

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

**N°: SDRCC 17-0327**

**MARILYNE PLANTE**

**(CLAIMANT)**

**AND**

**CANADIAN FENCING FEDERATION (CFF)**

**(RESPONDENT)**

**AND**

**MS. BRITTANY MARK-LARKIN**  
**MS. VANESSA LACAS-WARRICK**

**(AFFECTED PARTIES)**

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**Attendees at hearing:**

For the Claimant: Marilyne Plante, Represented by Vincent Pelletier

For the Respondent: Caroline Sharp, Monica Peterson & David Howes for CFF

For the Affected Parties: Ms. Brittany Mark-Larkin, Represented by Johanne Lacas

Ms. Vanessa Lacas-Warrick, Represented by Gilbert Ménard

Further to my summary decision rendered on June 6, 2017, the following is my reasoned decision pursuant to the Canadian Sport Dispute Resolution Code.

## Summary of the dispute:

*This appeal arises out of the Respondent's decision to allow the Affected Parties to register late for the Bogota, Colombia international fencing event in contravention to the Canadian Fencing Federation ("CFF") Selection Policies. The points earned by the Affected Parties at the Bogota event allowed them to get ahead of the Claimant, Marilyne Plante, in the CFF High Performance Program ("HPP") rankings. As a result, the Claimant was not selected to the team representing Canada at the Pan American Championships in Montreal, Canada on June 12-18, 2017. The Claimant contests the Respondent's application of its Selection Policy and says she should have been selected.*

## PROCEDURAL HISTORY

1. In accordance with the CFF Appeal Policy, the Claimant first appealed the CFF decision to the CFF's internal appeal body on May 31, 2017. The CFF Ad-Hoc Committee dismissed the appeal on June 3, 2017 finding that *"(...) the HP Committee, acting through Mr. Howes, was acting in the spirit of the HP Handbook and that all affected athletes had a reasonable expectation that late entries would be allowed"*.
2. The Claimant then appealed the Ad Hoc Committee's decision to the SDRCC in accordance with the CFF's Appeal Policy.
3. The SDRCC appointed me from its rotating list of arbitrators to hear the matter on June 5, 2017.
4. The hearing and all submissions were expedited and the hearing took place on the morning of June 6, 2017. That afternoon, I rendered my summary decision as follows:

*[...]*

*I have carefully considered and weighed all the facts and evidence before me.*

*The decision to allow the Affected Parties' late registration to the Bogota event was neither arbitrary, nor biased, nor unreasonable.*

*I find that the CFF has met its burden of proving that it has administered its HPP Selection Policies Handbook in accordance with its recognized criteria.*

*The Request made by the Claimant is hereby denied.*

*[...]*

5. Because I did not then have the opportunity to do so, I wish at the outset to commend all the individuals who were involved in this case on their cooperation, notably in light of the expedited proceedings. As I stated at the end of the hearing, selection cases are never easy, whether for the parties or for the arbitrator. It is unfortunate there was no way for all three athletes to be selected to the Pan Am Championships team.

## **JURISDICTION**

6. This appeal is brought before the SDRCC pursuant to article 2.1.b) of the *Canadian Sport Dispute Resolution Code (2015)* (“Code”) as provided for in the CFF Appeal Policy.
7. All parties have recognized the SDRCC Tribunal’s jurisdiction to settle the dispute and I render my decision in accordance with section 6.21 of the Code.

## **THE PARTIES**

8. The Claimant, Marilyne Plante is a female athlete competing in the sport of Fencing, specifically women’s Epee (hereinafter referred to as the “Claimant”).
9. The Respondent, the Canadian Fencing Federation, is the national governing body for the sport of Fencing in Canada (hereinafter referred to as the “Respondent” or “CFF”).
10. The two Affected Parties, Ms. Brittany Mark-Larkin and Ms. Vanessa Lacas-Warrick, are also both female athletes competing in the sport of Fencing, specifically women’s Epee. (Hereinafter referred to jointly as “the Affected Parties’ or as Ms. Mark-Larkin and Ms. Lacas-Warrick).

