

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 24-0702

**CHARLOTTE SIMONEAU
(Claimant)**

AND

**WEIGHTLIFTING CANADA
HALTÉROPHILIE
(Respondent)**

AND

**SHANIA BEDWARD
(Affected Party)**

Representing the Parties:

For the Claimant:

Ms. My Anh Hamel (counsel)
Mr. Patrick Lapierre (counsel)
Mr. Pierre Malhamé (counsel)

For the Respondent:

Mr. Sebastien L. Pyzik (counsel)
Ms. Arielle Reeves-Breton (counsel)

For the Affected Party:

Mr. Lucas M.K. Richards (counsel)
Mr. Luc Chabanole

DECISION WITH REASONS

I. INTRODUCTION

1. This arbitration involves the decision by Weightlifting Canada Haltérophilie (the "Respondent" or "WCH") to not recommend to Sport Canada that Charlotte Simoneau (the "Claimant" or "Athlete") be carded for the 2024 cycle in accordance with Sport Canada's Athlete Assistance Program ("AAP").

2. On March 6, 2024, I accepted the mandate to be the arbitrator in this case in accordance with Section 5.9 of the Canadian Sport Dispute Resolution Code ("the Code"). No objection to my appointment was filed by the Parties.
3. On March 19, 2024, a preliminary conference call was held between the Parties, myself and representatives of the Sport Dispute Resolution Centre of Canada ("SDRCC") in order to establish a timetable for the proceedings.
4. On March 26, 2024, a second preliminary conference call was held between the Parties, myself and representatives of the SDRCC to finalize a procedural calendar. It was determined that a hearing would not be necessary and that a decision would be rendered based only on the documentary evidence and submissions.
5. On April 11, 2024, the Claimant filed her written submissions, and the Respondent filed its written submissions on April 18, 2024.
6. On April 23, 2024, the Affected Party produced her written submissions.
7. On April 25, 2024, the Claimant filed a response to the Respondent's written submissions.

II. THE FACTS

8. On November 1, 2022, the Athlete Assistance Program (AAP) was published by Sport Canada as a reference for athlete carding.
9. In January 2023, the Respondent published the 2024 carding eligibility criteria, set out in the document entitled *2024 Athlete Assistance Program (AAP) - Eligibility Criteria* ("2024 AAP").
10. In May 2023, the Claimant took part in the Canadian Senior Weightlifting Championships.
11. In November 2023, the Claimant participated in the International Weightlifting Federation Junior World Championships, where she won three (3) silver medals. This performance appears to have positioned her among the athletes eligible for carding according to the final rankings published by the Respondent.
12. On January 30, 2024, the Claimant was informed by e-mail that she was not eligible for a SR card (Senior National Card) as she had not met all the eligibility criteria.
13. On February 21, 2024, the Claimant appealed the decision to the Sport Dispute Resolution Centre of Canada (SDRCC).

III. THE PARTIES

14. The Claimant is a junior international weightlifter. She represented the *Club d'haltérophilie Villeneuve Loubet sur mer* in France, with whom she participated in three competitions between November 2022 and February 2023. In 2023, she won the Canadian Junior Championship and was named best athlete of the competition in all categories, ranking twelfth among Canada's top weightlifters in the rankings published by WCH. She also won three silver medals at the International Weightlifting Federation World Junior Championships in Mexico, making her one of the top Canadian weightlifters of 2023. She was not recommended by WCH for Sport Canada carding. She is challenging this decision.
15. WCH is the governing body for the sport of Olympic weightlifting in Canada. It is responsible for establishing the carding criteria that enable athletes to obtain funding from the AAP, a grant program of the Canadian federal government that provides direct financial assistance to Canadian high-performance athletes. The criteria can be found in the 2024 AAP document.
16. The Affected Party is a Canadian weightlifter. She has been recommended by WCH for a Senior National Card (SR Card) under the AAP for the 2024 calendar year. Ms. Bedward has been granted Affected Party status because if the Claimant's appeal is successful, she stands to lose the SR carding status she was granted.

IV. JURISDICTION

17. On March 19, 2003, the SDRCC was created under the Physical Activity and Sport Act.
18. Under the Act, the SDRCC has exclusive jurisdiction to provide the sports community with a pan-Canadian alternative dispute resolution service for sports-related disputes.
19. On February 21, 2024, the Claimant filed an appeal with the SDRCC to reverse the Respondent's decision in accordance with Article 6 of the Code.
20. All Parties have agreed to recognize the jurisdiction of the SDRCC in this case.

