

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

NO: SDRCC 21-0489

**LEO KAMARA
SATWINDER THIND
(CLAIMANTS)**

AND

**BOXING CANADA
(RESPONDENT)**

AND

**JONATHAN BOURGET
DMITRI SUMCHENKO
(AFFECTED PARTIES)**

DECISION

Appearances:

For the Claimants: Michael Williamson

For the Respondent: Mark Alward
Roy Halpin
Ryan Savage
Daniel Trepanier

For the Affected Parties: N/A

1. On February 22, 2021, the Claimants brought this dispute regarding their non-selection to the Olympic Pathway Team. I was appointed as Mediator/Arbitrator Neutral to hear this team selection matter. A preliminary meeting was held on February 25, 2021 and mediation was held on March 1.
2. The Parties agreed that a decision was required by March 11, 2021. As such, this matter was heard via telephone conference call on March 8, 2021. I issued a short decision on March 9, 2021, granting the Claimants' Request in part: the Claimants' Request to be appointed to the Boxing Canada National Team was rejected and, instead, the matter was

sent back to Boxing Canada to reconduct the vote used to determine a new selection method. In the short decision I wrote that if Option 2 of the January 5, 2021 email is chosen in the revote, then Boxing Canada must make its best efforts to adhere to the criteria as set out in that email. These are my full reasons.

3. The facts in this matter are by-and-large undisputed.

The Parties

Claimants

4. Mr. Leo Kamara, is a boxer in the 57 kg weight class. He is a two-time Ontario Provincial Boxing Champion in the 56 kg weight class.
5. Mr. Satwinder Thind is a boxer in the 91 kg weight class. Mr. Thind is a Canadian National Champion in the 91 kg weight class and a two-time Canadian Youth National Champion in the 75 kg and 81 kg weight class categories.

Respondent

6. Boxing Canada is a not-for-profit organization and Canada's National Sport Organization for boxing. Its mission is to promote, organize and coordinate boxing for the advancement of the sport and its members.

Affected Parties

7. Mr. Jonathan Bourget is a boxer in the 57 kg weight class who has been named to the Olympic Pathway Team. Mr. Bourget is a Quebec Provincial Boxing Champion in the 57 kg weight class and a two-time Youth Quebec Provincial Champion in the 56 kg weight class.
8. Mr. Dmitri Sumchenko is a boxer in the 91 kg weight class who has been named to the Olympic Pathway Team. Mr. Sumchenko is a British Columbia Provincial Boxing Champion in the 91 kg weight class and an Under 16 British Columbia Provincial Champion in the 67 kg weight class.

Background

9. On November 15, 2019, Boxing Canada published *its 2020 Olympic Continental Nomination Procedures* ("Nomination Procedures"). These Nomination Procedures identified the *Specific Nomination Criteria* that were to be used for available positions at the 2020 Olympic Continental Qualifier. Of significance was Priority 3, which identified that athletes who finished Top 1 at the 2019 Boxing Canada Trial would be appointed to the Tokyo 2020 Olympic Games Qualification Pathway Team ("Olympic Pathway Team"). Members of this team would go on to the Olympic Qualifiers, success at which would have made them eligible for the 2020 Olympics in Tokyo. The Claimants, Mr. Kamara and Mr. Thind, finished second in the 57 kg and the 91 kg weight classes, respectively.

