

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA  
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA**

No.: SDRCC 20-0462

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN:** Kinsey Boulanger (Claimant)

**-and-**

Canada Snowboard (Respondent)

**-and-**

Lily-Ann Ulmer,  
Jenna Walker (Affected Parties)

**ARBITRATOR:** Ross C. Dumoulin

**APPEARANCES:**

For the Claimant: Catherine Parent  
Brian Smith  
Shayne Lynch  
Steve Boulanger

For the Respondent: Adam Klevinas, Counsel  
Tyler Ashbee  
Jean-François Rapatel

For the Affected Parties: Lisa Ulmer  
Jill Walker

**ARBITRATION AWARD**

December 1, 2020

1. This is an arbitration award rendered pursuant to paragraph 6.21(c) of the Canadian Sport Dispute Resolution Code (2015) (the "Code"). I was selected by the parties and appointed as arbitrator by the Sport Dispute Resolution Centre of Canada (SDRCC) to hear and determine the present matter.
2. On August 31, 2020, this Panel rendered a preliminary decision naming Lily-Ann Ulmer and Jenna Walker as Affected Parties pursuant to the definition of the term found in paragraph 1.1 (a) of the Code.

### **THE FACTS**

3. The Claimant, Kinsey Boulanger, challenges Canada Snowboard's decision not to select her to the 2020/21 Halfpipe NextGen Program (Team). She is 16 years old. She has been training with the snowboard sport-school program for three years. In this program, she has a complete team providing her the support necessary to be considered a high-performance athlete. The said team includes a mental health coach, nutritionist, physical trainers and therapists, technical Comp/Dev certified coaches and sports doctors. Before registering with the sport-school program, the Claimant participated in numerous training camps. She trains over 700 hours per school year, not including training camps and competitions.
4. Lily-Ann Ulmer, one of the two Affected Parties, is 14 years old, has been snowboarding since the age of seven and training for the last six years. She is also a competitive gymnast and has been competing for six years. Ms. Ulmer is home-schooled and is in grade 10. She trains approximately 1,000+ hours per year for both snowboarding and gymnastics. She has attended numerous snowboard

training camps over the years. She is currently riding with AMP Academy Snowboard where she has access to a coach who is a former National Team athlete with 15 years of coaching experience, as well as other coaches that are Comp/Dev certified and Air 2 trampoline certified.

5. Ms. Ulmer has participated in Provincials, Westerns and Nationals competitions over the years. Last season, she competed in the Alberta Provincials and podiumed 2<sup>nd</sup> overall in halfpipe. She also competed in Westerns and podiumed 2<sup>nd</sup> place in U15/2<sup>nd</sup> overall in halfpipe. Her competition goals for this year include Provincial, Western and National competitions, as well as attending a NorAm event.

6. Jenna Walker, the other Affected Party, is 14 years old, has been snowboarding since the age of seven and training for the last five years. She is also a gymnast who has been training recreationally for the past seven years and completed the highest level of recreational gymnastics. She is in grade 10 and trains approximately 500+ hours per year. Ms. Walker has attended numerous snowboard training camps over the years. She is currently riding with AMP Academy Snowboard where she has access to a coach who is a former National Team athlete with 15 years of coaching experience, as well as other coaches that are Comp/Dev certified and Air 2 trampoline certified.

7. Ms. Walker has participated in Provincials, Westerns and Nationals competitions over the years. Last season, she competed in the BC Provincials, where she podiumed 2<sup>nd</sup> in U15 in slopestyle. She also competed in Westerns where she podiumed 1<sup>st</sup> place in U 15/1<sup>st</sup> place overall in halfpipe, podiumed 2<sup>nd</sup> place in U15/6<sup>th</sup> place overall in slopestyle and won the women's overall

competitor. As well, she participated in the Nationals and placed 16<sup>th</sup> overall, with a knee injury, in slopestyle. Her competition goals for this year include Provincials, Westerns and Nationals competitions as well as attending a NorAm event.

8. On June 11, 2020, Canada Snowboard announced its selection of athletes named to Canada's 2020/2021 National Team in freestyle and halfpipe snowboarding. The National Team is composed of the senior National Team, the NexGen Team and the NexGen Prospect Team. No female athletes were selected to the NextGen Halfpipe Team, while two females were selected to the senior National Team. Two female athletes, Lily-Ann Ulmer and Jenna Walker, the Affected Parties named by the Panel, were ranked ahead of the Claimant. All three of those athletes were judged to be eligible for the NexGen Team, but were not selected to the Team.

9. Mr. Tyler Ashbee, the Respondent's High Performance Manager, developed Canada Snowboard's "High Performance Program Selection Protocol Halfpipe National Team & NextGen Program 2020-2021" ("Protocol"). In doing so, Mr. Ashbee received input from, and consulted with, the following freestyle snowboard experts: Chris Witwicki, a Chartered Professional Coach who has over 16 years of snowboard coaching experience; Jeremy Sheppard, Director of Performance Solutions at Canadian Sport Institute Pacific, the Slopestyle Off-Snow Coach at Canada Snowboard and holder of a PhD in Strength Science, a Masters of Applied Science and an undergraduate degree in coaching/strength and conditioning; Drew Lawson, the Canada Snowboard Off-Snow Coach working with the halfpipe program through the Canadian Sport Institute - Calgary; and Michael Slaughter, a Level 2 certified coach by US Snowboarding with over 20 years of snowboard

coaching experience and the coach of the National Halfpipe Team in Canada since 2016, attending the 2018 Winter Olympic Games in that position.

10. On May 4, 2019, the Protocol was reviewed with the halfpipe discipline technical experts, Messrs. Witwicki, Sheppard and Slaughter. Messrs. Witwicki and Slaughter provided insight and guidance on the performance criteria included in the selection process detailed in the Protocol in relation to the evolving landscape of performance at the international level with the goal of establishing a fair measurement of where the top-performing athletes within Canada currently are.

11. The Protocol was also sent to the Canada Snowboard Athlete Council for review and feedback. The Athlete Council is composed of a representative for each discipline supported by Canada Snowboard, including halfpipe with two standing members.

12. The document was then sent to Canada Snowboard's High Performance Director, Jean-François Rapatel, for approval and then to the Executive Director of Canada Snowboard, Dustin Heise, for final approval and ratification. The Protocol was then published on Canada Snowboard's website on November 6, 2019.

13. As the Protocol states, it sets out the process of identifying those athletes who are eligible for selection to the 2020-2021 High Performance Program in the halfpipe discipline and then determining which athletes shall be offered positions on the 2020-2021 Halfpipe National Team and NextGen Program.

14. Section 13 of the Protocol outlines the eligibility requirements which an athlete must meet for selection to the NextGen Program. There is no dispute

between the parties that the Claimant, Kinsey Boulanger, as well as the two Affected Parties, met the eligibility requirements.

15. Although its phrasing is more in the nature of a selection criterion, the following statement is included as an eligibility requirement under section 13 of the Protocol:

To be defined as a NextGen Athlete, their results must be tracking towards an Olympic medal from four (4) to eight (8) years out from the 2022 or 2026 Olympics.

16. Mr. Rapatel testified that a NextGen Athlete is at the level below the National Team and confirmed the above-noted definition. These are athletes who are performing at the National level and winning at the Provincial level. He added that approximately five years ago, the term "Development Athlete" was changed to NextGen Athlete in order to be more precise and evidence-based in identifying athletes who were tracking towards winning Olympic medals. The former term encompassed a wider range of athletes, including those at a much lower level. This change was made in order to comply with the "Own the Podium" initiative and to receive the associated funding. Mr. Rapatel emphasized that Canada Snowboard needs to be competing with the "rest of the world", hence its standards must be so aligned.

