

**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 20-0462

Kinsey Boulanger  
(Claimant)

**-and-**

Canada Snowboard (CS)  
(Respondent)

**PRESIDING:** Ross C. Dumoulin

**APPEARING:**

For the Claimant:

Ms. Catherine Parent  
Ms. Shayne Lynch  
Mr. Brian Smith  
Mr. Steve Boulanger

For the Respondent:

Me Adam Klevinas  
Mr. Tyler Ashbee  
Mr. Jean-François Rapatel

**PRELIMINARY DECISION**

August 31, 2020

[1] In accordance with the *Canadian Sport Dispute Resolution Code (2015) (Code)*, I have been appointed as an arbitrator by the Sport Dispute Resolution Centre of Canada (SDRCC) to hear and decide this case.

[2] The issue to be determined in this preliminary ruling is whether two female athletes who were ranked before the Claimant, Ms. Kinsey Boulanger, by the Respondent, Canada Snowboard, should be considered Affected Parties.

### **FACTS**

[3] On June 11, 2020, the Respondent announced the selection of the Canadian National Freestyle and Halfpipe Snowboard Team for the 2020/21 season. On the National Team are the Senior National Teams, NextGen (maximum age 20 years on December 31, 2019 for female athletes) and NextGen Prospect.

[4] No female athletes were selected for the NextGen Halfpipe Team, while two were selected for the Senior National Team. Two female athletes who were ranked above Ms. Boulanger and who were also eligible for the NextGen team were still not selected. According to Canada Snowboard, these two athletes meet the minimum criteria, but their skill level and competitive events are not currently at the appropriate level to be placed on the team.

[5] If the Applicant is added to the NextGen team, no athlete currently on the team would lose his or her place. Mr. Tyler Ashbee indicated at the preliminary meeting on August 25, 2020, that his understanding is that if Ms. Boulanger is added to the team, the two athletes ranked ahead of her should also be added.

## **ANALYSIS AND DECISION**

[6] The issue to be determined is whether the two female athletes who were ranked before the Claimant by the Respondent should be considered Affected Parties.

[7] The definition of "Affected Party" is found in section 1.1(gg) of the *Canadian Sport Dispute Resolution Code (2015)*:

"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.

[8] I am of the opinion that the two female athletes who were ranked above Ms. Boulanger could be prejudiced by my decision. I may decide that the Claimant be ranked ahead of them and/or be placed on the NextGen Halfpipe team. This would mean that both female athletes would lose their rank. They would be adversely affected, i.e., disadvantaged, within the meaning of the definition in paragraph 1.1(gg) of the Code, as the loss of their rank would be equivalent to a loss of their status, as specified in that definition. In the context of this definition, I interpret a person's status as his or her position in relation to one or more other persons.

[9] In addition, the reasons for a decision that the Claimant be ranked ahead of the two female athletes and/or that the Claimant be placed on the NextGen Halfpipe team may be based in part on an unfavourable comparison between their

skill levels and/or competitive events and those of the Claimant. And my decision may be based in part on evidence presented by the Claimant's representatives attacking the merit of the two athletes, which would cause them further harm. Their participation in the arbitration would give them the opportunity to defend themselves against such prejudice.

[10] The fact that the two female athletes who were ranked above Ms. Boulanger were not selected for the NextGen Halfpipe team does not prevent the loss of status or prejudice described above.

[11] For the reasons set out above, the Panel appoints Ms. Lily-Ann Ulmer and Ms. Jenna Walker, the two female athletes ranked before the Claimant, as Affected Parties. They will therefore be able to participate in the arbitration of this file, should the case arise.

[12] The provisions of Sections 6.12 and 6.14 of the Code will apply on a case-by-case basis, particularly with respect to the submission of a signed confidentiality agreement and Intervention by both affected parties.

Ottawa, August 31, 2020

Ross C. Dumoulin  
Arbitrator