10. As a result of the COVID-19 global pandemic, the 2020 Summer Olympics were postponed.
11. The athletes who finished Top 1 at the 2019 Boxing Canada Trial in the 57 kg and the 91 kg weight classes were unable to advance and the two positions on the Olympic Pathway Team became open.
12. As a result of the two vacancies on the team, it was determined that a selection camp would be held in Montreal from January 31 to February 3, 2021, for athletes in the 57 kg weight class, and from February 3 to February 6, for athletes in the 91 kg weight class. The PSOs were notified of the selection camp in an October 28, 2020, email with the subject line: “Selection camp Men’s 57 kg & 91 kg | Camp de sélection pour les hommes 57 kg et 91 kg”. The email included an attachment setting out the relevant information.
13. Due to the resurgence of COVID-19, the selection camp was cancelled. Boxing Canada notified the Provincial Sport Organizations (“PSOs”) of this decision via email on January 5, 2021 (“January 5 email”). The email’s subject line was the following: “Update - Boxing Canada selection camp for the 57kg and 91kg Olympic categories / Mise a Jour - Camp de sélection pour les catégories olympiques de 57kg et 91kg”.
14. The email also identified the vacant team positions would be filled by February 11, 2021, and that it was essential to fill the two vacancies quickly. The PSOs were asked to vote for their preferred method for filling the vacancies and were given two options. Option one was to fill the vacancies using the “Next in Line Athlete from 2019 Trial”. These criteria did not specifically identify any athletes but identified the selection priority to be used. Option two was to fill the vacancies using a “Discretionary Nomination”. The email identified that under option two, the High Performance Director (“HPD”), Mr. Daniel Trépanier, would select the two athletes to fill the 57 kg and 91 kg weight classes and outlined the criteria that would be used.
15. The PSOs were asked to inform the Inter-Provincial/Territorial Council (“IPTC”) Chairs (Harry Black and Ryan O’Shea) of their preferred option by January 12 and, if option two was selected, to register nominated athletes by January 28, 2021.
16. Option two was selected as the preferred choice by a margin of 4-3 with one abstention and three votes submitted after the January 12 deadline. The three late votes were not counted. The results of the vote were communicated to the PSOs on January 19, 2021. Two athletes, Mr. Jonathan Bourget and Mr. Dmitri Sumchenko, were then selected by the HPD with input from two coaches. These selections were then communicated to the PSOs and athletes on February 11, 2021.

Submissions

Claimants’ Submission

17. The Claimants have submitted that as a result of the Top 1 athletes from the 2019 Boxing Canada Trial in the 57 kg and the 91 kg categories being unable to advance, the

Claimants should be placed on the Olympic Pathway Team in their absence. The Claimants have submitted that s. 6 of the Nomination Procedures set out the selection criteria and specifically identified Priority 3 as supporting their claim. The Claimants argue that Priority 3 of the Selection Criteria should be interpreted to mean that if Top 1 athletes are unable to advance, that the silver medallists from the 2019 Boxing Canada Trial should advance in their absence by default.

18. The Claimants have submitted that appointing the silver medallists by default is consistent with what is done at all advancing tournaments and is supported by the AIBA and IOC Boxing policies for tournaments. The Claimants submitted that Boxing Canada departed from these standard practices and policies when they made the decision to hold what the Claimants characterize as a “training/evaluation camp”.
19. The Claimants take the position that any change in criteria is “unethical and in violation of policy”. The Claimants took further issue with the January 5 email, arguing that Boxing Canada justified its position for changing the team selection policy was premised on “complications created due to COVID-19”. The Claimants take the position that all selection criteria for the advancing team had already been completed before COVID-19 restrictions were in place. They argue that, as a result, there was no reason to update or change the selection criteria.
20. The Claimants argue that because the results were already known to the PSOs, a conflict of interest was created. The Claimants argue that because they were the silver medallists at the 2019 Boxing Canada Trial, by offering option two, the PSOs were disincentivized from voting for option one as the PSOs would have a chance of having their athletes selected for the national team under option two.
21. The Claimants have raised further issues with how the vote on the new selection criteria was conducted. The Claimants argue that the votes were demanded by January 12, 2021, and that no meeting was called and no opportunity for discussion was given. The Claimants also maintain that no verification of the voting receipt was given and that the voting results were not provided. They further question whether all PSOs were given appropriate time to vote in the matter.
22. The Claimants argue that this amounted to a change in the team selection policy and amounts to a violation of Boxing Canada’s own policies. Further, they argue that Boxing Canada’s ability to make a Discretionary Nomination is “questionable”. In support of this, they cite the IOC and AIBA policies, taking the position that these policies prohibit selecting team members by discretion.
23. Notwithstanding their position on the use of the Discretionary Nomination criteria, the Claimants take the view that Boxing Canada failed to execute the evaluations in the manner indicated. Specifically, the Claimants argue that Boxing Canada only evaluated athletes on three exercises: sprints, beep test and vertical jump. The Claimants maintain that this is not in accordance with the criteria, set out in the January 5 email, voted on by