17. Section 13 specifies that "the maximum age of a NextGen Athlete is 19 for males and 20 for females as of December 31, 2019." It goes on to state that an athlete may remain on the NextGen Team beyond the above-noted ages provided they show a significant progress towards achieving National Team standards "as determined by the athlete's performance curve compared to the Podium Pathway

[...]” As well, athletes must have competed in a minimum of two regional-level events and one national-level event or higher events in the program year just ended and be ranked within the top 15 men or women on the latest “HP Canadian Ranking List”. Athletes must have submitted a NextGen application, including a “Skill Chart” and video footage.

18. For the 2020/21 NextGen Halfpipe Team, Canada Snowboard decided to remove the eligibility requirement for an athlete to compete in at least one national-level event. This was due to the cancellation of the Canadian Air Nation Nationals as a result of the COVID-19 pandemic.

19. Canada Snowboard has used compiled research and data that demonstrate the pathway towards the end goal of winning Olympic medals. The data that forms part of the “Podium Pathway” is from all past halfpipe medalists and the results they achieved at different ages prior to winning an Olympic medal.

20. Mr. Rapatel testified that Podium Pathway Overview documents are not made public because to do so might give a competitive advantage to other countries. One such document was provided by Canada Snowboard in this matter, however Mr. Klevinas, counsel for Canada Snowboard, advised that the said document was not applicable to the discipline at hand, a fact that he had just discovered, and undertook to provide the correct one upon request. The document that was produced in error was in the form of a chart indicating levels of results of athletes at various levels of events from five years from a medal to the medal year.

21. Section 15 of the Protocol, found under the heading "**SELECTION PROCESS**", specifies that the athletes applying for selection to the NextGen Program will be ranked based on four categories.

22. The Protocol then provides as follows under the heading "Overall Athlete Ranking":

[...] the athlete 'Gap Score' will be a total out of 100 and the athletes with the lowest gap score will be the highest ranked for selection. The team will be decided based on the highest ranked athletes until a significant gap is presented, there are no longer eligible athletes, or by reaching the maximum amount of athletes CS can support.

23. Regarding the concept of a "significant gap", Canada Snowboard determines this on the basis of the gaps in the points used to rank athletes, which may be taken to represent a significant gap in performance ability. In the words of Mr. Ashbee, the "gap points" indicate "how close or far away from each other the riders' overall snowboard skill and competition results are compared to the other eligible riders in Canada". He testified that a gap is determined the same way for male and female athletes. Since there are more males than females competing in the halfpipe discipline, a rating of 50<sup>th</sup> in the world would result in a lot more points for a male rider than for a female rider. Male riders are compared to other male riders and female riders are compared to other female riders.

24. Section 15 of the Protocol further provides that each category will be given a value to make up the total 100 points for their ranking. The four categories listed and their values applicable to athletes applying for selection to the NextGen Program are as follows:



- **A. Halfpipe Rank:** 35% of score; the Protocol provides that in this category, athletes will be ranked based on their active World Snowboarding Points List (WSPL) results as of May 1, 2020; a mathematical formula factoring in the athlete's "Rider Canadian Rank" and "Rider Points" used to calculate the athlete's score is outlined;
- **B. Skills Based Assessment:** 25% of score; in the description of this category found in the Protocol, it is observed that an athlete's ranking "sometimes does not coincide with the actual skill level of the athletes"; a point score of skill will be made based on comparing all eligible Canadian athletes, the submitted Skill Based Assessment sheet, the submitted video footage and the expertise of the selection committee; the Protocol goes on to state that "All eligible athletes will be ranked one after another by the selection committee based on their skill which includes trick variety, difficulty, amplitude and consistency." An equation used to calculate the point score of the athlete is outlined;
- **C. Producing Consistent High Level Results:** 20% of score; in this category, the Protocol states that to determine the overall consistency score, each halfpipe event in which the eligible athletes competed will be given a point score based on a scale; each point score from the results will be added up and divided by the number of events to give the overall score on a selection sheet; for the NextGen athletes, the scale specifies: Tier 1: 400-600 WSPL Level events as ranked by the selection date. Tier 2: 0-300 WSPL Level events as ranked by the selection date; a "CONSISTENCY" chart enumerates Tier 1 and 2 results from "Podium" to "25+" and their corresponding point scores from 1 to 10; the NextGen eligible results are given an individual score based

on the chart and all scores are added together, then divided by the number of events attended;

- **D. Seasonal Progression:** 20% of score; in this category, an assessment is made of the submitted skill-based sheet, as well as in-person observations by the national team coaches and if needed, discussion with the athlete's coach will determine the progression of the athlete; the Protocol specifies that "New Tricks will only include 'Game Changing' tricks that would improve the current competition run for the athlete in an event"; a "PROGRESSION" chart indicates a point score based on the number of new tricks.

25. Section 15 of the Protocol is a ranking process to help the Selection Committee determine the level of the riders and where they are best situated within the Canada Snowboard system as either a National Team, NextGen Program or Provincial Level rider. These three tiers align with the competition landscape of halfpipe events. There are necessary skills, called Key Performance Indicators (KPIs), at each level to gain results to improve the riders' ranking in the world on the World Snowboarding Points List (WSPL).

26. Section 16 of the Protocol states that athletes will be selected for the NextGen Program positions "by the order of their final ranking on the selection sheets". It stipulates that "the athlete scores will be a total out of 100 and the athlete with the lowest score will be the highest ranked for selection".

27. Canada Snowboard's ultimate objective is to win Olympic medals. On the basis of past data from Olympic medalists, Canada Snowboard has a podium

pathway showcasing KPIs leading into those medals. Although Canada Snowboard does not limit its selection protocols strictly to these KPIs, they are used to help shape its programs with athletes able to achieve an Olympic medal 4 to 8 years in advance of such a performance, whether that is skill-based or result-based for the current level of competition of the rider.

28. The required snowboarding skills change from year to year as riders progress in the sport, and Canada Snowboard's technical experts are familiar with the current level of skills needed to compete at the different levels of competitions in which its National and NextGen Teams will compete.

29. Canada Snowboard determined that 15 athletes were eligible to be considered for selection to the NextGen Halfpipe Team. These athletes were invited to send their applications to Canada Snowboard by April 28, 2020.

30. Canada Snowboard received four applications. The applicants were: Lily-Ann Ulmer, Jenna Walker, Kinsey Boulanger, and Isla Graven. The 11 other invited athletes did not apply. Mr. Ashbee testified that a reason for such a low number of applicants was that, of the 15 female athletes who were invited, many were young and/or competing in multiple sports or disciplines. These young athletes will likely make the NextGen Halfpipe Team in the future, in Mr. Ashbee's view.

31. On May 5, 2020, the Selection Committee met to discuss the applications received by Canada Snowboard for the NextGen Halfpipe Team. In attendance on the Zoom conference call were Messrs. Ashbee, Witwicki, Sheppard, Lawson and Slaughter (the above-noted freestyle snowboard experts – see paragraph 9), as well as Jean-François Rapatel, Canada Snowboard's High Performance Director,

Kayla Williams and Jeremy Watkin. The group went through the selection Protocol, ranking riders on a selection sheet. They used the data available from the riders' results, consistency, skill and progression from the year by considering the submitted applications, including their skill charts, video clips, the WSPL results and the expertise of the coaches seeing any of the riders at events or training camps throughout the season. For riders presenting a gap between overall scores, the Selection Committee discussed why that gap existed and where the riders fit in Canada Snowboard's structure (Provincial, NextGen, National).

