Appeal deadline; selections final <p>Track Nations Cup II – Performance</p> <ul style="list-style-type: none"> • Feb. 6 – Coach Panel submits recommendations to Head Coach and DHPS 		

	<ul style="list-style-type: none"> • Feb. 8 – Selection decision made; athletes informed; appeal period starts* • Feb. 16 – Appeal deadline; selections final <p>Track Nations Cup III – Performance Team Pursuit Team</p> <ul style="list-style-type: none"> • Feb. 20 – Coach Panel submits nominations to Head Coach and DHPS • Feb. 22 – Selection decision made; athletes informed; appeal period starts* • March 1 – Appeal deadline; selections final <p><i>Note: Cycling Canada reserves the right to not enter a Performance team in this event. The final decision will be made after Nations Cup II based Canada’s Olympic qualification ranking.</i></p> <p>Track Nations Cup III – Development Team Pursuit team, and all Bunch Races</p> <ul style="list-style-type: none"> • March 5 – Coach Panel submits recommendations to Head Coach and DHPS • March 7 – Selection decision made; athletes informed; appeal period starts* • March 15 – Appeal deadline; selections final <p>*Anyone not named in the selection decision must appeal by the deadline or they lose their right to appeal.</p>
Selection panel:	<p>Selection recommendation made by:</p> <ul style="list-style-type: none"> • Cycling Canada Track Endurance Coach Panel (see CC website) <p>Selection decision made by:</p> <ul style="list-style-type: none"> • Head Coach – Dan Proulx • Director of High Performance Services – Kris Westwood

<p>Eligibility</p>	<p>Per UCI rule 3.2.001, riders must be at least 18 years old on Dec. 31, 2024. Any rider representing Canada must participate in the full preparation camp prior to each event they will compete in (see camp dates above and the Appendix).</p> <p>Per UCI rule 3.4.004, to be considered for bunch events (Omnium, Madison, Scratch Race, Elimination Race, Points Race) athletes must have 250 UCI points in that discipline six weeks before the first Nations Cup or in the latest update to the UCI ranking on the registration date. U23s and second-year juniors (athletes born 2002-2006) are prioritized for the Development Team at the Milton Nations Cup per the criteria below.</p>
<p>Selection criteria:</p>	<p>Cycling Canada reserves the right to modify the selection criteria for these events based on an overarching strategy to support medal winning performances and support Cycling Canada’s qualification strategies for the 2024 Olympic Games and 2024 Elite Track World Championships.</p> <p>Team Pursuit</p> <p>Performance Team (Nations Cups I and II; a decision on whether to enter a Performance Team in Nations Cup III will be made after Nations Cup II)</p> <p>The Coach Panel shall recommend, based on its expert opinion, a Team Pursuit composition of 4 starters and 1 alternate that has the highest potential to achieve the team’s target time or result in competition. In determining the team composition, the Coach Panel shall assess each rider’s ability to contribute to the team’s performance based on the following factors:</p> <ul style="list-style-type: none"> • Suitability to specific positions; • Ability to deliver team strategy at target pace; • Tactical and technical ability. • Other Factors listed in Clause 3 of the General Selection Policy may also be considered. <p>It is understood that the team composition shall reflect a unique</p>

combination of riders who fulfill specific positions and workload distributions that combine to achieve the best team performance. In some cases, a strong individual rider may not be recommended to the team because their characteristics and abilities do not mesh effectively with the recommended team composition.

In the event of a selection appeal in Team Pursuit, all riders recommended to the team shall be named as affected parties in the appeal as any change to the team composition may require a change to other rider's positions or workload distribution for the event.

To be considered for selection, performances and results in training or competition must be achieved between Jan. 1, 2023, and the applicable selection date. Any training session that is led by a Cycling Canada National Team coach may be used to inform selection recommendations made by the Coach Panel.

Cycling Canada reserves the right to explore different combinations, positions, and workload distribution strategies to maximize the long-term progression of the Team Pursuit and capitalize on each athlete's unique characteristics. This may include upgrading an alternate to the starting lineup in training or competition based on coach assessment of team and individual performance in preparation for an event or during the event. This may also include selecting new riders that have demonstrated, in training or racing, the potential to improve the team's time based on the expert opinion of the Coach Panel.

Per Clause 3 of the General Selection Policy , the starting composition for each competition round shall be determined on site by the coach of that event.

Development Team (Nations Cup III)

Canada will enter a development Team Pursuit team for both women and men at the Milton Nations Cup, with priority placed on U23 and second-year junior athletes (born 2002-2006).

The Coach Panel shall recommend, based on their expert opinion, a Team Pursuit composition of 4 starters and 1 alternate. Riders will be considered in the following order of priority:

1. Riders born 2005-2006 who finished top 8 in the Individual Pursuit, Omnium, Madison, Elimination Race, Points Race or Scratch Race at the 2023 UCI Junior World Championships.
2. Riders born 2002-2006 who achieved the Elite A or B time standard* in the Individual Pursuit between Jan. 1, 2023, and the selection date.
3. Riders born 2001 or earlier who achieved the Elite A time standard* in the Individual Pursuit between Jan. 1, 2023, and the selection date.
4. Riders born 2001 or earlier who achieved the Elite B time standard* in the Individual Pursuit between Jan. 1, 2023, and the selection date.
5. Coach Panel discretion based on an overall assessment of results by eligible riders in the 500m/1,000m time trial, Individual Pursuit and Omnium at the 2024 Elite Canadian Track Championships.
6. Coach Panel discretion based on Other Factors listed in Clause 3 of the General Selection Policy.