members. They argue that changing the criteria only for the two weight classes was unfair.

24. The Claimants request that they be appointed to the Olympic Pathway Team.

Respondents' Submissions

25. Boxing Canada submits that the Complainants did not meet Priority 3 and should not be appointed on that basis. Boxing Canada states that the Complainants did not finish Top 1 in their respective weight classes at the 2019 Boxing Canada Trials. The athletes who had finished Top 1 at the 2019 Boxing Canada Trials were forced to withdraw from the High Performance Program in the summer of 2020, rendering them ineligible for the Olympic Pathway Team, which created vacancies in the 57 kg and 91 kg weight classes.

26. Boxing Canada submits that Priority 3 has clear language that specifically sets out a nomination procedure that does not permit designates or backups. Boxing Canada takes the position that this language is intentional and in specific contemplation of situations where the Top 1 athletes are ineligible for team selection to the Olympic Pathway Team. According to Boxing Canada, this language was designed to avoid automatically awarding a spot on the Olympic Pathway Team to potentially weaker boxers.

27. Boxing Canada takes the position that this interpretation of the language in Priority 3 is reasonable and that it should be given deference to interpret the language in this manner. It relies on *Corey v Speed Skating Canada*, SDRCC 19-0416 (Bennett), and *Cliff v Athletics Canada*, SDRCC 16-0303 (Bennett).

28. Boxing Canada submits that it has the ability to fill the team vacancies using discretionary selections. Boxing Canada argues that as a result of there being no athletes who met the qualifications under Priorities 1, 2 or 3, the Nomination Procedures could not be applied to fill the vacancies on the Olympic Pathway Team. As a result, Boxing Canada wanted to run a selection camp to fill the vacancies on the Olympic Pathway Team. This selection camp was cancelled in January 2021 although vacancies still had to be filled in February 2021. Boxing Canada argues that there was no choice for it but to revise the selection criteria as no athletes met the initial selection criteria and there was no other policy that spoke to filling a vacancy.

29. Boxing Canada sent two team selection options to the PSOs on January 5, 2021, by way of email. The results were a 4-3 vote in preference of the discretionary nomination. One PSO abstained from the vote and three sent in their votes after the deadline and were not counted. The results of the vote were communicated to the PSOs on January 19, 2021, and the PSOs were told of the nomination process.

30. Boxing Canada submits that, at all times in revising its selection criteria, proper procedure was followed and the vote was done with a proper quorum. Boxing Canada submits that the criteria being voted on was set out in the January 5 email. This gave the PSOs ample time to review the criteria and raise any issues they may have had. No such issues were raised and the PSOs voted in favour of the criteria under option two.