32. With respect to the first category, **Halfpipe Rank**, each athlete's ranking and points show where the rider currently ranks in the world based solely on their competition results against the entire international competitive field. As indicated above, in this category, athletes are ranked based on their active World Snowboarding Points List (WSPL) results as of May 1, 2020. The WSPL is calculated by the World Snowboard Tour which uses an equation that assigns a point value for different levels of events. The athletes' three best events are used to come up with an average score out of 1,000.

33. In the case at hand, a chart showing the WSPL rankings for Canadian halfpipe female athletes as of May 4, 2020 indicates that the Claimant is ranked 11<sup>th</sup> with 48.63 points among Canadian female halfpipe riders. This ranking does not include Elizabeth Hosking and Brooke D'Hondt, the two Canadian female halfpipe athletes at the top of the list (with much higher point totals than the others) who were selected for the National Team. They were therefore removed from the list of athletes being considered for the 2020/21 NextGen Halfpipe Team. Jenna Walker, one of the two Affected Parties, is ranked 9<sup>th</sup> with 66.67 points and Lily-Ann Ulmer, the other Affected Party, is ranked 2<sup>nd</sup> with 120.19 points. Isla

Graven, the only other female athlete who applied to be placed on the NextGen Halfpipe Team, is ranked 7<sup>th</sup> with 70.32 points. Isla is 9 years old. The other seven female athletes on the WSPL chart who are ranked from 1<sup>st</sup> to 10<sup>th</sup> did not apply to be placed on the NextGen team.

34. Still on the subject of the **Halfpipe Rank** category, section 15 of the Protocol indicates that athletes with the lowest gap score are the highest ranked for selection. The overall scores attributed to each of the four applicants by the Selection Committee are indicated in another chart (overall ranking chart) produced by the Respondent. Applying the formula provided in the Protocol for this category, the gap scores that appear in the said chart for the four athletes who applied to be selected to the NextGen Halfpipe Team were as follows:

- Lily-Ann Ulmer: 22.99
- Jenna Walker: 30.67
- Kinsey Boulanger: 33.57
- Isla Graven: 35.00

35. It must be noted that there was a typo in the above-noted overall ranking chart indicating that Isla Graven's Halfpipe rank was 19<sup>th</sup>, however she was ranked 9<sup>th</sup>. As such, her gap score should have been 30.48 which would have ranked her ahead of both Jenna Walker and the Claimant.

36. With respect to the second category, **Skills Based Assessment**, the Selection Committee followed the process and considered the factors outlined in the Protocol as above-noted. The Committee ranked each athlete on the basis of their execution of the skills specified in the Protocol. All the athletes were

compared against one another and the ranking was determined. In the result, the four applicants were ranked as follows: first: Lily-Ann Ulmer; second: Kinsey Boulanger; third: Jenna Walker; fourth: Isla Graven. They received gap scores of 2.5, 5, 7.5 and 10, respectively.

37. The third step in the assessment process is **Producing Consistent High Level Results**. This consistency rank uses the results from every event at which each athlete competed during the 2019/20 competition season. As with the other steps, the athlete with the lowest gap score is ranked highest. The results of the calculation of the gap scores for each of the four athletes' consistency rank were as follows:

- Lily-Ann Ulmer: 4
- Jenna Walker: 4
- Isla Graven: 7.5
- Kinsey Boulanger: 8.33

38. The final step of the selection process in the Protocol is **Seasonal Progression**. In assessing each applicant's skill-based sheet, the video and in-person observations of the national team coach, if, for example, an athlete added a more demanding new trick to their competition run in the year being assessed, this would be considered, provided that it has been included in the athlete's video footage or other session or competition where a coach is in attendance. The four applicants for the 2020/21 NextGen Halfpipe Team received the following scores:

- Isla Graven: 6 (4 new tricks)
- Kinsey Boulanger and Jenna Walker: 8 (2 new tricks)

- Lily-Ann Ulmer: 10 (no new tricks)

39. Their corresponding gap scores were 12, 16, 16 and 20, respectively.

40. The overall ranking chart indicates that, based upon the above-noted results, the overall gap scores for the four applicants were as follows:

- Lily Ann Ulmer: 53.49
- Jenna Walker: 62.17
- Kinsey Boulanger: 71.24
- Isla Graven: 72.00

41. After the four above-noted assessments were conducted, the athletes were ranked in order and the Selection Committee determined whether the top-ranked athlete was performing at the NextGen level.

42. Canada Snowboard did not consider that any of the four female 2020/21 NextGen Halfpipe applicants were performing at the NextGen level. Mr. Ashbee testified that none of the applicants achieved consistent results at the Regional/Provincial level events, nor did they achieve high-level (i.e., top 50%) results at National events. Consequently, it was determined that no female NextGen Halfpipe athletes would be selected to the 2020/21 Team. Mr. Ashbee added in his testimony that next in line for selection to the NextGen Halfpipe Team would be Lily Ann Ulmer and Jenna Walker.

43. In 2019/20, Canada Snowboard selected Brooke D'Hondt to the NextGen Halfpipe Team. She was ranked second in Canada and had previously won the Western Provincial Nationals, the Canadian Senior Nationals, the Canadian Junior Nationals and a US NorAm event and had two 6<sup>th</sup> places at other US NorAm events (which have a stronger field than the Canadian events) prior to her 2019/20 NextGen Team selection. Ms. D'Hondt was ranked with 450.75 WSPL points, which ranked her 21<sup>st</sup> in the world at only 14 years old. She had also won the overall FIS NorAm Tour.

44. When comparing the applicants for the 2020/21 female NextGen Halfpipe Team to Ms. D'Hondt, Canada Snowboard considered that none of them were performing at the level that Ms. D'Hondt was in the 2019/20 season. However, Mr. Ashbee specified in his testimony that this comparison between the applicants and Ms. D'Hondt was not made at the time the Selection Committee made its determination, but rather in response to the Claimant's appeal of its decision.

45. It was Canada Snowboard's evidence that the reason the Claimant was not selected to the 2020/21 NextGen Halfpipe Team was that her gap scores, specifically in relation to her halfpipe ranking and results consistency, were too high. This was in addition to the fact that the athletes who are ranked ahead of her pursuant to the selection process described in the Protocol were not, in the assessment of the Selection Committee, performing at the NextGen level.

46. More specifically, as noted above, the Claimant was ranked as the 11<sup>th</sup> female halfpipe rider in Canada after competing in three events during the 2019/20 season. These three events consisted of two National (US NorAm) events and one US Regional (FIS Race) event. Her results at these events earned her 48.63 WSPL



points and ranked her 95<sup>th</sup> out of a total of 181 in the world for female halfpipe riders. Mr. Ashbee testified that Ms. Boulanger's results were as follows:

- at her first US NorAm event, the Claimant finished 25<sup>th</sup> out of 27 competitors and earned 29.9 WSPL points;
- at her second US NorAm event, the Claimant finished 24<sup>th</sup> out of 27 competitors and earned 40.10 WSPL points;
- at the US Regional Futures Tour event (FIS Race), the Claimant finished 18<sup>th</sup> out of 23 competitors and earned 75.9 WSPL points.

47. On the basis of her rank and consistency scores, the Selection Committee determined that the Claimant, along with the athletes ranked ahead of her, were not yet ready to be competitive at the national level (NorAm tour) as a NextGen rider. The Selection Committee was of the view that Ms. Boulanger was better situated to try to earn podium results at provincial level events in Canada with her current club for the 2020/21 season, while attending some national events to gain experience at a higher level. Doing so would provide her with an opportunity to increase her Canadian and World ranking, while developing her skills toward becoming a national level contender.