** Given the changes to the track time standards published on Oct. 17, 2023, the Coach Panel may consider performances that met the standards in place prior to that date, providing the athlete has demonstrated continual progression towards the new standards since they met the original standard.*

It is understood that the team composition shall reflect a unique combination of riders who fulfill specific positions and workload distributions that combine to achieve the best team performance. In some cases, a strong individual rider may not be recommended to the team because their characteristics and abilities do not mesh effectively with the

recommended team composition.

In the event of a selection appeal in Team Pursuit, all riders recommended to the team shall be named as affected parties in the appeal as any change to the team composition may require a change to other rider's positions or workload distribution for the event.

To be considered for selection, performances and results in training or competition must be achieved between Jan. 1, 2023, and the applicable selection date. Any training session that is led by a Cycling Canada National Team coach may be used to inform selection recommendations made by the Coach Panel.

Cycling Canada reserves the right to explore different combinations, positions, and workload distribution strategies to maximize the long-term progression of the Team Pursuit and capitalize on each athlete's unique characteristics. This may include upgrading an alternate to the starting lineup in training or competition based on coach assessment of team and individual performance in preparation for an event or during the event. This may also include selecting new riders that have demonstrated, in training or racing, the potential to improve the team's time based on the expert opinion of the Coach Panel.

Per Clause 1 of the General Selection Policy, the starting composition for each competition round shall be determined on site by the coach of that event.

Bunch Races

To be considered for selection, results must be achieved between Jan. 1, 2023, and the applicable selection date. Results must be in the top half of athletes registered for the event.

If Canada does not qualify in any of these events or the event is not part of the event racing program, that position will not be filled.

Omnium and Madison:

1. Up to 1 Omnium starter and 1 alternate and 2 Madison starters and 1 alternate will be selected from among athletes named to the Team Pursuit* in the following order of priority for each respective event: Athletes finishing top 8 in that event at the Elite UCI World Championships.
2. Athletes finishing top 8 in that event at a UCI Nations Cup
3. Athletes finishing top 12 in that event at the Elite UCI World Championships
4. Athletes finishing top 12 in that event at a UCI Nations Cup
5. Coach Panel discretion considering Clause 3 of the General Selection Policy. *Any ties will be broken by best individual result. If there is still a tie it will be broken by Coach Panel discretion.*

Scratch Race, Points Race, and Elimination Race (if they are part of the competition program):

1 starter and 1 alternate per event will be selected from among riders selected to the Team Pursuit* in the following order of priority:

1. The 2023 Continental Champion in that discipline
2. The top Canadian on the UCI ranking in that discipline on the selection date
3. The best result in that discipline in World Championships or Nations Cups

Coach Panel discretion considering Clause 3 of the General Selection Policy.

* This provision does not apply to Nations Cup III if Canada does not enter a Performance Team Pursuit Team in that event: in that case, Canada may enter athletes in the bunch races who were not selected to the Team Pursuit teams. In addition, if there are no athletes within the Team Pursuit selection who have the requisite points for one or more bunch events, Cycling Canada reserves the right to add one or more eligible athletes to the selection to ensure representation in all the events Canada has qualified for.

Costs:	Athletes are responsible for project fees and certain costs as outlined in the Athlete Fees Policy published on the Cycling Canada website. These costs will be communicated to the athlete at the time of selection. All outstanding project fees must be paid prior to the beginning of the project.
--------	--

V. ANALYSIS

Have the team selection criteria for Pan Am Championship and Milton Nations Cup events been appropriately established?

34. I now turn to consider the first part of *Code Section 6.10*, which requires the Respondent to satisfy the onus of proof that the team selection criteria for the Pan Am Championship and the Milton Nations Cup events have been appropriately established.
35. I can do no better than repeat the Respondent’s submissions, which provide a history of the evolution and pedigree of the CC team selection criteria adopted to establish the *2024 Track Endurance Selection Policy, Final published Feb. 16, 2024*.
36. CC’s *Track Endurance Selection Policy* was drafted by members of the Coach Panel (Laura Brown, Phil Abbott), CC Head Coach Dan Proulx, and CC Director of High Performance Services Kris Westwood.
37. This policy went through multiple iterations based on changes to international calendars, CC budgets, and feedback from coaches, staff, and the CC High Performance Committee.
38. Of note, the criteria's intent was to balance CC’s qualification to and performance at the 2024 Olympic Games while providing development opportunities for athletes who are likely to be in contention to represent Canada at the 2028 Olympic Games in Los Angeles.
39. Given Canada’s qualification status has been evolving throughout the season, the criteria needed to account for multiple scenarios—including unforeseen ones—while remaining as objective as possible.