31. Boxing Canada submits that the appropriate time to have raised an issue with the selection criteria was when the policy was adopted and not after its implementation. They rely on *O'Neil and Karate Canada*, SDRCC 18-0352 (Bennett). Boxing Canada further argues the timeliness of this complaint, submitting that the vacancy in the 91 kg weight class was communicated on or about June 26, 2020, and the vacancy in the 57 kg weight class was communicated on or about August 28, 2020. On October 28, 2020, Boxing Canada then advised the PSOs that it would be holding a selection camp. No PSO or athlete raised any concern with the selection camps or with Boxing Canada's position that the spots were vacant. It was also not raised that the silver medallists from the 2019 Boxing Canada Trials should take the place of the ineligible Top 1 athletes.
32. Boxing Canada maintains that the results of the team selection vote were communicated on January 19, 2021, following which, PSOs submitted the names of their athletes for consideration under the discretionary selection criteria. Two of the names submitted were those of the Claimants, who submitted additional information in support of their nomination. On February 11, 2021, the discretionary selections made by the HPD were communicated to the PSOs and athletes. The Claimants appealed to Boxing Canada and their claims were denied on the basis that the policies appealed were no longer applicable. The appeal to the SDRCC was then received on February 22, 2021.
33. Boxing Canada takes this to mean that there was ample opportunity to raise an objection to the use of the discretionary nomination criteria and none was made until after the selection had been made according to the new criteria. Boxing Canada argues that raising these objections are unreasonable and untimely. They rely on *Carroll v Taekwondo Canada*, SDRCC 13-0195 (Picher).
34. Boxing Canada also made submissions on the issue of deference owed to Boxing Canada pursuant to recent changes to the Canadian Sport Dispute Resolution Code (the Code). Boxing Canada outlined the expertise of its HPD and its national team coaches. In addition, Boxing Canada provided specifics on the criteria it used and how it weighted and determined which athletes would fill the vacant spots on the Olympic Pathway Team.
35. Boxing Canada submits that its criteria were meant to mirror the Boxing Canada Assessment Tool (BCAT) as closely as possible given Boxing Canada's inability to view the athletes at a selection camp. The rubric developed was based on nine considerations: performance in previous provincial, national and international boxing events; technical ability; tactical ability; physique; podium chance at the Olympic Games in the current quadrennial cycle; podium chances at the Olympic Games in the next quadrennial cycle; podium chances at world championships in this quadrennial cycle; commitment and motivation; and injury.
36. Athletes were then considered under these criteria and assessed a score by the HPD and two of the national team coaches. Based on that, two athletes were selected to fill the Olympic Pathway Team vacancies, neither of whom were the Claimants.

37. Boxing Canada requests that if the claim is allowed, that the matter be returned to Boxing Canada with instructions on re-evaluating the athletes by way of specific criteria that should be used.

Affected Parties

38. The Affected Parties adopted the positions of Boxing Canada.

Issues

39. The following issues have been raised in this matter:
- a. Whether the Claimants automatically qualify for the 2021 Olympic Qualification Event under the 2020 Olympic Continental Qualifier Nomination Procedures;
 - b. Whether the vote conducted by Boxing Canada to determine a new selection method for the 2021 Olympic Qualification Event was procedurally fair; and,
 - c. Whether Boxing Canada appropriately implemented the discretionary selection method for the 2021 Olympic Qualification Event.

Preliminary Issues

40. Boxing Ontario sought Intervenor status in this matter pursuant to s. 6.6 of the Code on the basis that they wanted to support their athletes. After careful consideration I determined that Boxing Ontario should not participate in this matter as an Intervenor pursuant to s. 6.6(c) of the Code. Section 6.6(c) states the following: “In deciding on the participation of an Intervenor, the Panel shall consider whether the Intervention will unduly delay or prejudice the determination of the rights of the Parties.”

41. I have also considered the definition of “Intervenor” provided under Article 1:

“Intervenor” « Intervenent » means a Person, who is not a Party to a proceeding but claims an interest in the Arbitration, and whose presence is useful for the proper adjudication of the dispute, who files an Intervention pursuant to Section 6.6 and is accepted by the Parties or by the Panel as an Intervenor

42. I find that, based on the above definitions and sections of the Code, Boxing Ontario did not meet the test for being given Intervenor status. While it is the case that PSOs would like to support their athletes in any and every way they can, Intervenor status will only be granted in rare circumstances where those claiming it can show that their presence is useful for the proper adjudication of the dispute and that their presence will not unduly delay or prejudice the rights of the parties involved.