## **THE EVIDENCE**

11. I have read all materials and heard each party but refer herein only to the submissions and evidence I consider necessary to explain my reasoning.

### **The HPP Criteria and Rankings**

12. The Claimant and both Affected Parties are part of the High Performance Program (“HPP”) of CFF and the CFF HPP selection criteria are outlined in the CFF Selection Policies Handbook (the “Handbook”).
13. The Handbook provides that the top four ranked women in the Epee discipline on the HPP ranking list will be selected to the Pan Am Championships team. Their ranking depends on various points earned when competing in an aggregate of events, both national and international.
14. All CFF athletes were invited to attend a Grand Prix event in Bogota. Before the Bogota event the Claimant was in third place on the HPP ranking in women’s Epee with a lead of 5 points over both Affected Parties.
15. The Claimant did not compete in Bogota but the Affected Parties did and each earned 75 points towards their HPP ranking. As a result of the points they earned, the Affected Parties became third and fourth on the HPP ranking List thereby bumping the Claimant to fifth. They, not the

Claimant, qualified for the last two of four spots available for selection to the Pan Am Championships team.

### **The Registration Deadline**

16. The relevant portions of the Handbook are found at page 6 under subsection 3 of the CFF Selection Policies:

*Registration for FIE competitions:*

*Only the CFF can register fencers for FIE competitions. Consequently, all requests for registration for an FIE competition must be made as indicated in the sections below.*

*[...]*

*Registration deadline: 35 days (5 weeks) before the first day of competition of any FIE competition.*

*Entry Procedures: Fencers must complete the online request process on the CFF website before the registration deadline to be considered for selection for a FIE competition. Submission of this Form does not guarantee fencers a spot in the competition. For non-HP fencers, the registration fee will be refunded if not selected.*

*Late entries: Will not be accepted.*

And on page 2 under the heading “Changes to this Handbook”:

*The CFF has taken every possible step to ensure that this material in this Handbook will remain accurate for the entire season, but in instances where changes do occur, specifically to international selection competitions, the person in charge of the HP program (in consultation with the High Performance Advisory Committee (HPAC)) reserves the right to make changes to this Handbook, which in its discretion are necessary to ensure the selection of the best teams for the 2016-2017 season events.*

*Any changes to this Handbook shall be communicated directly to all National Team Members.*

*[...]*

17. The CFF’s clear written policy is that the registration deadline is 35 days before an event.
18. The Handbook further states that changes to the Handbook are possible so long as they are communicated to the members of the national team.
19. The Affected Parties registered late for the Bogota Event and, notwithstanding the deadline stated in the policy, CFF registered them and allowed them to participate.

20. Had the Affected Parties late entry been denied, the Claimant would have maintained her third place ranking and been selected to the Team.
21. Both Monica Peterson, CFF High Performance Manager, and David Howes, National Women's Epee Team Coach, testify that CFF has long adopted the practice of allowing late registrations in all weapons and for all athletes in order to ensure that all athletes have equal access and opportunities to attend, participate and compete in Satellite, Grand Prix (i.e.: Bogota) and World Cup events. They add that this is done so as to not put up any administrative barriers in order to receive the highest number possible of entries in each event, especially since participation in fencing has decreased in the last few years.
22. The CFF says that its administrative practice to accept late registrations is widely known within the sport by all coaches and athletes. In support, CFF provides uncontested evidence that it has not denied any late registrations in (at least) the last 5 years.
23. CFF also provides uncontested evidence firstly, that late registrations have become the norm more than the exception in fencing, i.e. 13 out of the last 25 registrations received (and accepted) by CFF since March 28, 2017 have been late, and secondly, that both Ms. Mark-Larkin and Ms. Lacas-Warrick have signed up late for 2 and 3 events out of 5 respectively.

