

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

Citation: Brown v. Freestyle Canada, 2026 CASDRC 2

No: SDRCC 26-0800  
Ordinary Tribunal  
Date: 2026-02-03

BERKLEY BROWN

(CLAIMANT)

AND

FREESTYLE CANADA

(RESPONDENT)

AND

ASHLEY KOEHLER

(AFFECTED PARTY)

**REASONED DECISION**

Submissions:

Hugh Meighen, Counsel	On behalf of the Claimant
Adam Klevinas, Counsel	On behalf of the Respondent
S. Clément, Counsel	On behalf of the Affected Party

1. On January 21, 2026, I was selected by the parties as an Arbitrator under Subsection 5.3 (b) of the Canadian Sport Dispute Resolution Code (the “Code”) to hear Berkley Brown’s appeal of Freestyle Canada’s (“FC”) decision not to nominate her to compete in the Women’s Mogul event at the Milano Cortina 2026 Winter Olympic Games (the “Decision”).
2. The proceedings were conducted on an expedited basis due to a January 24, 2026 deadline for the Canadian Olympic Committee to submit the names of athletes to the Olympic Committee.

3. The parties filed written submissions on January 23 and 24, 2026. After reviewing those submissions, I conducted a short oral hearing and issued my decision to deny Ms. Brown's appeal, with reasons to follow. These are my reasons.

## **BACKGROUND**

4. Freestyle skiing events in Canada are governed by two National Sport Organizations. Alpine Canada Alpin ("ACA") is responsible for ski cross events while FC has responsibility for all other disciplines, including Moguls. FC is responsible for nominating Women's Mogul athletes to the Canadian Olympic Committee ("COC") for selection to the Canadian Olympic Team.
5. Ms. Brown is 25-year-old athlete in the sport of Freestyle skiing, and specifically the Moguls discipline. She is a long-standing member of FC, having been on the National Team since 2017. She has competed on the International Ski and Snowboard Federation ("FIS") Freestyle Ski World Cup moguls circuit since 2018. She is the 2022 Canadian National Champion and has achieved multiple World Cup top ten finishes. As of the last World Cup event on January 16, 2026, she ranked 15<sup>th</sup> in the world.

## **The Nomination Criteria**

6. FC has the initial burden of establishing that the selection decision was made in accordance with the Nomination Criteria. If that burden is satisfied, the onus then shifts to Ms. Brown to demonstrate, on a balance of probabilities, that the selection decision was not made in accordance with the Nomination Criteria, or that the decision was otherwise wrong, objectively unreasonable or biased. (*Code* s. 6.11)

### *The Nomination Procedures*

7. ACA and FC jointly established the *2026 Olympic Winter Games "Canadian Olympic Team Internal Nomination Procedures for Freestyle Ski Events"* ("INP"). Initially published in December 2024, the INP was revised on several occasions to correct administrative errors, to clarify several provisions and to make changes to the event calendar during the Team Qualification Periods. The final version of the INP was published on January 12, 2026.
8. The International Olympic Committee and FIS establish the overall quotas for each discipline per event.
9. The *INP* prescribes a) the criteria used to determine the quota allocation for each Freestyle skiing discipline, and b) after the quotas are allocated, the process for nominating athletes within each discipline. (Section 8.0)
10. Section 8.0 of the *INP* sets out two methods for nomination; Method A; and for those athletes not earning a quota under Method A, Method B (Sections 8.0 and 9.0). Ms. Brown did not dispute FC's determination that she did not meet the criteria for nomination under either Method A or Method B.
11. The INP also contains a clause designated as "Unforeseen Circumstances" (Section 10).