43. The goal of the SDRCC is to conduct hearings in a manner that avoids delay and aims to bring about a just, speedy and cost-effective resolution of the dispute (s. 5.7(f) of the Code). Permitting Boxing Ontario to take part on the basis it has requested would have added undue delay in this matter and would set a dangerous precedent that would have the effect of opening the floodgates to every party requesting Intervenor status.

44. I also note that in coming to this determination, I did not limit Boxing Ontario's ability to take part as a witness.

Issues Raised After Hearing

45. Following the hearing and after the publication of my short decision on March 9, 2021, the Claimants sought to submit additional evidence they believe contributes to their case. A meeting was held with all the Parties. I found that this evidence was discoverable by the Claimants prior to the hearing, although they did not submit it at that time. I have therefore refused to consider this evidence. The goal of the SDRCC, as stated above, is to conduct hearings in a manner that avoids delay and aims to bring about a just, speedy and cost-effective resolution of the dispute. Permitting parties the opportunity to submit evidence that they chose not to include for hearing would defeat the goal of the SDRCC and would add undue delay and would permit the continuance of litigation past the hearing. I have refused to consider this evidence out of consideration of the need for finality. During that meeting, it became evident that the Parties required an interpretation of my short decision. I therefore clarified that the evaluation of the athletes was to be based on the criteria set out in the January 5 email, as described at paragraph 70 below.

Analysis

Issue #1: Whether the Claimants automatically qualify for the 2021 Olympic Qualification Event under the 2020 Olympic Continental Qualifier Nomination Procedures

46. I find that the Claimants do not automatically qualify for the 2021 Olympic Qualification Event under the 2020 Olympic Continental Qualified Nomination Procedures. I find that the Complainants do not qualify under Priority 3 and I find that they are time-barred from bringing the matter before the SDRCC.

47. I agree with the arguments put forward by Boxing Canada on this matter as the language under Priority 3 is clear and succinct: "Top 1 at 2019 Boxing Canada Trial". In this matter, the Claimants finished second at the 2019 Boxing Canada Trial, meaning they do not qualify under Priority 3. While the athletes who finished Top 1 at the Boxing Canada Trial in the 57 kg and that 91 kg weight classes are now ineligible to attend the Olympic Qualification Event, the language under the Nomination Procedures does not permit for designates or for the second-place athletes to automatically take the place of the Top 1 athletes. If there was evidence to conclude the Top 1 athletes had been made ineligible due to a disqualification impacting on their placements at the Boxing Canada Trial, this matter may have been considered otherwise, however, no such evidence has been presented.

48. I also accept Boxing Canada's submissions that the Claimants are time-barred from bringing the issue of whether the Claimants were automatically appointed to the Olympic Pathway Team. Section 6.2 of the Code sets out the time limits for filing a request with the SDRCC:

(a) Unless set by agreement, statute, regulations or other applicable rules of the relevant SO, the time limit to file a Request shall be thirty (30) days following the later of the date on which:

(i) the Claimant becomes aware of the existence of the dispute;

(ii) the Claimant becomes aware of the contested decision; and

(iii) the last step in attempting to resolve the dispute occurred, as determined by the SDRCC.

The SDRCC may, in its discretion, refer this issue to a Panel.

(b) Notwithstanding Section 3.5(c), the time limit may be waived with respect to a Request upon agreement of the Parties or under exceptional circumstances. Any issue pertaining to the waiver of the time limit will be referred to a Panel.