48. In an email dated June 18, 2020 addressed to Catherine Parent in response to her inquiry, Mr. Ashbee wrote the following with respect to the decision of the Selection committee:

We decided not to take any of the eligible women to the NG team because of the gaps presented in skill level and results from the eligible group. The first ranked eligible woman is still in her developmental stage as an athlete and can still develop her skills within the provincial structure at this time

and is not yet ready to be included in the NextGen group for training and competition opportunities. Kinsey being 3<sup>rd</sup> ranked on the selection list also did not meet the selection. Kinsey presented a gap of 17.77 in the overall scores to the first ranked female on the NextGen selection.

49. Mr. Ashbee went on to say in the said email to Ms. Parent that the areas that would help the Claimant in improving her overall selection and ranking score would be her rank, (which is based on the Canadian Ranking List, and also on the number of points she has on the WSPL) and her contest consistency. Mr. Ashbee observed that rankings over 20<sup>th</sup> position at events increase the gap score considerably, which can increase the athlete's overall score. Having more competition results at events where Ms. Boulanger can place higher would benefit her consistency score.

50. Mr. Ashbee also specified in the said email that for this group of NextGen eligible females, the Selection Committee members asked themselves whether the applicants' skill is "currently at the level to compete on the Nor-am tour (Nationally) progressing towards being a finalist or on the podium."

51. As well, Mr. Ashbee emphasized in his response to Ms. Parent that although there are benefits to naming people to National teams, "we are not 'filling the bus' with athletes for their individual benefit, it is a high performance team and the positions on the team must be earned [...]" Mr. Ashbee concluded his email by expressing the following view:

[...] at this time the eligible females in the selection are all currently competing at a Provincial level, and their skill base is not yet at the level to achieve consistent results in line with meeting NextGen standards as 'an athlete who demonstrates Olympic Medal potential 4 to 8 years out'. That is not saying they are not able to attend and even medal the 2026

Olympics, but the data we have available for these riders have not shown that they have demonstrated the ability to do that yet in their young careers.”

52. Mr. Ashbee testified that the following matters were not considered to be criteria in the selection of the 2020/21 NextGen Halfpipe Team athletes: an athlete’s sacrifices, dedication, program choice, team, camps, experience, coaching staff and parents’ financial investment.

53. With respect to the 2020/21 male NextGen Halfpipe Team, the two athletes selected by Canada Snowboard were Kiran Pershad and Liam Gill. Kiran Pershad, who is 20 years old, received an age exemption allowing him to remain on the NextGen Team, although he is older than the entry age. This is in keeping with the eligibility requirements in the Protocol: once an athlete is on the Team, he/she may remain on it as long as he/she is showing progress towards the national level. Kiran Pershad’s results at two US NorAm events were 9<sup>th</sup> out of 36 competitors (earning him 312.24 WSPL points) and 17<sup>th</sup> out of 37 competitors (earning him 190.86 WSPL points). As well, he competed at a Western Canadian Championship event, finishing 5<sup>th</sup> out of 44 competitors (earning him 213.36 WSPL points). These three results gave him 238.82 points on the WSPL, placing him 45<sup>th</sup> in the world out of 335 athletes and 4<sup>th</sup> in Canada. His overall gap score was 47.57

54. Liam Gill’s results were as follows: at a US NorAm event, he was 15<sup>th</sup> out of 36 competitors (earning him 212.16 WSPL points); at an Alberta Provincial event, he placed 1<sup>st</sup> out of 46 competitors (earning him 200 WSPL points); and at a Western freestyle event, he was 2<sup>nd</sup> out of 44 competitors (earning him 273.57

WSPL points). These three results gave him 212.44 WSPL points and placed him 49<sup>th</sup> in the world and 5<sup>th</sup> in Canada. His overall gap score was 48.74.

55. Mr. Ashbee testified that the above-noted men's gaps were not as significant as the women's gaps.

56. The world situation between male and female halfpipe competitors is different. On the WSPL, there are 247 female halfpipe competitors, compared to 494 males in the halfpipe discipline. The Key Performance Indicators between genders are specific to the field they compete against. Canada Snowboard's technical experts attend the events and, consequently, know the results and level of skills that are required to compete at the different levels of competition.

## **THE POSITIONS OF THE PARTIES**

### **Canada Snowboard:**

57. Mr. Klevinas outlined on behalf of the Respondent that pursuant to section 15 of the Protocol, athletes being considered for selection to the NextGen Team are given a gap score out of 100. As indicated under the heading "Overall Athlete Ranking", the team is decided based upon the highest ranked athletes until a significant gap is presented, there are no longer any eligible athletes, or if a maximum is reached beyond which Canada Snowboard cannot financially support any additional athletes. A gap in points between athletes indicates an athlete's

potential ability or inability to compete at the same level as other Canada Snowboard athletes in the same discipline.

58. Regarding the first category, Halfpipe Rank, counsel explained that Canada Snowboard included this category as part of the selection process because each athlete's ranking and points are objective data which shows where the rider currently ranks in the world based solely on their competition results against the entire international competitive field. Canada snowboard takes an athlete's World Snowboarding Points List (WSPL) results as of May 1, 2020 and plugs it into the mathematical formula indicated therein. It was submitted that by taking this approach, Canada Snowboard uses an objective metric, i.e. each athlete's WSPL results, and applies a formula that is used for every athlete being considered. This allows Canada Snowboard to determine a gap score on an objective and consistent basis for each athlete being considered for selection to the NextGen Team.

59. Mr. Klevinas described the next two categories under section 15 of the Protocol, Skills Based Assessment and Results Consistency. Regarding the latter, it is a consistency assessment which is used to evaluate each athlete's ability to produce consistent high-level results. Canada Snowboard included this category as part of the selection process because the ability to achieve consistent results is a trait of high-performance sport and a clear indicator that athletes are competitive against different fields and levels of the competition. The score given to each athlete is based on an objective method and is applied consistently to each athlete being considered for selection to the NextGen Team.

60. Counsel submitted that the final category, Seasonal Progression, was included because an increase in an athlete's progression will increase their

competition run and, ultimately their rank in the future. Further the ability to learn new skills is a key to success in freestyle snowboarding. The seasonal progression gap score is determined by the submitted documents (skills chart and video) by the athletes and their coaches.

61. Mr. Klevinas argued that Canada Snowboard has provided sufficient evidence to establish that the criteria found in the Protocol are justifiable and reasonable. With respect to the selection criteria found in section 15 of the Protocol, in three of the four categories, i.e., sections 15 (A), (C) and (D), the determinations made are entirely objective and based on formulas or objective determinations that apply consistently to every athlete being considered for selection to the NextGen Team. Further, the inclusion of section 15 (B) of the Protocol was to benefit athletes who have decided to focus more on training than competitions in order to improve their scores.

62. If one applies the formula found in section 15 (A) of the Protocol relating to the Halfpipe Rank category, the Claimant had the highest gap score, and hence the lowest ranking, among the four athletes who applied to be selected to the NextGen Team. This is taking into account the typo indicating that Isla Graven was ranked 19<sup>th</sup> instead of 9<sup>th</sup>. Her gap score should have been 30.48, which would have ranked her ahead of both Jenna Walker and the Claimant. Canada Snowboard notes that the calculation conducted at this stage is entirely objective and applies to every athlete being considered for selection in the same manner.

63. Counsel pointed out that with respect to the Skills Based Assessment and Results Consistency Categories, the Claimant ranked second and last respectively

in gap scores among the four athletes who applied for selection to the NextGen Team.