12. Method B establishes specific considerations for athletes who were impacted by health-related circumstances in 2025/2026 competition season (July 1, 2025 – January 18, 2026). The *INP* states that athletes so affected would still be ranked based on results achieved during the qualification period, however they were still required to achieve the minimum performance level to be considered for nomination under Method B.
13. FC also circulated high performance updates explaining the Olympic Team nomination procedures including team size, earning versus filling a quota, and outlining current rankings to the date of the updates. The updates were circulated to athletes on November 20, 2025, December 10, 2025, December 19, 2025, and December 24, 2025.
14. The ACA and FC established a five-person selection committee (the “Committee”) to determine athlete nominations in each of the Olympic freestyle skiing disciplines.
15. On January 17, 2026, FC informed Ms. Brown that FC intended to nominate four female mogul athletes and that she was fifth on the internal ranking list. On January 21, 2026 Ms. Brown filed her appeal with SDRCC challenging the Decision.
16. The Affected Party, Ashley Koehler is the fourth mogul athlete nominated by FC.

## Arguments

### Athlete

17. Ms. Brown did not dispute the substance and reasonableness of the *INP*; rather, she contended that FC incorrectly interpreted the criteria in not nominating her. Specifically, Ms. Brown contended that FC failed to consider and apply Section 10 of the *INP*, which reads as follows:

#### *10. Unforeseen Circumstances*

*This INP is intended to apply as drafted and, specifically, where no athletes are prevented from competing because of an unforeseen health related circumstance or other unanticipated or other unforeseen circumstances. Situations may arise where unforeseen circumstances or circumstances beyond ACA’s or FC’s control do not allow competition or nomination to take place in a fair manner or in the best interests of the priorities and general principles for selection as indicated in these criteria, or do not allow the procedure for nomination as described in this document to be applied.*

*In the event of such unforeseen circumstances, the OFSNC will meet to determine if the circumstances justify competition, or nomination should take place in an alternative manner. In such circumstances, the OFSNC shall communicate the alternative selection or nomination process to all impacted individuals as soon as possible.*

18. Ms. Brown says that, when correctly considered and applied, this provision operates in favour of her nomination. She contends that the Nomination Committee was obliged to consider unforeseen circumstances; specifically her injury status as well as the number of cancelled events, in making its decision.

*Ms. Brown's injury status and cancelled events*

19. The Team Qualification Period for the 2026 Olympic Games began on July 1, 2024. The 2025 season began on November 20, 2024 and ran until March 21, 2025, with 21 FIS Freestyle World Cup and World Championship competitions within this season eligible for consideration in the ranking for athletes to be nominated under Method B.
20. Ms. Brown achieved four World Cup top ten finishes between December 16, 2023, and January 2024. In January 2024, Ms. Brown tore the ACL in her right knee which required a second ACL reconstruction. Due to the severity of the injury, she remained off her skis for 12 months and did not return to moguls skiing for 15 months. Once medically cleared in January 2025, she progressed through a rehabilitation program, returning to full competitive capacity in October 2025. Ms. Brown says that because she spent the entire 2025 season recovering from her injury, she did not earn eligible results for nomination.
21. Unfortunately for Ms. Brown, the 2026 season was marked by a number of event cancellations. Of the nine competitions scheduled before the qualification cut-off date of January 18, 2026, four did not proceed for various reasons.
22. Of the five events that proceeded, Ms. Brown was the top placed Canadian in two of them and achieved better results than two of the other nominated athletes in the three remaining events. According to FIS rankings, she is 15<sup>th</sup> in the World according to FIS World Cup discipline standings, ahead of two of the athletes nominated ahead of her.
23. Ms. Brown argues that there were both “unforeseen health-related circumstances” as well as “circumstances beyond FC’s control” which engaged the application of Section 10. She says that those circumstances include her knee injury which caused her to miss all 21 eligible qualifying competitions in the 2025 season and 50% of scheduled events in the 2026 season. She contends that this threshold constitutes extraordinary circumstances beyond the “health-related circumstances” identified in Section 9.1, and that that while her knee injury could not support a challenge to a decision made under Method B, it must be considered under Section 10.
24. Ms. Brown contends that Section 10 is an important check on unfair or unintended results arising from the mechanical application of the Method B nomination criteria. She argues that there is no limit or direction on when Section 10 should be considered or applied; rather, that it applies as a matter of course in the consideration of athlete nominations.
25. Ms. Brown argued that the Committee’s failure to consider the magnitude of her injuries and the number of cancelled events has led to an unfair and unintended outcome. She contends that, had there only been one or two cancelled events, she

would have had at least two chances to separate herself with an additional 12<sup>th</sup> (or better) place under Method B, and given her track record, there would have been a different outcome.