## **SUBMISSIONS**

### **The Claimant's Submissions**

24. The Claimant relies on *SDRCC 13-0211 Laberge v. Bobsleigh Skeleton Canada* to the effect that words in selection policies must be given their natural and ordinary meaning.
25. She argues the HPP policies clearly state that the deadline for registration is 35 days prior to an event, that the Affected Parties missed this deadline and that as a result they should have not have been allowed to register or compete in the Bogota Grand Prix.
26. The Claimant argues that for CFF to allow the Affected Parties late registration is a breach of the HPP Selection Policy, that it was not open for CFF to unilaterally modify its published selection criteria and that its failure to follow its criteria renders it unable to satisfy its burden of proof under article 6.7 of the Code.
27. The Claimant alleges that because a policy breach has occurred, the Affected Parties' registration to Bogota should be rescinded, the points the Affected Parties earned at the Bogota GP should be cancelled and she should be named to the Pan Am Championship Team.

### **The Respondent's Submissions**

28. The Respondent pleads that the 35-day deadline outlined in its policy is merely an administrative benchmark established many years ago at a time when more athletes registered

for events to allow CFF to properly administer all the registrations, including travel and accommodations, in a timely manner.

29. The CFF argues that the administrative policy change has been consistently communicated to all its national team members and their coaches by regularly encouraging them via email communications, and in person, to register for events, even when the settled deadline has passed. Late registrations now reoccur frequently and, significantly, none have been refused.
30. CFF believes that it has properly applied its selection criteria as published in the Selection Policies Handbook because it allows for changes. As foreseen in the Handbook, this “change” to the registration deadline was made in the spirit of the sport and was both adequately communicated and widely recognized and accepted by all CFF coaches and athletes.

### **The Affected Parties’ Submissions**

31. The Affected Parties submissions are very similar. For the sake of brevity I will treat their evidence as one.
32. Both Affected Parties state that CFF’s practice to accept registration past the stated 35-day deadline is widely recognized and regularly relied upon by all athletes and coaches. Both view CFF as long being accomodating in this regard.
33. Both explained that, in order to gain more ranking points and experience, they decided to go to Bogota. They then registered in good faith, received confirmation of their registration to the event from CFF and travelled to Bogota to compete in the Grand Prix.
34. Never did they consider that their points would become ineligible as a result of a challenge to the CFF’s recognized policy of accepting late registration.

### **DISCUSSION**

The Canadian Sport Dispute Resolution Code reads at Article 6.7

#### ***Onus of Proof in Team Selection and Carding Disputes***

*If an athlete is involved in a proceeding as a Claimant in a team selection or carding dispute, the onus will be placed on the Respondent to demonstrate that the criteria were appropriately established and that the selection or carding decision was made in accordance with such criteria. Once that has been established, the onus of proof shall shift to 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.*

### Has the Respondent Met its Onus of Proof?

35. The uncontested applicable standard of review of the Respondent's HPP Committee's decision (and that of its Ad Hoc Committee who affirmed that decision) is one of "reasonableness" not correctness. (See for example *SDRCC 06-0044 Béchard v. Canadian Amateur Boxing Association* R. W. Pound; *SDRCC 12-0178 Marchant & Duchene v. Athletics Canada*. G. Mew; *SDRCC 12-0191/92 Mehmedovic and Tritton v. Judo Canada*, R. Décary)
36. In other words, the Respondent need not establish that its decision to allow the late registrations is correct, only that I conclude that the Respondent reasonably applied and respected its established selection criteria when allowing the Affected Parties' late registrations for the Bogota Grand Prix, the CFF's onus of proof will be met.