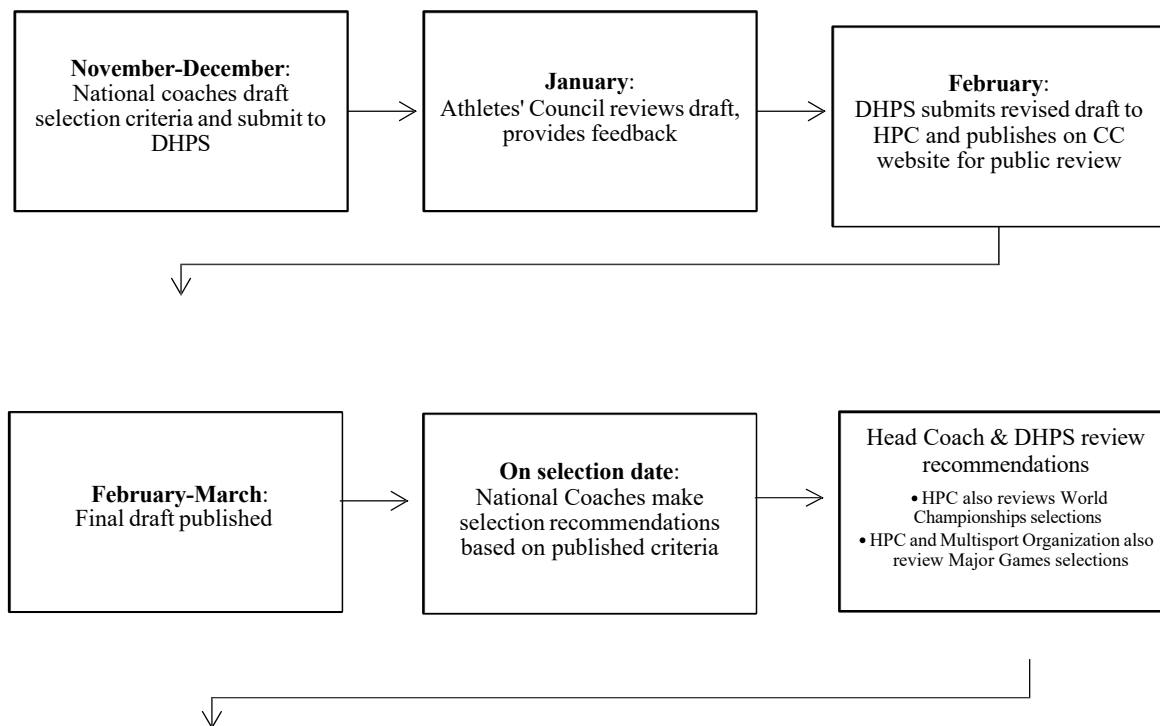
40. Each significant update to the policy was submitted to the CC Athletes' Council and High Performance Committee for review and published on the CC website. The criteria remained in draft form until Feb. 16, 2024.
41. The first published draft of the policy (V9) was posted to the CC website on Oct. 26, 2023.
42. This draft was subsequently updated, and V10 was posted to the CC website on Jan. 5, 2024. This draft incorporated changes in selection priority based on feedback from coaches and athletes, in particular, adding a window for athletes older than U23 to be selected for development-focused projects.
43. This draft also pushed the selection date for the Pan Am Championships and the development team for the Milton Nations Cup from Jan. 16 to March 19 so that rankings after the Hong Kong Nations Cup could be taken into consideration.
44. A further update, V11, was posted to the CC website on Jan. 24, 2024. This draft corrected a missing reference to the Canadian Championships and added the opportunity for performances meeting time standards published prior to October 2023 to be considered.
45. The final version was posted to the CC website on Feb. 16, removing the DRAFT watermark. This version reflected the cancellation of the Hong Kong Nations Cup project (due to budget limitations). It advanced the selection deadline for the Pan Am Championships and the development team for the Milton Nations Cup to March 5, 2024, to give athletes more time to prepare, but still occurring after the Ontario and Quebec provincial championships to ensure athletes had an opportunity to meet the time standards at those events.
46. Based on the above, CC contends the track endurance selection policy was appropriately established.
47. The Party Filings folder on the SDRCC Tribunal portal contains numerous emails and email chains of correspondence passing back and forth between the Claimants, their representatives, the athlete representatives (Collier and Foley), the Athletes Council, the CC coaching staff, the CC Head Coach, and the CC High Performance Director. All of this correspondence pertains to the evolution of the different iterations of the team selection criteria.

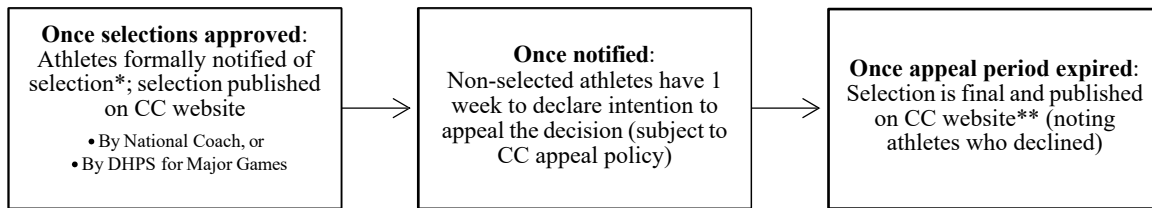
48. After reviewing the email correspondence, I am satisfied that the Claimants were given ample opportunity to ask questions, provide feedback on the selection criteria, and fully express their concerns during the development of the team selection criteria.
49. In their submissions, the Claimants have raised two issues challenging the process for the development of the team selection criteria as follows:
- a. The Claimants have questioned the timing, the length of time taken to complete the process, and the number of iterations of the team selection criteria;
 - b. The Claimants have raised an allegation of bias and a conflict of interest regarding the role played by the athlete representative, Collier, in developing the team selection criteria.