26. Ms. Brown also argued that FC's failure to nominate her is not in the best interests of the guiding principles of the Nomination Procedure, which are "to ensure that the athletes representing Canada in the Freestyle Skiing events at the OWG are the best Freestyle Skiing athletes in the country and are amongst the best in the world" (*INP* Section 3.0).
27. Ms. Brown argues that, if "podium results" are prioritized, she must be selected ahead of two other athletes, including the Affected Party. Ms. Brown says that the Affected Party's results were far below the results Ms. Brown achieved in both the 2024 and 2026 seasons, and of the 21 eligible competitions scheduled in 2025, the Affected Party made the finals in only two, compared to the five top 14 place finishes Ms. Brown achieved in her past eight events.

*FC*

28. FC disputes Ms. Brown's categorization of Section 10 as a discrete or third method for nomination. It argues that it is "an effective safeguard which reserves [the Nomination Committee's] right to make changes where it considers that Unforeseen Circumstances make the application of the INP, as drafted, unfair." It argues that it is not an alternate method for nomination that can be exercised in favour of an individual athlete who would not otherwise meet the criteria for nomination under Method A or B.
29. FC contends that Method B clearly and unambiguously provides that exceptions to the strict application of the selection criteria in Method A will only be granted if an athlete is unable to compete in 50% or more of the competitions during the 2025-2026 season due to health-related reasons. FC contends that to accept that Section 10 is intended to broaden the scope of the injury exception to include any injury that may occur during the qualification period is to ignore the plain language and expressed intention to only provide individual exceptions for health-related circumstances.
30. FC contends that Section 10 is meant to develop an alternative selection or nomination process on a prospective basis and is not meant to be used to re-write criteria once results are known. To do otherwise, it says, would give FC an opportunity to "reverse engineer" selection decisions in the event that selection decisions made under Methods A and B do not produce the nomination results FC may have desired.
31. FC contends that neither injuries nor cancelled events are unforeseen or exceptional circumstances; rather, they are circumstances specifically contemplated by and addressed in the INP.
32. FC acknowledges that an event cancellation could trigger the application of Section 10, but it would only be resorted to in circumstances where the nomination committee considered that the cancellation would not allow nominations to take

place in a fair manner or in the interests of the priorities and general selection principles. FC submits that event cancellations are not unusual.

33. FC submits that neither Ms. Brown's injuries nor the cancellation of events in 2026 were sufficient to trigger the use of Section 10 because the other general provisions were sufficient to make nomination decisions.
34. Finally, FC says that while Ms. Brown argues that she is a better skier and better positioned for Olympic success, it is impossible to verify the effect of the cancelled races. FC submits that it cannot be assumed that there would have been a different nomination outcome if she had competed those events, and I should not substitute my decision for those of the Committee based on "what could have happened."

#### *Affected Party*

35. Ms. Koehler agrees with FC's arguments on the proper interpretation of Section 10, contending that Ms. Brown's request is based on considerations outside the INP process (Sections 8 and 9) and that she has not demonstrated that her injuries or cancelled events constitute unforeseen circumstances.

### **ANALYSIS AND DECISION**

36. Section 6.12 of the *Code* provides that the Panel has the power to review the facts and the law and has the discretion to substitute its decision for the decision that gave rise to the dispute.
37. Ms. Brown bears the onus of demonstrating, on a balance of probabilities, that the decision not to nominate her to the 2026 Olympic Winter Games Team was not made in accordance with the INP. (Code 6.11)
38. I am not persuaded that Ms. Brown has discharged that burden.
39. Ms. Brown suggests that Section 10 allows for other considerations to ensure fairness, in particular, her injury and the number of cancelled events, both of which, she contends, are not adequately reflected in the Method A or B nomination criteria.
40. In my view, Section 10 does not provide a discrete method for nominating athletes to the 2026 Olympic Winter Games. The *INP* specifies that Methods A and B are to be exclusively applied in determining the athlete quotas. Section 8 provides:

*Methods A and B described in Section 8.1 and 8.2 below will be applied to determine the number of quotas that may be allocated to each of the five Freestyle skiing disciplines....*

*Method A will be applied first to determine the priority allocation of quotas to each Freestyle skiing discipline...*

*Any quotas not allocated under Method A (i.e., due to athletes not achieving the requisite level of performance as described in Section 8.1 to secure the quota allocation) will be available for allocation to all Freestyle skiing disciplines under*

*Method B (subject to the maximum allocation of four (4) quotas per discipline per gender...)*

...