### The CFF Selection Policies Handbook

37. In selection disputes, a national sport organisation must establish both that it has properly established selection criteria and that it has properly followed said selection criteria. Article 6.7 of the Code cited above makes this abundantly clear.
38. The establishment of CFF's Selection Policy is not in question. The Claimant challenges CFF's application of its Selection Policy (or Handbook).
39. The CFF says that the Handbook expressly provides that changes to the Handbook can be made by the HPP so long as these changes are communicated to all athletes and, as stated by both Ms. Peterson and Mr. Howes from CFF at the hearing, so long as these changes "are made in spirit of the Handbook in the best interest of providing equal access and opportunities to all its athletes".
40. The Claimant on the other hand argues that "*late entries will not be accepted*" is a clear and explicit criteria and that it is not open to CFF to unilaterally disregard its Handbook policies.
41. CFF argues it respected its Handbook by regularly communicating changes to its criteria, notably the acceptance of late registrations, to all National team athletes.
42. CFF also states that these changes were communicated to all the National Team members to promote the selection of the best team with the highest possible number of athletes for its scheduled events. The content of Mr. Howes' emails of March 28 and April 30 supports this argument.
43. All the emails that were submitted confirm the inference that CFF was thereby informing its team members that late registrations were to be generally accepted from all competitors and for all competitions. The wording consistently used i.e.: "*you are supposed to register...*" and then "*but we will accept late registrations*" lead to the conclusion that the 35-day registration deadline stated in the Selection Policy was indeed not cast in stone for anyone on the national team or for any weapon.

44. Further, it appears that most athletes register late for events. The compelling evidence is that since March 28, 13 out of 25 registrations did not meet the 35-day policy deadline.
45. The evidence before me also confirms that CFF has accepted this first by communicating the permission to do so and second, by never rejecting any late registrations in at least five years.
46. Thus, late registrations are standard and the Bogota event seems to have been treated no differently than any other.
47. Finally, the evidence confirms that the CFF acceptance of the Affected Parties late registration was not arbitrary. It was typical. In fact, had the CFF decided to deny the late registrations, in light of the evidence before me, it is conceivable that decision could have been successfully challenged by the Affected Parties on the grounds of bias or discrimination.
48. To sum up, I find that the CFF respected its Handbook regarding this administrative “change” by consistently communicating the fact that late registrations are allowed and effectively confirming this “change” in policy by always accepting all late registrations that it receives.

#### **The Claimant’s Reasonable Expectation**

49. The CFF submits, as decided by the Ad Hoc Committee and as argued by the Affected Parties, that because of its recognized administrative practice of accepting late registrations, the Claimant and the Affected Parties’ reasonable expectation was that late registrations to Bogota would be accepted.
50. The Claimant argues that her expectation was that the Policy would be strictly followed with regards to registration deadlines and that she had no knowledge that CFF regularly accepted late registrations. However, she does not dispute that she has received the emails which clearly state that late registration would be allowed for various events.
51. The Claimant’s representative and coach stated during the course of the hearing that he was aware the CFF has accepted late registrations in the past and when asked, he could not confirm with certainty that he had not conveyed this information to the Claimant. It is therefore plausible that he did.
52. Via Facebook, Ms. Peterson informed the Claimant that the Affected Parties had indicated their intention to sign up for Bogota after the registration deadline. Ms. Peterson made no mention whatsoever that the tardy registrations would not be accepted. To the contrary, the exchange clearly implies that that unless the Affected Parties withdrew 14 days prior, they would be going.
53. The Claimant's reaction (more specifically “ok thanks.”) to Ms. Peterson’s affirmation that the Affected Parties were likely to go to Bogota is additional evidence that the Claimant was in fact aware of CFF policy to accept late registrations and that the Affected Parties would be going to Bogota.



54. Therefore, I find that the Claimant had a reasonable expectation that, even if tardy, the Affected Parties' late registration to the Bogota event would be accepted by CFF.

### **The Review of the CFF Decision**

55. I outlined at the onset that my task is not to determine if the CFF actions and decisions were "correct" (the CFF itself admits that its application of its registration deadline had shortcomings). My task is to decide if the CFF's decision to allow the Affected Parties' late registration was "reasonable".

56. I find that the breach complained of by the Claimant does not cast a doubt upon the integrity and credibility of the CFF's selection process nor do I find that the CFF's administrative application of its Handbook policies has been arbitrary, discriminatory or biased.

57. As stated in SDRCC 13-0214 *Beaulieu v. Gardner* (R. Décary citing SDRCC 12-0191/92 *ibid.*) "[...] *the test is whether the outcome falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and of the policies at issue.*"

58. For the reasons above, notably that in accordance with its Policy CFF has communicated to all National Team Members that it allows late registrations, that late registrations have become the norm and that late registrations have not once been denied, I find that the CFF's decision to allow for the Affected Parties' late registration to the Bogota event certainly falls within a range of possible and acceptable outcomes and that, with regards to the facts and policies in issue, the CFF's decision is both reasonable and defensible.