The timing of the development of the team selection criteria

50. Turning to the CC’s *General Selection Policy, Updated Nov. 6, 2023*, we find a chart which maps out the timeline for the development and implementation of the team selection process as follows:

Cycling Canada Selection process:





51. The Claimants have complained that the schedule and timing of the release of draft versions of the team selection criteria have left athletes with little time to provide feedback and /or adjust their individual development strategies to comply with the evolving criteria.
52. CC acknowledges that the numerous revisions to the criteria were unfortunate, but changes were needed to incorporate athlete and coach feedback and reflect changes to Cycling Canada programming. Up to Feb. 16, 2024, it was clear the criteria were in draft form and subject to change.
53. I am satisfied that CC established a working schedule of events and followed it once adopted to develop, adjust, and implement a team selection criterion while considering feedback from athletes, coaches, the Athlete’s Council, and the High Performance Committee.
54. Comparing the time taken to develop a *Junior Track Selection Policy* to the time taken to develop the *Track Endurance Selection Policy* is not relevant. The greater time spent and the greater number of iterations of the *Track Endurance Selection Policy* only demonstrate the efforts taken to accommodate the feedback from all interested sources.
55. The Claimants have failed to demonstrate how the timing of events was to their prejudice such that the team selection outcome might have been different under different circumstances.
56. Like most sports, endurance cycling is subject to constant flux, particularly during a quadrennial Olympic year. I find nothing extraordinary in the timing of the decision-making process and the implementation of a team selection criterion.

Allegations of bias and conflict of interest

57. Both Claimants have alleged that the potentially affected party, Collier, was in a conflict of interest during her performance as an athlete representative, resulting in

a biased decision-making process. Both Claimants have asked that Collier be eliminated from Team Pursuit Team selection and disqualified from selection to the various endurance cycling events at the Pan Am Championship and the Milton Nations Cup.

58. Athletes elect athlete representatives to serve a two-year term as their representative to the Athletes' Council. The Athletes' Council ("AC") is a group of elected athlete representatives from Olympic, Paralympic, and non-Olympic cycling disciplines that functions as a conduit between National Team athletes and CC. AC exists to promote and protect athletes' rights and interests and ensures effective and ongoing communication between CC, athletes, and disciplines.
59. The *General Selection Policy, Updated Nov. 6, 2023*, under section 8, provides a definition of conflict of interest as follows:

8. CONFLICT OF INTEREST

Anyone with decision-making authority must declare any potential real or perceived conflicts of interest prior to participating in a selection decision. This declaration will be reflected in the meeting notes related to the selection decision.

Anyone with personal coaching or financial relationships (e.g. grants, sponsorships or business collaborations) with an athlete in consideration for selection must recuse themselves from that selection decision.

Individuals who have recused themselves may be consulted prior to a decision, but may not take part in the decision.

For more information please see Cycling Canada's Conflict of Interest Policy and Coach Panel document.

60. Collier was an athlete representative. She did not have decision-making authority at any stage of developing or implementing the team selection criteria.
61. Collier was and is an athlete. In performing her duties as an athlete representative, she will, almost by definition, have an interest in the rights and interests of the athletes she represents. That does not place her in a conflict of interest.
62. Considering the specific allegations of bias and conflict of interest regarding Collier's role in developing the team selection criteria, the email correspondence provided by the parties shows that she diligently relayed information from all

parties, including the Claimants, and involved the other track cycling athlete representative (Foley) and other members of the Athletes' Council in providing her feedback to Cycling Canada.

63. CC submits that it received feedback on the team selection criteria from many parties, much of it conflicting, and no one party had a disproportionate influence on any changes. For example, the change to allow athletes to qualify by meeting the time standards that were in place prior to October 2023 was based on feedback from Heather Lylyk, the Claimant's representative in this appeal.
64. The Claimants have failed to tender any evidence to show that Collier acted in any manner to promote her personal interests over those of her fellow athletes. To the contrary the email evidence demonstrated that Collier was a strong advocate in communicating the concerns, feedback and interests of her fellow athletes as regards the team selection criteria. The Claimants admitted as much in their submissions during the arbitration in offering praise for Collier's efforts on their behalf.
65. I find that Collier was not in a conflict of interest and that there was no evidence of bias on the part of Collier or CC in the development and implementation of the endurance team selection criteria.
66. Based on the foregoing, I am satisfied that on a balance of probabilities, CC has demonstrated that the team selection criteria for the Pan Am Championship and the Milton Nations Cup events were appropriately established by the most knowledgeable and experienced persons available, with open consultation with the athletes and their representatives, all of whom have attempted in good faith to produce the best possible team selection criteria in the particular circumstances for the sport of endurance cycling.