*Once quotas are allocated to each discipline under Method B, athletes from each discipline will be nominated to the COC for selection to the 2026 Canadian Olympic Winter Games Team according to the criteria specific to their discipline as described in Method B. (my emphasis)*

*Any nominations to the COC for selection to the 2026 Canadian Olympic Winter Games Team under Method A or B shall be subject to Section 9.1 (health-related circumstances).*

41. Section 10 is not identified as a consideration for either quota allocation or the athlete nomination process and there is no language that indicates that nominations are subject to Section 10.
42. While I do not have the benefit of any minutes from the INP drafting committee regarding the intent of Section 10, it is, in my view, not intended to be used to address circumstances that are otherwise referred to in the INP. Injuries, including those requiring extensive rehabilitation, are addressed as health-related circumstances in Section 9 of the *INP*. Section 9.1 provides that exceptions to the strict application of Section 8 selection criteria (for both Methods A and B) will only be granted if an athlete is unable to compete in 50% or more of the competitions during the 2025-2026 season due to health-related circumstances.
43. That some injuries might require longer rehabilitation periods than others but do not fall within the Section 9.1 exception does not make them “unforeseen circumstances or circumstances beyond FC’s control.”
44. Furthermore, the second paragraph of Section 10 specifies that, in the event of unforeseen circumstances, the Committee will meet to determine if nomination should take place in an alternative manner, and where that occurs, “the Nomination Committee shall communicate the alternative selection or nomination process to all impacted individuals as soon as possible.” In my view, this wording supports FC’s argument that this clause is intended to address circumstances where an event cancellation would affect several, as opposed to individual, potential Team members. In those circumstances, FC would establish alternative selection or nomination processes and would notify the affected athletes.
45. I conclude that Section 10 was not intended to provide an alternative nomination route for athletes who have not been nominated under Method A or B. The primary purpose of establishing selection/nomination criteria is to ensure fairness by publishing impartial, transparent and objective standards by which athletes will be evaluated for selection or nomination. The *INP* does this through the establishment of Methods A and B, both of which contain provisions for individual health-related circumstances.

46. Ms. Brown urges me to find that, had she been able to complete the events which had been cancelled, she would have achieved a placing that would have attracted sufficient points to meet the nomination requirements.
47. While I acknowledge that past performance is a good predictor of future performance, I cannot conclude that, had Ms. Brown been able to compete in the cancelled events, she would have been nominated to the Team. For the Panel to draw that conclusion would be both speculative and improper. Furthermore, although Ms. Brown has a higher FIS ranking than two of the athletes nominated, for either the Nomination Committee or this Panel to consider factors that are not that are not specified in the *INP* is both arbitrary and unfair to other athletes who have qualified under the published criteria.
48. It is well established SDRCC jurisprudence (see *Palmer v. Athletics Canada SDRCC 08-0080*) that the standard of review of decisions of national sport organizations is one of reasonableness, not correctness, and that arbitrators should only interfere with a sport organization's decision only when the decision has been demonstrated to be so "manifestly wrong" that it would be unjust to let it stand.
49. I am not persuaded that the Committee's decision was manifestly wrong and deny the appeal.
50. While my decision is no doubt disappointing to Ms. Brown, I acknowledge her dedication to her sport as evidenced by her World Cup results following serious injuries and wish her well in her future athletic endeavors.
51. I also thank all counsel for their helpful advocacy in this appeal.

## **CONCLUSION**

52. The appeal is dismissed.

DATED: February 3, 2026, Vancouver, British Columbia

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Carol Roberts, Arbitrator