49. Pursuant to s. 6.2 of the Code, the athletes had 30 days to file a Request after becoming aware that they were left off the Olympic Pathway Team. The Claimants argued that they believed the selection camp was a “training/evaluation camp” and that the issues of timeliness do not apply to them. It is unclear from their submissions when they indicate they first became aware they were left off the Olympic Pathway Team.
50. Regardless, I find that Boxing Canada was clear and unequivocal when it advised the PSOs that the camps scheduled for January 31 to February 6, 2021, were selection camps. This was clearly communicated in the October 28, 2021, email, which included the subject line, “Selection camp Men’s 57 kg & 91 kg | Camp de sélection pour les hommes 57 kg et 91 kg”. The body of the email likewise confirms the purpose of this camp as a selection camp in the 57 kg and 91 kg weight classes. In addition, vacancies on the Olympic Pathway Team were communicated even earlier than that to the PSOs (on or about June 26 and August 28, 2020).
51. I find that if the Claimants and their PSO had a belief they were unreasonably left off of the Olympic Pathway Team, they have missed the deadline for filing a Request related to that matter. For that reason, I find that their complaint is time-barred.
52. Finally, where the Claimants have argued their eligibility for selection to the Olympic Pathway Team under Priority 3 by relying on the AIBA and IOC policies, I find that these policies are irrelevant to this matter. After reviewing these policies, I am not convinced that these policies set out a nomination procedure or impose the types of team selection criteria on Boxing Canada the Claimants have argued for.

Issue #2: Whether the vote conducted by Boxing Canada to determine a new selection method for the 2021 Olympic Qualification Event was procedurally fair?

53. I find that the vote conducted by Boxing Canada was procedurally unfair.

54. I find that Boxing Canada made a reasonable attempt to fill the vacant spots on the Olympic Pathway Team by way of a selection camp. However, given the challenges

posed by a resurgence of COVID-19 and the restrictions placed by the Quebec government, Boxing Canada made the decision to cancel the selection camp. This decision was communicated to the PSOs in the January 5 email. An alternate method of selecting athletes to the 57 kg and 91 kg weight classes was required. Boxing Canada put the matter to the PSOs and to a vote.

55. I find that the manner in which the vote was carried out was procedurally unfair when all of the factors are considered together and not for any one specific factor in isolation.
56. I find the January 5 email was not clear enough to permit a strict adherence to such a short time line. The PSOs were asked to vote on an alternate form of team selection in the January 5 email and told to do so within seven days. This email was sent under the subject line: “Update - Boxing Canada selection camp for the 57kg and 91kg Olympic categories / Mise a Jour -Camp de sélection pour les catégories olympiques de 57kg et 91kg”. I find that this subject line is not clear that the PSOs are being asked to take any specific course of action in a time sensitive matter. This is especially the case when PSOs are being asked to make a time sensitive decision on a matter as meaningful to PSOs and their athletes as team selection criteria. It has been submitted to me that PSOs are run by volunteers who are often busy with other obligations that can lead to delays in responding.
57. I accept Boxing Canada’s arguments that it was acting under an obligation to determine a method for filling the vacant Olympic Pathway Team spots. Given the ongoing COVID-19 pandemic and its impact on sport, there must be flexibility afforded to NSOs and the manner in which they respond to the manifold difficulties they face as a result. Given that the global sporting community has been impacted on every level by COVID-19, sport organizations have had to do their best to meet these unprecedented challenges. In order to ensure the future success of their programs, sport organizations need to be given a wide berth for making responsive decisions. While this is the case, this responsibility should be exercised judicially and reasonably. I find that Boxing Canada took reasonable steps to adapt their policies and their team selection criteria in order to set itself up to succeed at the Olympic level.
58. It is only on the manner in which the email communications took place that Boxing Canada can be shown to have erred. Boxing Canada did not follow-up with the PSOs to ensure receipt of the emails or to make PSOs know that they were being asked to vote. Three of the PSOs submitted their votes after the January 12 deadline and indicated in their emails that they were unclear it was a firm deadline. These votes were not counted by Boxing Canada. To the same extent that flexibility should be shown to NSOs, flexibility should have been shown to the PSOs in this matter, whose members are also responding to the same challenges imposed by COVID-19.
59. Under normal circumstances I might consider that the PSOs were obliged to respond in a timely manner, however, given the extraordinary circumstances the global community finds itself living in under COVID-19, I am prepared to consider that Boxing Canada

could have not enforced a strict adherence to the voting deadline or that it could have taken extra steps to ensure PSOs were aware of what they were being asked to vote on and the timeline they were being asked to do it by. The due date for the votes was set at January 12, 2021, however, the results of the vote were not communicated to the PSOs and their athletes until January 19, 2021. The January 12 due date was an arbitrary due date and some flexibility could have been exercised to accommodate these late votes.