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

67. I now turn to consider whether the Pan Am Championship team selection decisions concerning Lylyk have been made in accordance with the approved team selection criteria and policy. This is the second part of the Code, Section 6.10: the onus is on

the Respondent to demonstrate that the selection decisions were made in accordance with the selection criteria.

68. The evidence indicates that CC selected the Pan Am Championships team using the following process:

- 1) The Coach Panel (Laura Brown, Phil Abbott, and Franck Durivaux) compiled the information regarding selection and met by email to finalize the selection recommendations, which were submitted to the Head Coach and Director of High Performance Services (“DHPS”) on March 5, 2024.
- 2) The Head Coach and DHPS reviewed and approved the recommendations.
- 3) The selections were communicated to the athletes and published on the CC website on March 7, 2024.

69. Following the team selection criteria and team selection policy, for the reasoning as noted below, CC nominated the following athletes from among the athletes nominated to the Team Pursuit Team for the Pan Am Championship:

- 1) Madison: Collier (Priority 1: top-ranked rider on the UCI ranking) and Plante (Priority 2: best Canadian result in a Nations Cup)
 - i. Alternate: Barraclough (Priority 3: Canadian champion)
- 2) Omnium: Collier (Priority 1: top-ranked rider on the UCI ranking) Alternate: Barraclough (Priority 3: Canadian champion)
- 3) Points: Plante (Priority 1: top-ranked rider on the UCI ranking) Alternate: Brants (Priority 4: top-8 finisher in a bunch race at junior world championships)
- 4) Scratch: Plante (Priority 1: top-ranked rider on the UCI ranking)
 - i. Alternate: Lylyk (Priority 3: Canadian champion)
- 5) Elimination: Collier (Priority 1: top-ranked rider on the UCI ranking)
 - i. Alternate: Brants (Priority 4: top-8 finisher in a bunch race at junior world championships)

70. CC maintains that it followed its team selection criteria and policy in naming athletes to the bunch races and that Lylyk did not meet the higher priority criteria for any of these events than the athletes who were selected from amongst the Team Pursuit Team.

71. Regarding the Pan Am Championship team selections, I am satisfied, on a balance of probabilities, that CC's selection decisions followed the team selection process, criteria, and policy as adopted by CC for that purpose.

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.

72. I now turn to consider whether Lylyk has demonstrated that she should have been selected in accordance with the approved Pan Am Championship team selection criteria and policy. Under the *Code, Section 6.10*, the onus now shifts to Lylyk to demonstrate that she should have been selected.

73. In a revised appeal submission received on March 22, 2024, Lylyk alleges that CC failed to follow the team selection policy for the Team Pursuit bunch racing for the Pan Am Championship for the following reasons for appeal:

- 1) CC failed to follow the selection policy for the Team Pursuit bunch racing for the Pan Am Championship.
- 2) CC made a biased decision when writing the criteria and selecting athletes.
- 3) The project objective is to develop U23 athletes, yet no U23 athletes were selected to bunch race at the Pan Am Championship.

74. I have previously addressed Lylyk's second reason for appeal when discussing and dismissing the allegation of bias and conflict of interest with respect to the role of Collier as an athlete representative.

75. Lylyk's first and third reasons for appeal focus on the eligibility of two of the selected athletes, Collier and Plante, based on the stated objective of the Pan Am Championship project as a Development project.

76. Lylyk references the definition of development noted on Page 2 of the selection criteria: "For the purpose of this policy ... athletes selected to "Development" projects are those who are expected to perform in the future but require international competition opportunities as part of their development. CC reserves the right to modify selection priority based on extenuating circumstances including, but not limited to, athlete availability and Canada's qualification strategies."

77. In reply, CC draws attention to the final sentence of this definition, emphasizing “extenuating circumstances.”
78. CC maintains that qualification to the 2024 World Championships (to be held in Ballerup DEN on Oct. 16-20) and the 2025 Nations Cups events in as many events as possible will be important to the continued development of Canadian athletes towards the 2028 Olympics in Los Angeles and beyond.
79. CC notes that qualification for the World Championships is governed by UCI regulations 9.2.022 to 9.2.028 and is based on a combination of nation ranking and individual ranking in each event. Continental champions also qualify directly for the World Championships, and an athlete must have a minimum of 250 UCI points in a given event to be able to participate in that event at the World Championships.
80. Qualification to the Nations Cups is governed by UCI regulation 3.4.004. Again, an athlete must have a minimum of 250 UCI points in a given event to be able to participate in that event at a Nations Cup.
81. CC, therefore, must weigh these qualification imperatives in any selection decision.
82. After reviewing Canada’s qualification status for the World Championships in the bunch races on March 5, 2024, CC noted the following:
- 1) Madison (top 18 nations qualify): Canada was ranked 22nd, more than 900 points behind the last nation to qualify for the World Championships. The only way for CC to secure world qualification is by earning an automatic spot by winning the Pan American Championships.
 - 2) Omnium (top 16 nations qualify, followed by the top 8 individuals from non-qualified nations): Canada was ranked 18th and needed a net gain of more than 200 points to come top 16. A strong result at Pan Ams, or a victory, is required to qualify for worlds.
 - 3) Points Race (top 16 nations qualify, followed by the top 8 individuals from non-qualified nations): Canada was ranked 14th and needs to continue gathering points to secure qualification.
 - 4) Scratch Race (top 16 nations qualify, followed by the top 8 individuals from non-qualified nations): Canada was ranked 11th and needs to continue gathering points to secure qualification.