V. POSITION Of THE PARTIES

21. The Parties filed submissions rich in content, enabling me to consider the full context of this case. Not all the submissions are analyzed in this decision, but they have been considered in my decision.
22. The Claimant challenges the Respondent's decision to not recommend her to Sport Canada to obtain a SR Card, despite her performance and alleged compliance with the established criteria of the 2024 AAP. She considers this decision to be unreasonable and in breach of the principles of predictability and transparency, as it is based on the addition of an unapproved and unexpected criterion not provided for in the 2024 AAP, specifically that the Senior Canadian Championships are not considered an eligible qualifying competition for a SR Card. The Respondent relies on the text of Sections 2.2 and 2.6 of the 2024 AAP, communications with a member of the Respondent's Board of Directors, and the Respondent's decision-making history to support her position. She asks the Tribunal to allow her appeal, to set aside the impugned decision and to order the Respondent to include her on the list of athletes recommended to Sport Canada for the granting of an SR card.
23. The Respondent's position is that the 2024 AAP criteria and those of previous years require athletes to participate in a designated international competition in the first period of the year. WCH argues that the Claimant has not participated in such a competition and therefore cannot be selected or nominated for carding under the approved criteria.
24. The Affected Party contends that WCH's decision to recommend her is reasonable and consistent with the established criteria, and therefore asks the Tribunal to dismiss the Claimant's appeal and uphold the Respondent's original decision.

VI. ANALYSIS:

25. My analysis is based for the most part on the wording of Section 2.6 of the 2024 AAP.
26. I agree with the three parties that the framework of analysis is that of the *Vavilov*¹ decision, i.e. that of the reasonable decision.

¹ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 SCR 653

27. My interpretation of the criteria leads me to conclude that WCH wished to oblige all athletes wishing to be part of the AAP for the year 2024 to participate mandatorily in the Canadian Senior or Junior Championships in 2023, and that they participate in an international competition in each of the two distinct periods of the year.
28. Section 2.6 of the 2024 AAP reads as follows:

2.6 CONDITIONS TO OBTAIN AND MAINTAIN CARDING STATUS

The athlete will have to participate at the Canadian Senior Championships of the carding period unless a designated competition takes place within 30 days of the Canadian Senior Championships. The athlete will have the option of competing in either the Canadian Senior Championships or their designated competition.

Athletes must compete in at least two (2) international competitions annually. Athletes must also compete in at least 2 of the competitions outlined below, where one is between January and June, and the other is between July and December. The qualifying competitions will include the following:

PERIOD ONE (January 1 to June 30, 2023)

2023 Senior Pan American Championships - Bariloche, Argentina

2023 Junior Pan American Championships - Manizales, Colombia

2023 Senior and Junior Canadian Championships

2023 Youth World Championships 2023 - Durres, Albania

2023 IWF Grand Prix - Havana, Cuba

PERIOD TWO (July 1 to December 31, 2023)

2023 Pan American Games - Santiago, Chile

2023 Commonwealth Championships - Delhi, India

2023 IWF Senior World Championships - Riyadh, KSA

2023 IWF Junior World Championships - Guadalajara, Mexico

IWF Grand Prix - Doha, Qatar

Each athlete is responsible to ensure that they are eligible to participate in, and that they qualify for, these qualifying competitions. Athletes must also submit training plans per the criteria outlined in appendix B.

If these conditions are not met, WCH may recommend to Sport Canada the withdrawal of the athlete's card status.

29. While the first criterion is clear that one is required to participate in the Senior and Junior Canadian Championships in the current year, the second criterion requiring that one participates in two international competitions in two distinct periods of the year, from January 1 to June 30, 2023 and from July 1 to December 31, 2023, is not so clear.
30. While the premise of this criterion is clear, its application is ambiguous. As the Claimant validly points out, there is no definition of the term "international competition" in the 2024 AAP.
31. On the contrary, this terminology is used only once in Section 2.6, while the term "designated competition" and "qualifying competition" are used twice, adding to the confusion in the interpretation of the text.
32. Given this inconsistency in the wording, I can understand the difficulty for a reasonable athlete to understand what type of competition the criteria refer to, particularly since the Senior and Junior Canadian Championships are mentioned in the list of "qualifying competitions" in the first period.
33. The inclusion of the Senior and Junior Canadian Championships in this list also renders the Respondent's January 30, 2024 decision inconsistent.

Indeed, in its decision, the Respondent states: *"While you were listed as 6th in the year-end ranking that we provided to Sport Canada, section 2.6 of the 2024 Athletes Assistance Eligibility Criteria required that you compete in an International Competition in Period One (January 1 - June 30, 2023), which competitions are listed."*²

34. In referring the Claimant to the list of competitions in Section 2.6, which includes the Canadian Senior and Junior Championships, the Respondent once again is unclear.
35. The Respondent's position is based on what it considers to be the obvious interpretation that a Canadian Championship is not an international competition. But then why include it in the list of the first period when the preamble was clear that participation in the Canadian Championships was mandatory? Since the Respondent holds the legislator's pen, it must be absolutely clear in drafting its

² English version of the decision sent by the Respondent to the Claimant on January 30, 2024.

criteria, at the risk of having its decisions reviewed in the event of imprecision, inconsistency or conflicting textual content.