59. Therefore, I am satisfied on a balance of probabilities that CFF has met its obligations under its policy and that it has discharged its burden of proof under article 6.7 of the Code.

### ***Has the Claimant Satisfied her Burden of Proof?***

60. The Respondent has satisfied its onus. It therefore follows that the onus now shifts to the Claimant to establish on a balance of probabilities that she should have been selected to the team.

### **The MQR for Rio**

61. The Claimant argues that the Affected Parties should have been barred from competing in Bogota because their registrations were late and the Handbook criteria do not permit late registrations.

62. Conversely, CFF pleads that the Handbook policies also did not provide for athletes to qualify for another event, held earlier in the year in Rio, if they did not meet the Minimum Qualification Requirements (MQR). However, even if the Claimant did not meet the unequivocal MQR criteria, the CFF did not bar her from competing.

63. The CFF states that they allowed the Claimant to compete in Rio by applying the same inclusive philosophy of allowing equal opportunities that it applies when accepting late registrations.
64. Because she was not barred by CFF from competing in Rio (even though she did not meet Handbook's MQR criteria) and then scored good results, the Claimant was both able to qualify to compete at the FISU Games and to earn sufficient points to allow her to even consider qualifying for the Pan Am Championships. These are opportunities she never would have had otherwise, keeping in mind the fact that she had only competed in one National Team Project competition.
65. For the Claimant now to successfully argue, to the detriment of others, that CFF has not followed the Handbook's registration deadline criteria would lead to an absurd result.

### **The Rankings**

66. Upon taking notice of her jump in the HPP rankings after the Rio competition, the Claimant realized that her selection to the Pan Am and World Championships was within her grasp, yet contingent on both Affected Parties not going to Bogota. This is clear from her Facebook communications with Monica Peterson.
67. The honest opportunity for all three athletes to earn the last selection spots was there for the taking and the Affected Parties very much intended to seize that opportunity, as most athletes in their position would.
68. Needless to say, the Claimant's participation in Bogota would likely have cemented her selection to the Pan Am Championship team by maintaining her 3<sup>rd</sup> place ranking. The Claimant however testified that she never intended to go to Bogota.
69. The Affected Parties registered for and competed in Bogota and thereby earned additional HPP ranking points. Although their registration was late, I have decided that it was proper.
70. The Affected Parties have, in all fairness, surpassed the Claimant in the rankings and, rightly, CFF awarded them the last spots on the team.
71. With respect, for the above reasons, I find that the Claimant has not discharged her burden of establishing that decision should be reversed.

**Is this a circumstance where the judicial review would allow the Tribunal to *substitute such measures and grant such remedies or relief that the Panel deems just and equitable in the circumstances?***

72. The Claimant has asked the Tribunal to substitute the CFF decision and to cancel the registration and points the Affected Parties earned in Bogota, thereby reinstating her third position in the HPP rankings and allowing her to be selected to the team for the Pan Am Championships.
73. The facts and circumstances of this case do not lend themselves to substituting the Respondent's decision with another, which would have resulted in removing one of the Affected Parties from the spot they rightly earned on the team.

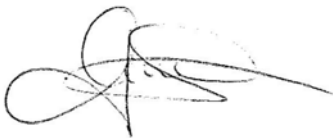
### **DECISION**

74. I am sympathetic to the many athletes such as the Claimant, who put in hard work, time and money in their respective sport in an effort to be selected to national teams only to fall short. Sadly, the reality is that there will always be athletes left out.
75. For the above reasons, I dismiss the Claimant's appeal but regretfully.

### **ORDER**

76. The Claimant's appeal is hereby denied.
77. I retain the jurisdiction to deal with other disputes arising out of this award.

Rendered and signed in Beaconsfield, QC, this 20th day of June 2017

A handwritten signature in black ink, appearing to read 'Janie Soublière', with a long horizontal stroke extending to the right.

Janie Soublière, sole arbitrator