60. As a result, I find that the manner in which the vote was carried out was procedurally unfair. Not for any one reason in particular but for the factors when considered in their totality.

Issue #3: Whether Boxing Canada appropriately implemented the discretionary selection method for the 2021 Olympic Qualification Event

61. I have not made a finding in relation to this issue except as it relates to my decision to send this matter back to Boxing Canada for a revote. The Claimants have alleged that Boxing Canada has not fairly implemented the discretionary selection criteria that was voted on under option two.

62. The criteria that was voted on was set out in the January 5 email in the following manner:

Option #2: Discretionary Nomination

Discretionary nomination will be used by the HPD to select two athletes (57Kg and 91Kg) who are progressing towards Boxing Canada Gold Medal Profile and Winning Style parameters, who have displayed physical disposition, competition behaviours and results to achieve national performances and trending to achieve International stage performance.

The HPD discretionary nomination is not to select the next in line athlete from the 2019 Canadian Trial, and so is not based on the results of the 2019 Canadian Trial. Rather, the process will involve a full review of athletes who have been submitted by the PSO's will be completed. Following such review, the considered athletes will may undergo further discretionary evaluation of any factors deemed relevant to meet the objectives of this selection. These factors include, among other things, an evaluation of technical and tactical boxing abilities, previous motivation and performance, attitude and commitment, outstanding results, general level of physical fitness, injury history and athletic potential. These factors will be assessed by the HPD based on the athletes' involvement with Boxing Canada at national and international events and competitions.

When completing the athletes evaluation in terms of a discretionary pick the HPD will refer to the Boxing Canada Gold Medal Profile, the information available at Boxing Canada on the athlete and the information shared by athletes and the PSO's to Boxing Canada (ex. yearly training plan, video and monthly training assessment) as a criteria.

Details:

Eligible Athletes:

- *Provincial Associations can provide two (2) male athlete's in each weight category (57kg and 91kg) for evaluation. [sic]*

Eligibility Requirement:

To be eligible for consideration for the discretionary nomination, at the me of submission deadline by the PSO's on January 28th an athlete must meet the following Eligibility Requirements:

- a. Be a member in good standing with their provincial boxing association (PSO) and Boxing Canada at me of nomination and must maintain this status until completion of the season;*
- b. Be born between January 1st, 1982 and December 31st, 2002;*
- c. Must be a Canadian Citizen at the time of selection;*
- d. Must have completed the National Team online physical testing protocol (see attachment);*
- e. Athletes must be open class boxers;*
- f. Meet the International Amateur Boxing Association (AIBA) requirements to be eligible to represent Canada at major international events.*

63. The Claimants submitted that Boxing Canada departed from this process and only evaluated athletes on three exercises: sprints, beep test and vertical jump.
64. In response, Boxing Canada submitted those factors it considered when evaluating athletes for selection to the Olympic Pathway Team. In doing so, it argued that deference was owed to it and how it implements its team selection criteria. The Code underwent a number of changes that came into effect on January 1, 2021. Among those sections changed under the Code is s. 6.11(c). Section 6.11(c) reads:
 - (c) No deference need be given by the Panel to any discretion exercised by the Person whose decision is being appealed, unless the Person can demonstrate relevant expertise.*
65. The effect of this new section is to place an onus on the decision-making party to establish its experience relevant to the matter under review. In the past, many sport organizations argued that deference was owed to them by default. However, this new section makes it clear that deference will only be given when the expertise is relevant to the matter at issue. The standard for proving deference is on the balance of probabilities.
66. I find that in the matter at hand, Boxing Canada has successfully discharged its onus and demonstrated that its HPD, Mr. Daniel Trépanier, had expertise relevant to the decision-making process that went into selecting the athletes for the Olympic Pathway Team. Specifically, Boxing Canada highlighted Mr. Trépanier's experience in boxing, both as an athlete and as a coach, as well as his coaching rank as a three-star international coach.