36. I agree with the principle raised by the Claimant that the Respondent's expertise and experience leans towards giving it deference in the interpretation of its policies. However, this deference also implies an obligation of result to draft criteria that are clear, unambiguous and whose meaning is easily understood by the reader.
37. Therefore, while it is true that national federations have expertise and experience in establishing selection criteria, they do not confer immunity when the criteria are imprecise, even slightly so.
38. As explained in *Fergusson v. Equestrian Canada*:

While deference is owed to the experience and expertise of sporting authorities, a National Sport organization must nevertheless follow its own rules making carding or team selection decisions. Where a sport organization has made a decision that is not in accordance with its own rules, that decision cannot be found to be reasonable or to "fall within a range of possible outcomes", and the Tribunal has the power to correct such errors.³

39. In the absence of a definition of "International Competition", the inclusion of the 2023 Canadian Championships in the list of "qualifying competitions" in the same list as other international competitions is likely to give it this international character. Thus, a reasonable athlete would be justified in considering it as meeting the criterion of participating in an international competition in the first period.
40. Furthermore, I cannot agree with the Respondent's position that the Claimant should have requested clarification of the selection criteria, if there was a risk of confusion: this burden cannot be shifted to the athlete, when her interpretation can reasonably be accepted, which is the case here. National federations have an obligation to draft clear guidelines and criteria that provide predictability to athletes so that they can make the most informed decisions in their pursuit of selection.⁴
41. *A contrario*, the Respondent's reasoning in its decision is flawed due to its reference to the list in Section 2.6 and the absence of a definition of the term "International Competition", rendering its decision inconsistent and unreasonable.

³ *Fergusson v. Equestrian Canada*, SDRCC 20-0455, para. 40.

⁴ *Adihetty v. Cricket Canada*, SDRCC 19-0411 para. 37.

42. In fact, in justifying its decision against the wording of Section 2.6, the Respondent added that the Canadian Senior and Junior Championships did not qualify as an "International Competition", which was not mentioned in its policy. This may be obvious, but not in this context, as explained two paragraphs below. By adding this element, the Respondent has demonstrated a lack of clarity to the Claimant, which runs counter to the principle of foreseeability and reasonableness of a decision, prescribed by the *Vavilov* decision.⁵
43. In fact, the presence of this competition in the list of competitions contained in the first period cannot be limited to the redundancy of an already existing criterion: a reasonable person could conclude that it was a unique event to fulfil this criterion, otherwise, the drafter of the criteria would have omitted it from this list, based on the principle of useful effect, i.e. that the legislator does not write to repeat or to say nothing.
44. A Canadian Championship can thus also be considered an "International Competition" in the absence of a contrary or more precise definition of the term. In fact, this was the case in 2022, exceptionally.
45. Finally, I cannot accept the Respondent's argument that its interpretation of the 2024 AAP was reasonable and cannot be called into question because of the existence of another possible interpretation that is also reasonable. In the case of vague or imprecise wording, the *contra proferentem* principle recognized by the SDRCC⁶ compels me to tilt the interpretation in favour of the *bona fide* athlete, which is the case.

VII. CONCLUSION

46. I find that the Respondent's carding criteria were imprecise and lacking in clarity, with respect to the inclusion of Canadian championships in Period One of the selection criteria. Having carefully considered the evidence, I conclude that the Respondent's decision not to grant AAP carding to the Claimant is unreasonable for the reasons explained above.
47. Therefore, I must intervene and use my power of substitution provided for in paragraph 6.11 (a) of the Code and order that the Respondent recommend the Claimant for carding under the AAP.

⁵ *Vavilov*, *supra*, note 1.

⁶ *Greszczyszyn v. Bobsleigh Canada Skeleton*, SDRCC 20-0437, *Baert v. Canoe Kayak Canada*, SDRCC 13-0207

48. I am aware that my decision will have a significant financial impact on the Affected Party. I recognize her success and contribution to Canadian sport and hope that this change in the situation will not hinder her performance.
49. I remain seized of the matter and reserve the right to hear and decide on any dispute relating to the interpretation or application of this decision.
50. Finally, I would like to thank the Parties for the quality and detail of their submissions, as well as their professionalism and efficiency.

VIII. DECISION

The Claimant's appeal is granted.

Signed in Montreal, Canada, on May 14, 2024

Patrice Brunet, Arbitrator