64. Regarding the Seasonal Progression category, the point score is determined entirely on the number of new tricks an athlete adds to her competition run in a given year. There is no subjectivity whatsoever at this stage of the assessment, in addition to the fact that the assessment is conducted based upon information submitted by the athlete and/or their coach.

65. Mr. Klevinas cited by way of example, and to support Canada Snowboard's decision not to select any female athletes for the 2020/21 NextGen Halfpipe Team, the selection of Brooke D'Hondt by Canada Snowboard to the NextGen Halfpipe Team for 2019/20. Based on her accomplishments and ranking, Canada Snowboard considers that Ms. D'Hondt was the quintessential NextGen Halfpipe rider who was tracking on the podium pathway for her age.

66. When comparing the applicants for the 2020/21 female NextGen Halfpipe Team to Ms. D'Hondt, Canada Snowboard considered that none of them were performing at the level that Ms. D'Hondt was in the 2019/20 season.

67. For the reasons mentioned above, it was Canada Snowboard's position that it correctly applied section 15 of the Protocol when assessing the applications of the four athletes in question. Furthermore, its determination that none of the four applicants were performing at the level required to be selected to that team was reasonable and justifiable in the circumstances.

68. Mr. Klevinas submitted that the appropriate standard of review in team selection cases is that of reasonableness and not correctness. Where the reasonableness standard applies, it requires a reviewing body to exercise deference. This standard of review has been consistently applied by SDRCC Tribunals. The decisions in *Larue v. Bowls Canada*, SDRCC 15-0255, *Palmer v. Athletics Canada*, SDRCC 08-0080, *Christ v. Speedskating Canada*, SDRCC 16-0298, *Mehmedovic and Tritton v. Judo Canada*, SDRCC 12-0191/92, *Bastille v. Speed Skating Canada*, SDRCC 13-0209, *Scott & Morneau v. Canoe Kayak Canada*, SDRCC 16-0305/06, *Dunsmuir v. New Brunswick* (2008 1 S.C.R. 190), *Canada (citizenship and immigration) v. Khosa*, 2009 SCC 12, [2009] S.C.R. 339 were cited in support.

69. It is Canada Snowboard's position that there is no evidence that it committed a cogent error when it applied the Protocol or when it assessed any of the female athletes who applied to be part of the 2020/21 NextGen Halfpipe Team and when it made its decision. The Tribunal should defer to the expertise of Canada's snowboard and its Selection Committee, who possess a high level of expertise and technical knowledge in freestyle snowboarding.

70. Canada Snowboard is not asking the Tribunal for complete deference. Instead, its position is that, unless the decision was vitiated by bias, bad faith or a clear error in the interpretation of the Protocol, the expertise of the members of the Selection Committee, who know freestyle snowboarding, must be given weight.

71. In Canada Snowboard's view, its decision was reasonable, as it was justified, transparent and intelligible and also because it falls within a range of possible and reasonable outcomes that are defensible in light of the facts and the Protocol.



72. Canada Snowboard considers that it acted in good faith when it applied the Protocol, assessed the athletes who applied for selection to the female NextGen Halfpipe Team and made its decision. There was no evidence that it acted in bad faith or in an arbitrary or discriminatory manner when it made its decision.

73. Counsel emphasized that the reason the Claimant was not selected to the Team was that her gap scores, specifically in relation to her halfpipe ranking and consistency, were too high, in addition to the fact that the athletes who are ranked ahead of her pursuant to the selection process described in the Protocol were not, in the assessment of the Selection Committee, performing at the NextGen level.

74. Canada Snowboard acknowledged that it had to exercise a certain level of discretion when it decided not to select any female athletes to the 2020/21 NextGen Halfpipe Team. However, the measures and tools that it put in place and its assessment of each athlete in accordance with the four steps listed in section 15 of the Protocol were rigorous, structured and transparent. The process followed when making its decision was reasonable and appropriate and in accordance with the Protocol. Its Selection Committee was able to have a meaningful and thoughtful discussion when making its decision, which was not subject to bias or any pre-formed opinions.

75. For the reasons outlined above, counsel submitted that the Tribunal should defer to Canada Snowboard's evaluation of the applications submitted by the four female athletes seeking to be selected to the 2020/21 NextGen Halfpipe Team and that it should allow the decision to stand.

**The Claimant:**

76. The Claimant was represented by Ms. Catherine Parent and Mr. Brian Smith.

77. Ms. Parent is a Chartered Professional Coach and has been a Canadian snowboard coach for over 16 years. She was one of the first coaches to complete an Advanced Coaching Diploma, becoming a Comp/Dev Advanced Certified Coach. She has dedicated a large part of her career to improving women in snowboarding by volunteering on numerous committees and as a consultant for federations and organizations. As a coach, she is currently active overseeing athletes' careers, accompanying them on high-performance camps and competitions and providing support.

78. Mr. Smith is a registered professional coach and has been involved with Canadian snowboard coaching for over 22 years. As a past member of the Canadian Snowboard Coaching Program's Technical Experts Committee, he contributed in developing the Long-Term Athlete Development (LTAD) for freestyle snowboarding in Canada. His role was to set the technical, tactical, physical, psychological, equipment and environment standards required for an athlete to be identified in all eight stages of the LTAD. As a Learning Facilitator and Evaluator, he has trained and certified coaches that have gone on to become National Team coaches. He is one of the few High-Performance coaches that works not only with elite athletes, but also at the grassroots level. He is also a level 4 with the Canadian Association of Snowboard Instructors.

79. It was submitted on behalf of the Claimant that her background as outlined earlier in this award contains criteria that are traits of a high-performance program for a NextGen level athlete and the NexGen entry-level mentioned in the Canada Snowboard LTAD.

80. The Podium Pathway Overview document does not align with NextGen level athletes regarding age when referring to multiple documents. According to the Podium Pathway document, the entry age for NextGen or Development athletes is 20-21, whereas the NextGen Selection Protocol indicates the maximum age for an athlete is 19 [for males and 20 for females]. And the Canadian LTAD shows an entry age for stage 5/6 level athletes of 14-17.

81. With respect to the Protocol's eligibility requirements for NextGen selection, the Claimant's representatives asked, how can an athlete possibly challenge NorAm podiums when they are only required to compete at a regional level one year prior to being selected to a NextGen high-performance Team?

82. In section 15 of the Protocol, mention is made of a "significant gap". It was argued on behalf of the Claimant that this is subjective. The Selection Committee can modify this "significant gap" to justify who they select as they please. The concept needs to be clear and equitable for both men and women.

83. According to the overall ranking document for the men's 2020/21 halfpipe, two men were selected on the NextGen team who only demonstrated consistency at a regional level. This is far from the "high level" results mentioned in the third category of section 15 of the Protocol.

84. The Claimant's representatives emphasized that, in reference to the overall ranking document for the men, it is clear that the gaps between the NextGen men are as substantial as those between the NextGen women. In fact, the men demonstrated a large gap and were still selected.

85. Canada Snowboard maintains that the Claimant was not selected due to the gap scores for halfpipe ranking and consistency. However, in the overall ranking document for the men, it is clearly indicated that two men were selected to the NextGen team with similar gap scores. The actual gap score number required is not mentioned in the selection Protocol.

86. The Respondent argues that had the Claimant obtained just one better result such as Top 8 at a NorAm level event, her ranking would have been much higher. However, no male athletes selected to the NextGen Halfpipe Team obtained a Top 8 at a NorAm level event.