5) Elimination Race (top 16 nations qualify, followed by the top 8 individuals from non-qualified nations): Canada was ranked 14th and needs to continue gathering points to secure qualification.

83. World Championship qualification strategies are, therefore, important selection considerations for all bunch races at the Pan Am Championship. Points earned and results achieved in the bunch races at the Pan Am Championship—in particular, the Omnium and Madison—are critical to Canada’s qualification.

84. CC recognizes that Collier and Plante are historically the best performers at the Pan Am Championship who are available for this event (the other top performers are not available because they are selected to the Performance Team for the Milton Nations Cup).

85. In addition, Collier, in particular, is a potential member of the Team Pursuit for the 2024 Olympic Games in Paris. Due to a shoulder injury suffered in a training crash in December, she was forced to miss training camps and the first round of the Nations Cup. It is very important for Canada’s performance potential in Paris to be able to fully assess her in the final two competitions of the Olympic qualification period.

86. CC relies on Section B, Clause 4 of CC’s General Selection Policy, which contains an Extenuating Circumstance clause that reads, in part:

In considering the performances and results of riders at events, trials, training camps or other attendances required under this Policy, the selection committee may, at its discretion, give weight to extenuating circumstances in accordance with this Policy.

For the purposes of this Policy, extenuating circumstances means an inability to compete, attend training camps or perform at an optimum level arising from any one or more of the following:

- Injury or illness (documented at the time the incident occurred and accompanied by a certified medical explanation).
- Pregnancy.

- Travel restrictions or delays outside the athlete's control

87. According to CC's team selection deliberations, Collier's participation in the Pan Am Championship is critical to CC's ability to properly assess, select, and prepare athletes for the Paris Olympic Games.

88. Based on the above, CC has demonstrated that it followed its published policy in selecting Collier and Plante for the Pan Am Championship. The Coach Panel's recommendations explicitly note the deference to qualification strategies.

89. Once Collier and Plante's eligibility is determined, CC notes it followed the bunch race selection priorities listed on Page 10 of the selection policy and nominated the following athletes from among athletes nominated to the Team Pursuit:

90. CC followed its criteria in naming athletes to the bunch races. Lylyk did not meet higher priority criteria for any of these events than the athletes selected for the Team Pursuit.

1) Madison:

- i. 4th on the UCI ranking (behind Collier, Plante, and Barraclough)
- ii. Did not do any Nations Cups or the World Championships
- iii. Canadian champion (with Ngairé Barraclough)

2) Omnium:

- i. 4th on the UCI ranking (behind Collier, Plante, and Barraclough)
- ii. Did not do any Nations Cups or the World Championships
- iii. 4th at Canadian championships

3) Points:

- i. 2nd on the UCI ranking (behind Plante)
- ii. Did not do any Nations Cups or the World Championships
- iii. 4th at Canadian championships

4) Scratch:

- i. 2nd on the UCI ranking (behind Plante)
- ii. Did not do any Nations Cups or the World Championships
- iii. Canadian champion

5) Elimination:

- i. 2nd on the UCI ranking (behind Collier)

- ii. Did not do any Nations Cups or the World Championships
- iii. 2nd at Canadian championships

91. Based on the above, CC contends that it established its selection policy appropriately, followed its policy as written, and made a reasonable selection decision in the face of the available evidence.
92. Lylyk, during oral submissions at the arbitration hearing, raised three additional reasons for appeal as follows:
- 1) Plante was selected for the Madison race on the basis of a priority error.
 - 2) An athlete who finishes in the top 8 in one event should not be given selection priority in all events.
 - 3) CC should allocate the bunch race selections between development and performance athletes based on Canada's qualification status for the World Championships in the bunch races on March 5, 2024.
93. CC selected Collier (Priority 1: top-ranked rider on the UCI ranking) and Plante (Priority 2: best Canadian result in a Nations Cup) for Madison. Lylyk submits that to be amongst the best Canadian results in a Nations Cup; the rider must also finish in the top ½ of the event. Plante was not in the top ½ of her event. She was 13th out of a field of 17 riders.
94. Lylyk argues that Plante should not have been selected as the second Madison starter. Rather, Barraclough should not be the alternate, as Barraclough and Lylyk are tied for points at 100 points, and Lylyk finished 1st place in 2024 and 3rd place in 2023 in the Madison at Nations. Eliminating Barraclough as an Alternate and Plante for the priority error would move Lylyk up to the second starter position.
95. CC has acknowledged this selection error. CC wishes to maintain Plante's selection as the Madison 2nd starter and falls back relying on the fifth priority position of "Coach Panel discretion considering Clause 3 of the General Selection Policy."
96. Adopting a performance strategy, CC contends that the only way Canada can qualify for the 2024 Paris Olympics is through the Pan Am Championship. Collier and Plante are Canada's top riders.
97. Lylyk's second point above focuses on the Pan Am Championship team selection priority #4:
- Riders born 2005-2006 who finished top 8 in the Individual Pursuit,

Omnium, Madison, Elimination Race, Points Race or Scratch Race at the 2023 UCI Junior World Championships, from among riders selected to the Team Pursuit*.

