

IMPORTANT NOTE: *This version is a translation of the original French version.*

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

No: SDRCC 20-0464

Hubert Marcotte
(Claimant)

And

Speed Skating Canada (SSC)
(Respondent)

PRESIDING:

The Honourable Yves Fortier, QC

APPEARING:

For the Claimant:

Mr. Mathieu Laplante-Goulet
Mr. Hubert Marcotte
Mr. Carmin Marcotte
Mr. Muncef Ouardi

For the Respondent:

Mr. Adam Klevinas
Mr. Shawn Holman
Ms. Cathy Tong

PRELIMINARY DECISION

September 10, 2020

1. In accordance with the *Canadian Sport Dispute Resolution Code* (2015) (the "Code"), I have been appointed as Arbitrator by the Sport Dispute Resolution Centre of Canada (SDRCC) to hear and adjudicate this dispute.
2. The only question I have to decide of a preliminary nature is whether the three athletes who were seeded before the Applicant, Hubert Marcotte, by the Respondent, Speed Skating Canada ("SSC"), should be considered as Affected Parties.

THE FACTS

3. On April 17, 2020, Speed Skating Canada's High Performance Long Track Committee informed Mr. Hubert Marcotte (the "Athlete") that he would not be selected to the SSC NextGen Team for the 2020/21 season.
4. The Athlete challenged this decision on April 23, 2020. Mr. Yann Bernard, on July 23, 2020, dismissed the appeal filed by the Athlete (the "Decision").
5. On August 13, 2020, the Athlete submitted a request under Section 3.4 of the Code requesting that the Decision be overturned and that he be granted NextGen status on the National Long Track Speed Skating Team for the 2020/21 season.
6. On August 18, 2020, the Respondent requested that the Arbitrator, who would be appointed to decide the matter, make a preliminary determination as to whether three additional skaters, who were seeded before the Athlete, should be considered Affected Parties:

[Translation]

If the only issue in dispute is the application of Section 3.3.2.2 of HP Bulletin 192, there are no Affected Parties in this case.

However, if one of the issues in dispute relates to the application of Section 3.3.3 of HP Bulletin 192, there are potentially three Affected Parties, because three athletes have a higher ranking than Mr. Marcotte on the "Podium Pathway" and have not been selected to the NextGen 2020/21 team.

7. I would like to point out that neither the Athlete nor these three skaters have been selected to be part of the SSC NextGen team for the 2020/21 season.
8. On September 1st, the Athlete informed me that he did not consider the other three skaters to be Affected Parties:

[Translation]

*[...] in the manner prescribed by the Code either to "losing a **previously granted** status or privilege". The two [sic] skaters concerned and Mr. Marcotte, the three (3) have not received the status or privilege of being selected on the NextGen team. Thus, both skaters could be involved, but not **affected** in that if the Arbitrator of the dispute on the merits decides to reverse SSC's decision and grant selection to the NextGen team, they would not have a privilege taken away.*

*Regardless of the Arbitrator's decision on the merits, the **two remaining skaters will not be selected.***

9. On the same day, the Respondent replied to the Athlete's last submission as follows:

[Translation]

The three athletes who are currently ranked before Mr. Marcotte may be prejudiced by the Tribunal's decision. In fact, if the Tribunal decides that Mr. Marcotte should be named to the NextGen team pursuant to Section 3.3.3 of HP Bulletin 192, the three athletes ranked ahead of Mr. Marcotte would lose their ranking and would be prejudiced or disadvantaged within the meaning of the definition found in paragraph 1.1(gg) of the Code as the loss of their rank would amount to a loss of status.

10. The Respondent also filed a recent confidential preliminary decision by Arbitrator Ross C. Dumoulin in another SDRCC file dealing with the issue of Affected Parties.

11. On September 3, the Athlete submitted to me that this decision by Arbitrator Dumoulin did not apply in the present case. Involving new persons at this stage would only make the procedure more cumbersome, according to the Athlete.

12. On September 3rd, the Respondent replied as follows:

[Translation]

The three skaters identified by SSC have been granted status or privilege: they have been ranked higher than the Claimant as per Section 3.3.3 of HP Bulletin 192. For selection purposes, a rank represents status and a privilege.

As an example, if one of the skaters named to the NextGen Team decides to retire and a spot on the team becomes available, that spot could be filled and it would be the next skater on the list (i.e. the first of the three skaters identified by SSC) who was not nominated for the NextGen Team who would take that spot. As such, the rank of the three skaters is equivalent to a status and a privilege.

13. On September 3rd, 2020, during the preliminary conference call that I chaired, the Respondent asked the Athlete to confirm whether his appeal was based solely on Section 3.3.2.2 of HP Bulletin 192, or whether it was also based on Section 3.3.3. According to the Respondent, if the appeal was based on Section 3.3.3:

[Translation]

there are potentially three Affected Parties, as three athletes have a higher ranking than Mr. Marcotte on the "Podium Pathway" and have not been selected to the Next Gen 2020/21 team.

14. The Athlete subsequently confirmed that his appeal was based on HP Bulletin 192 Sections 3.3.2.2 and 3.3.3, but not on how it had been developed.

ANALYSIS AND DECISION

15. I must therefore decide whether the three skaters Cooper Emin, Paul Coderre and Gibson Himbeault, who were seeded ahead of the Athlete, are to be considered Affected Parties.

16. The definition of "Affected Party" in Section 1.1(gg) of the Code reads as follows:

(gg) "Affected Party" "Affected Party" means a Person who may be adversely affected by a decision of the SDRCC, such as losing a previously granted status or privilege, and;

(i) who is accepted by the Parties as an Affected Party; or

(ii) who is accepted or named by the Panel as an Affected Party;

17. I believe that these three skaters may be prejudiced by my decision. Should I decide that the Athlete's appeal should be allowed and therefore be granted NextGen status on the National Long Track Speed Skating Team, these three skaters would lose their rank. They would therefore be prejudiced by my decision as defined in Section 1.1(gg) of the Code. The loss of their rank would be equivalent to a loss of status, as specified in the definition.

18. Moreover, it is not excluded that my decision as to the Athlete's ranking may be based on an unfavourable comparison to the other three skaters. My decision could also be based on possible evidence from the Athlete as to the merits of these three athletes causing them prejudice. In my opinion, it is fair that all three skaters be allowed to participate in the arbitration hearing so that they may defend their position, if necessary, against such prejudice.

19. Finally, I am of the opinion that the fact that the three skaters with a higher ranking than the Athlete were not selected for NextGen status on the National Team does not prevent the loss of status or prejudice described above.

20. For these reasons, I name Cooper Emin, Paul Coderre and Gibson Himbeault, the three skaters ranked ahead of the Athlete, as Affected Parties. They may participate in this arbitration hearing if they wish to do so.

21. The provisions of paragraphs 6.12 and 6.14 of the Code shall apply as necessary with respect to the submission of a confidentiality agreement and the involvement of the three Affected Parties.

Montreal, September 10, 2020

The Honourable Yves Fortier, QC
Arbitrator