In addition, Boxing Canada outlined the experience of two of the coaches who assisted Mr. Trépanier. In this matter, I find that the expertise is relevant.

67. Pursuant to s. 6.10 of the Code, in team selection disputes, the onus is placed on the Respondent Party to demonstrate that the criteria were appropriately established and that the disputed decision was made in accordance with such criteria. This is a two-part test. Under the first part, Boxing Canada must demonstrate that its criteria are appropriately established. I find this to be the case. Boxing Canada articulated a clear rationale that would support the proposed criteria under option two, as well as criteria supported by a rubric developed for the purpose of nominating the best athletes to represent Canada on the global stage.
68. Under the second part of this test, Boxing Canada must demonstrate that the disputed decision was made in accordance with that criteria. In its submissions, Boxing Canada disclosed that it had included provincial results in its evaluation of the selection criteria. Provincial results and performances were not included in the criteria set out under option two in the January 5 email. For clarity, I want to emphasize that Boxing Canada shall only use the criteria set out in the January 5 email. When they sent out that email, they were aware of how COVID-19 would impact their ability to evaluate each of the criteria. The January 5 email is clear that the evaluation is to be based on the athletes' involvement at national and international events:

*These factors include, among other things, an evaluation of technical and tactical boxing abilities, previous motivation and performance, attitude and commitment, outstanding results, general level of physical fitness, injury history and athletic potential. **These factors will be assessed by the HPD based on the athletes' involvement with Boxing Canada at national and international events and competitions.** (emphasis added)*

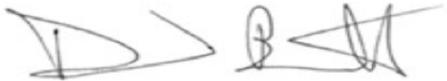
69. For these reasons, I find that Boxing Canada has not faithfully adhered to its own selection criteria. The criteria used was fair and relevant, however, the decision-making process considered elements that were not a part of the proposed criteria pursuant to the January 5 email.
70. While I find that deference is owed to Boxing Canada in its decision-making process, that process must be strictly adhered to when voted on by the member PSOs. Because of this, I am comfortable sending this matter back to Boxing Canada to reconduct the vote and to implement the selection criteria in a fair manner in accordance with this decision.

Order

71. The Request by the Claimant is granted in part.
72. I deny the Claimants' request to be placed on the Canadian Olympic Qualifier advancing team.

73. I find that the vote conducted by Boxing Canada pursuant to the email dated January 5, 2021, was procedurally unfair. Therefore, this matter was sent back to Boxing Canada to reconduct the vote in accordance with the procedure set out in the January 5, 2021, email. A vote was to be done by 3:00 p.m. EST on March 10, 2021. If Option 2 of the January 5, 2021 email is chosen in the revote, Boxing Canada must make its best efforts to adhere to the criteria as set out in that email.
74. I find Boxing Canada's interpretation of the 2020 Olympic Continental Qualifier Nomination Procedures to be reasonable.
75. I would also like to commend the parties on the collegial and respectful way they conducted themselves throughout the hearing and throughout the entirety of this process. The parties were effective in conveying their positions while remaining mindful of the fact that there are four excellent boxers involved that ultimately could, and perhaps someday will, be teammates.

Signed in Ottawa, this 23rd day of March, 2021.

A handwritten signature in black ink, appearing to read 'David Bennett', with a stylized flourish at the end.

David Bennett, Arbitrator