87. The Claimant's representatives assert that unless Canada Snowboard identifies Brooke D'Hondt as the required standard to be selected on the NextGen Team (which was never mentioned before the appeal process), this justification is irrelevant and inadmissible. Canada Snowboard maintains that because the other applicants are not as good as Brooke D'Hondt, currently a National Team athlete, they were not selected, yet nowhere is it stated in the Protocol that future female athletes need to fulfil the same path. It makes no sense to use Brooke D'Hondt's current skill level or contest results to select the NextGen athletes. Some men selected to the 2020/21 NextGen Halfpipe Team did not have the success that current men on the National Team have had in their development.

88. It was emphasized on behalf of the Claimant that federations are responsible for the accurate assessment of today's reality in sport. They must make sure that protocols and policies reflect this reality and not an ideal scenario that fulfills their personal agenda and eliminates any chance of creating a grassroots movement to develop the next generation of athletes. Brooke D'Hondt is not a fair assessment of what a NextGen female athlete should be in our current reality.

89. It was submitted on behalf of the Claimant that in light of the arguments presented by Canada Snowboard, the latter based its decision on a biased interpretation of the Protocol and on irregular procedures in the selection of the NextGen athletes. If the decision was not biased, then why did it use an age exemption to select male athletes who demonstrate similar gaps to the women? Using their Protocol and justifications, no male athletes should have been selected. This demonstrates a lack of equity. Men were selected, and not women, based on bias.

90. Although Ms. Parent and Mr. Smith agree that on some occasions, subjectivity is required when selecting athletes, when an athlete fills all the minimum standards, fits the profile of a high-performance athlete through her program choice, dedication, coaching staff, camps and financial investment, they should be selected.

91. It was further submitted that although every athlete considered was subject to the same evaluation, the reasons for selecting the athletes were subjective, such as a "gap difference". These questions arise: what is considered a large gap? And, where is this number in the selection Protocol?

92. Canada Snowboard states that it has a podium pathway showcasing KPIs leading to Olympic medals and that these are used to help shape its programs with athletes able to achieve an Olympic medal 4 to 8 years in advance of such a performance. In response to this statement, the Claimant's representatives assert that the Respondent cannot guarantee that a selected NextGen athlete will win Olympic medals, even if they fit the profile they created. And the podium pathway document does not reflect the reality of Canadian halfpipe snowboarding. The KPIs are not aligned with a Stage 5 level athlete which is clearly indicated in the Canada snowboard LTAD.

93. The Claimant's representatives agree that the required halfpipe skills change from year to year as riders progress in the sport. However, those skills don't necessarily increase year to year. Cutting off the flow of eligible NextGen female athletes by making the standards unattainable within today's Canadian female halfpipe snowboarding means there will be no NextGen female athletes in the future.

94. Canada Snowboard compared the riders on the basis of their skill level, but there is no mention of the skill level required in the selection Protocol.

95. The Respondent refers to the "pathway to 2026" which includes "all the female halfpipe riders who have achieved a podium (or top 8) at an Olympics", but Ms. Parent and Mr. Smith ask where this 2026 pathway comes from. Canada has only had one Top 8 female athlete at the Winter Olympics and it is very hard to calculate potential medals with only one result. Using performances from an international field of World Cup level athletes has no relevance in selecting a

NextGen Athlete based on the current Canadian level of female riders. It's unrealistic.

96. Canada Snowboard maintains that any athlete selected to represent Canada in snowboarding must meet minimum performance standards. In response, the Claimant's representatives pointed out that there is no mention of any "minimum performance standards" in the selection Protocol. If there is a minimum, where is it stated?

97. Canada Snowboard asserts that athletes seeking to be selected to the NextGen Team must earn the privilege of partaking in high-performance sport by demonstrating projected capabilities of earning a high level of rank and results in the future. The Claimant's representatives take umbrage at the insinuation that Ms. Boulanger has not "earned" her place on the NextGen Team. In support, they cite the sacrifices the athlete has made, her extensive training, including training camps, and the financial investment from her parents as proof that she has earned her place on the NextGen Team.

98. Ms. Parent and Mr. Smith allege on behalf of the Claimant that Canada Snowboard has produced inconsistent and irregular information regarding the selection of a NextGen female halfpipe athlete.

99. In their conclusion, the Claimant's representatives state: "We are not arguing the mathematical formula nor the selection criteria established by Canada Snowboard. We are arguing the process used to select the athletes."

100. Ms. Parent and Mr. Smith assert: "The current reality of female halfpipe snowboarding in Canada isn't like other countries. We cannot and should not select our NextGen athletes based on what other countries are doing".

101. Mr. Smith acknowledged in his submissions at the hearing that the Claimant is not taking the position that she is "above the two Affected Parties". From his experience, he is of the view that "we need to rebuild the NextGen Program".

102. As to the Podium Pathway document not being made public, Mr. Smith opined, "no country would want to copy what we're doing".

103. Mr. Smith observed that, as an expert and an experienced coach, he has difficulty understanding the selection process – the information is complicated or unavailable.

104. It was respectfully requested that Canada Snowboard's decision to exclude the Claimant from the 2020/21 NextGen Halfpipe Team be overturned and that she be named to the Team.

**The Affected Parties:**

105. Ms. Lisa Ulmer and Ms. Jill Walker, parents of the two Affected Parties, filed a joint submission on behalf of their daughters.

106. They state that after having read both the Claimant's and Respondent's submissions, they continue to agree with Canada Snowboard's decision not to



name Ms. Boulanger to the NextGen team. However, regarding equity between the male and female halfpipe athletes, there do appear to be inconsistencies in the information produced by Canada Snowboard regarding its selection and portrait of the NextGen female halfpipe athlete. There does also appear to be some confusion as to what is required to be considered for the NextGen team in relation to NorAm events, as well as the athletes' "gap" score as it relates to males and females.

107. The Affected Parties' representatives agree with the Claimant's argument that Canada Snowboard's reference to Brooke D'Hondt is not relevant in this proceeding as it had not been previously stated that she is the required standard in order to be selected to the NextGen Team.

108. Ms. Ulmer and Ms. Walker are of the view that Canada Snowboard should review the Claimant's submission and take into account what was expressed regarding the concern over the lack of female halfpipe competitors and its responsibility to ensure that there is equity in all disciplines. To this, they add: "Perhaps they could consider and address these concerns in next year's NextGen selection process."

109. In their conclusion, the Affected Parties representatives submitted that they are in agreement with Canada Snowboard's decision not to name the Claimant to the NextGen Team because she is ranked lower than the two Affected Parties and is not next on the list to be considered for the NextGen Team. As there are higher ranked halfpipe athletes ahead of her, she should not be entitled to funds that are extended to those athletes on the NextGen Team. If she were provided with the beneficial funding, it would be an unfair advantage. It is understood that training

is extremely expensive and parents want their children to succeed. But naming children to the NextGen Team before they are ready will only hinder their growth, and passing over athletes who are ranked higher will only create an unhealthy sport environment.

110. Ms. Walker and Ms. Ulmer emphasized that naming athletes to the NextGen Team before they have earned it sets a dangerous precedent for others to follow. It also takes away from the allure and prestige of being named on the NextGen/National Team.

111. At the conclusion of the hearing, after having heard the evidence and submissions presented by Canada Snowboard, its legal counsel and the Claimant's representatives, Lisa Ulmer and Jill Walker stated, on behalf of their daughters, that they concur with Canada Snowboard in this matter and have nothing further to add.

## **DECISION**

112. Subsection 6.7 of the Canadian Sport Dispute Resolution Code describes the onus of proof in team selection disputes such as this one. It reads as follows:

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.