98. Lylyk argues that if an athlete finishes in the top 8 in a race, then the priority status should only apply to that same race category. For example, Brants came 4th in the Scratch race in the Junior World Championship. She did not finish in the top 8 in any other event. Therefore, Lylyk submits that Brants should be restricted to priority only for the Scratch race.
99. The impact of this argument is that Brants should not have been selected as the Alternate for the Points and Elimination races. Lylyk contends that she would have been next in line for selection as the Alternate to the Points and Elimination races.
100. CC states that the selection criteria were specifically drafted to provide that if a rider born 2005-2006 finished in the top 8 in one event, they would then qualify in priority for other events from amongst riders selected to the Team Pursuit. There is no error in the selection of Brants as the Alternate for Points and Elimination.
101. The third argument presented by Lylyk was to suggest that CC might alternate between a development or performance emphasis for team selection based on Canada's qualification status for the World Championships in the bunch races on March 5, 2024.
102. Lylyk is of the view that not all bunch races at the Pan Am Championship need to be performance focused. Canada's status is assured for the Points (top 16 nations qualify - Canada was ranked 14th), Scratch (top 16 nations qualify - Canada was ranked 11th), and Elimination (top 16 nations qualify - Canada was ranked 14th).
103. Lylyk contends that CC should adopt a development focus for team selection to the Points, Scratch and Elimination races by favouring U23 riders such as Brants, Barraclough, and Lylyk. This is on the assumption that Canada's qualification in the Points, Scratch and Elimination races is already assured.
104. CC submits there is nothing in the endurance team selection criteria or policy which would support the jumping back and forth between a development and performance selection strategy eliminating performance riders for the benefit of development riders.

105. As CC notes, there are still five months to go for athletes and nations to increase or decrease their respective points' standing and ranking. The UCI points system is a rolling 12-month point count. CC intends to continue to use the team selection criteria, and riders will be appointed to Team Pursuit. They will not be given a performance of development categorization.

106. I find that when applying the third part of the *Code, Section 6.10*, on a balance of probabilities, Lylyk has not satisfied the onus and has failed to demonstrate that she should have been selected in accordance with the approved team selection criteria.

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

107. I now turn to consider whether the Milton Nations Cup team selection decisions concerning Montrichard have been made in accordance with the approved team selection criteria and policy. Under the *Code, Section 6.10*, the onus now shifts to Montrichard to demonstrate that she should have been selected.

108. Once again, the evidence indicates that CC selected the Milton Nations Cup team using the following process:

1. The Coach Panel (Laura Brown, Phil Abbott, and Franck Durivaux) compiled the information regarding selection and met by email to finalize the selection recommendations, which were submitted to the Head Coach and Director of High Performance Services on March 5, 2024.
2. The Head Coach and DHPS reviewed and approved the recommendations.
3. Both selections were communicated to the athletes and published to the CC website on March 7, 2024.

109. Following the team selection criteria and team selection policy, for the reasoning as noted below, CC nominated the following athletes from among the athletes nominated to the Team Pursuit Team for the Milton Nations Cup:

Women/Femmes	TP*	OM	MA	ER
Anika Brants	X			
Kiara Lylyk	X			

Devaney Collier	X		X	
Lily Plante	X		X	
Jenna Nestman	S			
Maggie Coles-Lyster		X		S
Sarah Van Dam		S		X
Declined selection Athlètes refusant sélection :	Ngaire Barraclough Ariane Bonhomme (Madison) Adèle Desgagnés Nora Linton			

* The selection panel did not consider athletes already selected to the performance Team Pursuit team

* le comité de sélection n'a pas considéré les athlètes déjà sélectionnés pour l'équipe performance de poursuite par équipes X = starter/partant(e). S = Substitute (travelling alternate/remplaçant(e) en voyage).

S (NT) = non-travelling alternate /remplaçant(e) non-voyagante

110. CC maintains that it followed its team selection criteria and policy in naming athletes to the bunch races and that Montrichard did not meet the higher priority criteria for any of these events than the athletes who were selected from amongst the Team Pursuit Team.

111. Regarding the Milton Nations Cup team selections, I am satisfied, on a balance of probabilities, that CC's selection decisions followed the team selection process, criteria, and policy as adopted by CC for that purpose.

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.

112. I now turn to consider whether Claimant Montrichard has demonstrated that she should have been selected in accordance with the approved Milton Nations Cup team selection criteria and policy. Under the *Code, Section 6.10*, the onus now shifts to Montrichard to demonstrate that she should have been selected.

113. The Montrichard submission of reasons for the appeal are rambling, repetitive, and lack specific details making it difficult to address the issues in a meaningful way.

114. Montrichard generally submitted the following reasons for appeal:

- 1) Montrichard is appealing the selection of Nestman (age 36) and Goudswaard (age 26) on the grounds that they are not U23 athletes.
- 2) As per the eligibility criteria priority should be given to U23 and 2nd year Juniors for the Development team for the Nations Cup III.