113. The first issue is therefore whether or not Snowboard Canada has demonstrated in its evidence that its selection criteria were appropriately established. The Claimant's representatives state this in their written argument: "We are not arguing the mathematical formula nor the selection criteria established by Canada Snowboard. We are arguing the process used to select the athletes." Hence, it would appear that the Claimant is not taking the position that the selection criteria were not appropriately established. In any event, the evidence shows that Canada Snowboard's Selection Protocol for the female NextGen Halfpipe Team for 2020-2021 was appropriately established by Tyler Ashbee, the Respondent's High Performance Manager, based on input from, and consultation with, a number of highly-qualified freestyle snowboard experts. As well, to their credit, Canada Snowboard sent the Protocol to the Canada Snowboard Athlete Council for review and feedback. It was then approved by the Respondent's High Performance Director and ratified by its Executive Director.

114. The next issue to be determined pursuant to Subsection 6.7 of the Code is whether or not the selection decision was made in accordance with the above-noted criteria. The provision then goes on to stipulate that once the Respondent has met its two-pronged onus, the onus of proof shall shift to the Claimant to demonstrate that she should have been selected in accordance with the approved criteria. In considering these issues, guidance may be had from the caselaw.

115. It has long been established by arbitrators faced with team selection or carding disputes that the standard of review to be applied in such cases is that of

reasonableness and that in applying this standard, the reviewing tribunal must exercise deference.

116. The Supreme Court of Canada, in *Canada (Citizenship and Immigration) v. Khosa* 2009 SCC 12 [2009] 1 S.C.R. 339, at para. 59, made the following pronouncement on the application of the standard of reasonableness and the principle of deference:

Where the reasonableness standard applies, it requires deference. Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within “a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably within the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.

117. Arbitrators have recognized the principle of deference in considering decisions made by a team selection committee composed of experienced experts in a given sport. In *Palmer v. Athletics Canada*, SDRCC 08-0080, arbitrator Pound observed, at page 14:

[...] Arbitrators are loathe to interfere with decisions reached by responsible sports authorities, who are presumed to have the knowledge and experience to make decisions in relation to the sport.

118. And in *Bastille v. Speed Skating Canada*, SDRCC 13-0209, arbitrator Mew expressed this view, at paragraph 34:

[...] As an outsider to the sport of speedskating, I would not presume to be in a better position than an expert Selection Committee or, indeed, an

internal appeal panel of SSC, to say how the results achieved by the athletes in various past competitions or any of the other non-exclusive criteria in the Policy should have been weighed and, hence, which athlete should have been selected. Provided that SSC followed its own rules, and did so fairly, an arbitrator at this level of the process should rarely if ever interfere.

119. As well, on the topic of deference, arbitrator Pound in *Larue v. Bowls Canada*, SDRCC 15-0255, as paraphrased by Arbitrator Palamar in *Christ v. Speed Skating Canada*, SDRCC 16-0298, at paragraph 40, expressed the view that the sports organization in that matter “knows the sport better than any arbitrator could”. And the arbitrator’s role simply “is to determine if a team selection process was decided in accordance with the selection criteria and whether that outcome fell within a range of possible and reasonable outcomes, defensible in light of the facts and the team selection criteria.”

120. This Panel is in agreement with, and adopts, the above-noted principles of reasonableness and deference enunciated in the caselaw. Indeed, the sport of halfpipe snowboarding, with its many facets of performance, numerous levels of competitive events, all in the context of an evolving international scene of athletes progressing in their skills, is one best evaluated by the snowboard experts. As the evidence showed, the required snowboarding skills change from year to year as riders progress in the sport and Canada Snowboard’s technical experts are familiar with the current level of skills needed to compete at the different levels of competitions in which its NextGen Team will compete.

121. An examination of the Selection Protocol for the 2020/21 NextGen Halfpipe Team and the selection criteria contained therein leads the Panel to find that the selection process has been carefully thought out by the experts at Canada

Snowboard. The Protocol contains an intricate, multi-layered selection process that ranks athletes from many different perspectives. The four categories that are the basis of the ranking of athletes i.e., Halfpipe Rank, Skills Based Assessment, Producing Consistent High Level Results and Seasonal Progression, would, on their face, seem to paint a complete picture of the athletes being evaluated.

122. The Halfpipe Rank is a reflection of an athlete's World Snowboarding Points List (WSPL) results based on their three best competition results as compiled by the World Snowboard Tour. Each athlete's ranking and points show where the rider currently ranks in the world based on their competition results against the entire international competitive field.

123. Under the Skills Based Assessment category, the eligible athletes have the opportunity to submit a skills-based assessment sheet and video footage. The Protocol clearly states that the athletes will be ranked based on their skill "which includes trick variety, difficulty, amplitude and consistency."

124. The Producing Consistent High Level Results category measures the consistency of the athletes as demonstrated at the halfpipe events in which the eligible athletes have competed.

125. For the Seasonal Progression category, an assessment is made of the submitted skills-based sheet, as well as in-person observations by the National Team coaches and, if needed, discussion with the athlete's coach. It specifies that new tricks shown by the athlete will only include "Game Changing" tricks.

126. The above-noted categories demonstrate a reasonable and very thorough process of evaluation that looks at the athletes based on many different sources of data and information, whether they be numbers-based, skills-based, consistency-based, or progress-based. Objective statistics, written information provided by the athletes, videos, in-person observations by experts and coaches' input are all considered.

127. In the case at hand, the following evidence has clearly established that the selection decision was made in accordance with the criteria contained in the Protocol, thus satisfying the second element of the onus of proof placed on the Respondent under subsection 6.7 of the Code.

128. The Selection Committee, consisting of a group of snowboard experts, met to discuss the four applications received for the female NextGen Halfpipe Team. They went through the Protocol selection process using the information provided in the submitted applications and the data available from the riders' results, consistency, skill and progression.

129. With respect to the Claimant, her results and ranking were considerably lower than those of the two Affected Parties, Lily-Ann Ulmer and Jenna Walker. The evidence adduced by Canada Snowboard established that her ranking, which was based on these results, was reasonable and correct.

130. The WSPL ranking indicates that Kinsey Boulanger is ranked 11<sup>th</sup> with 48.63 points among Canadian female halfpipe riders. Jenna Walker is ranked 9<sup>th</sup> with 66.67 points and Lily-Ann Ulmer is ranked 2<sup>nd</sup> with 120.19 points. Isla Graven, the other athlete who applied, is ranked 7<sup>th</sup> with 70.32 points. For the Skills Based

Assessment, the Selection Committee ranked each of the four applicants on the basis of the execution of the skills specified in the Protocol. The Claimant was ranked second among the four applicants. Regarding the Producing Consistent High Level Results category, the results from every event at which each athlete competed during the 2019/20 season were considered. The Claimant's consistency rank was the lowest of the four applicants. With respect to Seasonal Progression, after assessing each applicant's skill-based sheet, a video and in-person observations of the National Team coach, Kinsey Boulanger and Jenna Walker were ranked second. Based upon the above-noted results, the Claimant had a higher gap score than either of the two Affected Parties.

131. Canada Snowboard considered that none of the four female NextGen Halfpipe Team applicants were performing at the NextGen level. Consequently, it was determined that no female NextGen Halfpipe athletes would be selected to the 2020/21 Team. No evidence was presented persuading the Panel that this decision was in any way unreasonable. It certainly falls within a range of possible and reasonable outcomes. Mr. Ashbee's uncontradicted testimony was that none of the applicants achieved consistent results at the regional/provincial level events, nor did they achieve high-level (i.e., top 50%) results at national events.