- 3) Collier and Plante should not be selected as Development athletes because of their experience and age. These athletes have years of international race experience and are SR Carded.
 - 4) Four athletes selected do not meet the age criteria mentioned on the final draft for eligibility (not born between 2002 and 2006).
 - 5) Montrichard made the Junior “A” standard in 2023 and should be allowed to complete in Milton Nations Cup III as a first year U23 rider in Team Pursuit.
 - 6) Based on her past strong performances, Montrichard should be prioritized for selection to the Team Pursuit.
 - 7) Collier is an athlete representative who is in a conflict of interest because of her influence on changes to the selection policy.
 - 8) There were numerous changes to the Track Endurance Selection Policy between Oct 26, 2023, to Feb 16, 2024, including one change posted on the first day of the Elite Canadian Championships.
115. CC has responded to the Montrichard reasons for appeal with a similar response as was delivered to the Lylyk reasons for appeal. The CC response is slightly off target as it responds to the first set of Montrichard submissions. By the time of the Montrichard 3rd submissions, the reasons for the appeal had changed, and CC did not have an opportunity to reply to the changes.
116. The main thrust of Montrichard’s arguments is around the eligibility of the selected athletes, Collier, Plante, Nestman, and Barraclough, based on the stated objective of the Milton Nations Cup as a Development project.
117. Montrichard references the definition of development noted on Page 2 of the selection criteria: “For the purpose of this policy ... athletes selected to “Development” projects are those who are expected to perform in the future but require international competition opportunities as part of their development. CC reserves the right to modify selection priority based on extenuating circumstances including, but not limited to, athlete availability and Canada’s qualification strategies.”
118. In reply, CC draws attention to the final sentence of this definition, emphasizing “extenuating circumstances.”

119. In reply to Montrichard's submissions, CC repeats the same answers provided to Lylyk's submissions by detailing the team selection process and the rationale adopted to implement the team selection criteria.
120. Throughout the written submissions, the oral evidence, and her oral submissions, Montrichard continued to refer to the terms of the V9 version of the *2024 Track Endurance Selection Policy*. Montrichard sought to emphasize the importance of "Development" in the early drafts of the selection criteria.
121. Montrichard did not appear to appreciate that the earlier versions of the team selection criteria were drafts and that the only version that was relevant was the *2024 Track Endurance Selection Policy, V12 Final, published Feb. 16, 2024*.
122. In reply, CC notes that Nestman was selected for events that do not specify an age in the priority criteria.
123. I have previously addressed the Claimant's submissions regarding bias and a conflict of interest.
124. Montrichard stressed in her submissions that she had a strong past performance history. In reply, the CC noted that Montrichard's past performance history was at the junior level, where the time test standards are lower. Montrichard became a 2nd year junior as of January 31, 2023.
125. It was CC's position that the Elite time standard applied and not the A junior time standard. In an effort to accommodate Montrichard, on January 10, 2024, CC organized a time trial session to see if Montrichard could meet the Elite time standard. She was unable to meet the Elite standard.
126. I find that when applying the third party of the *Code, Section 6.10*, on a balance of probabilities, Montrichard has not satisfied the onus and has failed to demonstrate that she should have been selected in accordance with the approved team selection criteria.

VI. CONCLUSION

127. I have reviewed all of the parties' submissions and evidence and considered them, even if they are not specifically referred in these reasons for decision.
128. This proceeding started with a Requests filed by the Claimants Lylyk and Montrichard questioning the reasonableness of the interpretation and application

of the criteria set out in the *2024 Track Endurance Selection Policy, V12 Final*, published Feb. 16, 2024.

129. 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 team selection decisions were made in accordance with such criteria.
130. I have found that, on a balance of probabilities, CC 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 endurance cycling in Canada.
131. A review of the history of the development of the CC selection criteria has highlighted the difficulty of reconciling two different goals of supporting athlete development and performance athletes, particularly during a quadrennial Olympic year.
132. I have found that, on a balance of probabilities, CC has satisfied the second part of the onus and demonstrated that the disputed CC selection decisions were made in accordance with the selection criteria as adopted by CC.
133. The onus then shifts to Claimants Lylyk and Montrichard to demonstrate, on a balance of probabilities, that they should have been selected in accordance with the approved criteria.
134. 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:
 - a. 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.
 - b. 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.

135. 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.
136. 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.
137. In the more recent SCC decision in *Canada v Vavilov*, 2019 SCC 65, the Supreme Court of Canada 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.
138. I find in all of the circumstance of the appeals brought by Lylyk and Montrichard that deference should be given to Cycling Canada as the NSO "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." The team selection decisions, as they affect Lylyk and Montrichard, have met a reasonableness standard based on the evidence as presented.

DECISION

138. I find in favour of the Respondent CC and have, therefore, denied Claimant Lylyk's claim. I confirm the Respondent's selection decision of March 7, 2024, for the Pan American Championship event.
139. I find in favour of the Respondent CC and have, therefore, denied Claimant Montrichard's claim. I confirm the Respondent's selection decision of March 7, 2024, for the Milton Nations Cup event.

Signed this 28th day of March 2024.



James Minns, Arbitrator