132. Moreover, with respect to the Claimant, it was Canada Snowboard's evidence that the reason she was not selected to the 2020/21 female NextGen Halfpipe Team was that her gap scores, specifically in relation to her halfpipe ranking and results consistency, were too high. Kinsey Boulanger's 11<sup>th</sup> place ranking among female halfpipe riders was based upon three events in which she participated during the 2019/20 season. These events consisted of two National (US NorAm) events and one US Regional (FISU Race) event. She placed quite low



among the competitors in all three events: 25<sup>th</sup> out of 27 competitors, 24<sup>th</sup> out of 27 competitors and 18<sup>th</sup> out of 23 competitors respectively. These results earned her only 48.63 WSPL points and ranked her 95<sup>th</sup> out of a total of 181 female halfpipe riders in the world. This WSPL points total is far lower than the 120.19 points earned by Lily-Ann Ulmer (who was not selected to the female NextGen Halfpipe Team) and also lower than the 66.67 points earned by Jenna Walker and the 70.32 points earned by Isla Graven.

133. On the basis of the above rank and consistency scores, the Selection Committee determined that the Claimant and the athletes ranked ahead of her were not yet ready to be competitive at the national level (NorAm tour) as NextGen riders. There is no evidence that this determination was unreasonable. In fact, the evidence shows that it was based on solid grounds. Mr. Ashbee further explained the Selection Committee's decision to Ms. Parent in an email dated June 18, 2020 in these words: "[...] at this time the eligible females in the selection are all currently competing at a Provincial level, and their skill base is not yet at the level to achieve consistent results in line with meeting NextGen standards as 'an athlete who demonstrates Olympic Medal potential 4 to 8 years out'".

134. The evidence also clearly demonstrates that the Selection Committee's decision was not biased against female halfpipe athletes in favour of male halfpipe athletes. The two male athletes selected to the 2020/21 male NextGen Halfpipe Team achieved higher results at two US NorAm events, one Western Canadian Championship event, an Alberta Provincial event and a Western freestyle event. Kiran Pershad placed 9<sup>th</sup> out of 36 competitors, 17<sup>th</sup> out of 37 competitors and 5<sup>th</sup> out of 44 competitors. Liam Gill placed 15<sup>th</sup> out of 36 competitors, 1<sup>st</sup> out of 46 competitors and 2<sup>nd</sup> out of 44 competitors. They earned 238.82 points and 273.57

points respectively on the WSPL, which was considerably more than any of the four female applicants. As well, their overall gap scores of 47.57 and 48.74 were not as significant as the women's gap scores. Mr. Ashbee testified that a gap is determined the same way for male and female athletes.

135. Furthermore, the age exemption given to Kiran Pershad is in keeping with the eligibility requirements in the Protocol and is based on the fact that he is showing progress towards the national level.

136. The Panel notes with interest that, at the conclusion of the hearing, after having heard the evidence and submissions of the parties, the Affected Parties' representatives stated on behalf of their daughters (who were ranked higher than the Claimant, but not selected to the Team) that they concur with Canada Snowboard.

137. The Panel is in agreement with the Claimant's representatives that the concept of a "significant gap" and the calculation of the gap scores lack clarity and precision in the Protocol. Indeed, upon examining only the Protocol, it is perplexing how Canada Snowboard came up with the overall gap scores in this case. Even Mr. Smith, an expert and an experienced coach, said, unsurprisingly, that he has difficulty understanding the selection process and that the information is complicated. In its submissions and at the hearing, Canada Snowboard did furnish clarification, however the Panel recommends that it explain the concept of a "significant gap" in the Protocol. It would also be well-advised to explain to athletes not selected to the Team and to their coaches how their overall gap scores were calculated.

138. Regarding the "Podium Pathway" concept, the Claimant's coaches were left in the dark. Mr. Rapatel testified that the Podium Pathway Overview documents are not made public because this might give a competitive advantage to other countries. The Panel is skeptical that such a competitive advantage would occur. Upon an examination of the inapplicable document produced at the hearing, the Panel notes that all it indicates is desired levels of results of athletes at various levels of events over a five-year period. In any case, nothing should prevent Canada Snowboard from informing an athlete and her coaches where she is on the podium pathway and what her goals need to be in the coming months and years in her quest to be selected to the Team.

139. The Panel is of the view that it was unrealistic on the part of Canada Snowboard to compare the applicants for the 2020/21 female NextGen Halfpipe Team to Brooke D'Hondt, even only in response to the Claimant's appeal. It was also unhelpful to state in its submissions that the Respondent "considered that none of them [the applicants] were performing at the level that Ms. D'Hondt was in the 2019/20 season". Brooke D'Hondt is ranked second in Canada and has won four events, including a US NorAm event. Brooke D'Hondt is the Brooke Henderson of Canadian female halfpipe riders and it would not likely have been edifying, but rather discouraging, for the applicants to be compared to the former.

140. None of the points made in the three preceding paragraphs changes the Panel's above-noted findings that the Respondent has met the two requirements of the onus of proof under subsection 6.7 of the Code, nor the finding that the selection decision was reasonable.

141. In the Panel's view, the root cause of the present sport dispute is, in large part, a difference in philosophy on team selection. On the one hand, Ms. Parent and Mr. Smith, the Claimant's coaches, are of the view that if a rider fits the profile of a high-performance athlete through the sacrifices she has made, her program choice, dedication, extensive training, camps, coaching staff and parents' financial investment, she should be selected to the Team. They feel that the Claimant has "earned" her place on the NextGen Team based on the above-noted factors. They go so far as to say that our NextGen athletes should not be selected based on what other countries are doing.

142. On the other hand, Canada Snowboard views the selection process for the NextGen Teams in the context of international competition and the mission of winning Olympic medals from 4 to 8 years out from the 2022 or 2026 Olympics. Canada Snowboard has defined a NextGen athlete as one whose results must be tracking towards these medals. They must be performing at the national level and winning at the provincial level. A NextGen athlete is no longer just a Development athlete. In the words of Mr. Rapatel, Canada Snowboard needs to be competing with the "rest of the world".

143. In the Panel's view, in the context of high-performance athletes competing in Provincial, National and/or World Cup events, nobody gets an "A" for effort. This may seem harsh, but National Sport Organizations are entitled to require that the prized positions on their NextGen and National Teams be earned through performance and results. As Mr. Ashbee emphasized to Ms. Parent, although there are benefits to naming athletes to national teams, "we are not 'filling the bus' with athletes for their individual benefit, it is a high performance team and the positions on the team must be earned".

144. Of course, this does not mean that sacrifice and dedication aren't important. Kinsey Boulanger, Lily-Ann Ulmer and Jenna Walker are all gifted young athletes who have bright futures in the sport of halfpipe snowboarding and it is hoped that they continue to pursue their goals with the same commitment they have shown. The Selection Committee was of the view that the Claimant should try to earn podium results at provincial level events in Canada, while attending some national level events to gain experience at a higher level. Doing so would provide her with an opportunity to increase her Canadian and World ranking, while developing her skills toward becoming a national level contender. This is not so unattainable.

145. And the future of female halfpipe snowboarding in Canada may not be as bleak as described by the Claimant's representatives. Mr. Ashbee testified that the 15 young female riders who were invited to submit their applications to the NextGen Halfpipe Team will likely make the team in the future.

146. In the result, as stated in the above-noted analysis, this Panel finds that the selection criteria contained in the Protocol were appropriately established and the selection decision was reasonable and made in accordance with these criteria. As well, based on the above-noted evidence and conclusions, the Panel finds that the Claimant did not demonstrate that she should have been selected in accordance with the said criteria. It follows that Canada Snowboard's selection decision stands.

Dated at Ottawa this 1<sup>st</sup> day of December, 2020.



Ross C. Dumoulin  
Arbitrator