

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

NO: SDRCC 24-0737/0738

JOEY DESJARDINS  
(Claimant)

AND

LOWELL TAYLOR  
(Claimant)

AND

CYCLING CANADA CYCLISME  
(Respondent)

AND

MICHAEL SAMETZ  
(Affected party)

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DECISION WITH REASONS

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PROCEDURAL BACKGROUND

1. On 9 July 2024, Joey Desjardins (hereinafter Claimant 1 or Mr. Desjardins) filed a Request with the Ordinary Tribunal of the Sport Dispute Resolution Centre of Canada (the SDRCC) in accordance with Section 6.1 of the Canadian Sport Dispute Resolution Code (the Code).
2. Claimant 1 appealed Cycling Canada's decision to name him as an alternate to the Canadian Para-cycling team for the 2024 Paralympic Games in Paris. He submits "*there has been an oversight in the evaluation of my recent performance and progress*" and that he should have been named to the team rather than as First Alternate.
3. On 11 July 2024, Lowell Taylor (hereinafter Claimant 2 or Mr. Taylor) also filed a Request with the Ordinary Tribunal in accordance with Section 6.1 of the SDRCC Code.
4. Claimant 2 appealed Cycling Canada's decision to name him as a Second Alternate to the Canadian Para-cycling team for the 2024 Paralympic Games in Paris. He submits the criteria have been clearly stated, but that "*there has not been consideration for the*

*extenuating circumstances that are to be taken into account as per the selection policy.”* He submits that he should either be named to the team or moved up as First Alternate to the team.

5. Should Mr. Desjardins be successful in his appeal, Michael Sametz, the Affected Party who is currently on the team, would be moved down as First Alternate. Should Mr. Taylor be successful in full or in part in his Appeal, either Mr. Desjardins or Michael Sametz, or both, could be relegated to a lower position on the team.
6. The matter was urgently referred to the SDRCC. On the agreement of all Parties, Janie Soublière was appointed as Arbitrator to rule on the dispute expeditiously.
7. A Preliminary call was held on 16 July 2024 during which a truncated calendar for any additional required submissions was made, with the Parties agreeing for the matter to be decided by a video conference hearing to be held on Monday 22 July 2024.
8. All the Parties respected their procedural deadlines. The Arbitrator then issued a Short Decision on 22 July 2024, rejecting both appeals and confirming Cycling Canada’s selection for the Canadian Para-cycling team for the 2024 Paralympic Games.
9. The Arbitrator’s full reasons for her Decision are as follows:

## **PARTIES**

10. Claimant 1, Mr. Desjardins, is a Canadian para-cyclist who competes in the men’s H3 Class. He was selected by Cycling Canada as First Alternate to the Canadian Para-cycling team for the 2024 Paralympic Games in Paris.
11. Claimant 2, Mr. Taylor is a Canadian para-cyclist who competes in the men’s B class partnered with tandem pilot Ed Veal. He was selected by Cycling Canada as Second Alternate to the Canadian Para-cycling team for the 2024 Paralympic Games in Paris.
12. The Affected Party, Michael Sametz, is a Canadian para-cyclist who was selected by Cycling Canada to compete in cycling at the 2024 Paralympic Games in Paris.
13. The Respondent (Cycling Canada or “CC”) is the National Sport Organization that governs the sport of road cycling, comprising para-cycling, in Canada. This includes making team selections for World Championships and Major Events like the Olympic and Paralympic Games.

## **APPLICABLE LAW, JURISDICTION and ADMISSIBILITY**

14. The Parties agree that:
  - The Arbitrator, Janie Soublière has been properly nominated on agreement of all Parties to hear and settle the dispute.
  - The SDRCC has jurisdiction to hear the appeal and settle the dispute.
  - The SDRCC Code applies to all procedural matters related to this dispute.
  - The Respondent’s Internal Nomination Policy (INP) applies to the substantive elements of this dispute.

15. Section 6.10, the most relevant provision of the Code in relation to this dispute, reads as follows:

*If an athlete is a Claimant in a team selection or carding dispute, the onus will be on the Respondent to demonstrate that the criteria were appropriately established and that the disputed decision was made in accordance with such criteria. Once that has been established, the onus shall be on 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.*

16. The most pertinent provision of the INP, which the Arbitrator shall refer to herein as the "Discretionary Provision" read as follows:

*"Any remaining quota spots will be filled at the discretion of the Coach Panel taking into account:*

- a. The riders' potential to win a Paralympic medal*
- b. The riders' performances in the events listed in Appendix B*
- c. Other Factors in Section C, Clause 3 of this policy*

*One or more non-travelling alternates may be nominated using the same criteria."*

17. Section C Clause 3 of the INP reads:

### *3. OTHER FACTORS THAT MAY BE CONSIDERED IN NOMINATION*

*In addition to the Specific Nomination Criteria, nomination may take into consideration any one or more of the following additional factors, in no particular order, providing the factors are relevant to the event athletes are being nominated for. Only factors that can be applied to all athletes being assessed may be considered:*

- Past Individual performances and/or results in international competition;*
- The rider's potential to contribute to future World Championship, Olympic or Paralympic performances;*
- The rider's technical ability;*
- The rider's tactical ability;*
- The rider's physical ability / fitness;*
- The rider's suitability for the course / venue / environmental conditions of the event;*
- The rider's attitude, composure and behavior in high-pressure competitive environments;*
- The results of any of the rider's sport science tests conducted by CC, including biomechanical and physiological;*
- The rider's consistency and reliability in competition;*
- The ability of the rider to contribute to a team result;*
- The rider's attendance, performance, attitude and conduct in training whilst a member of national team program (DTE, training camp or competition);*

- *The rider's level of communication with CC, including sharing training programs and reports with the relevant National Coach.*

## **PARTIES SUBMISSIONS**

18. The following is a summary of the relevant facts and allegations based on the Parties' written submissions. Additional facts and allegations found in the Parties' written submissions may be set out where relevant in connection with the legal discussion below. While the Sole Arbitrator has considered all the facts, evidence, allegations and legal arguments submitted by the Parties in the present proceedings, she refers in her Decision only to the submissions and evidence considered necessary to explain her reasoning.

### **Claimant 1**

19. Claimant 1 submits that there has been an oversight in the Respondent's evaluation of his recent performances and progress and that he should have been selected to the team rather than as First Alternate.

20. In support of his appeal, and relying on various test results and race performance data, he submits *inter alia* that:

- He demonstrated a significant improvement in his performance metrics over the past year, documenting an augmentation of roughly 15% of his VO2Max.
- He achieved his all-time best power to weight outputs to date, with a reduction in weight of nearly 20 lbs and an all time high of 3.1 watts per kilogram (w/kg) in time trials.
- His recent race results showcase his peak form and readiness for high level competition
  - 13<sup>th</sup> in the Ostend Time Trial achieving 102.9% of the podium time
  - 6<sup>th</sup> in the Italy Time Trial achieving 100.6% of the podium time
- He is the current National Champion in both the Time Trial and Road Race, achieving an all-time best w/kg in both races and setting another personal best. The National championships course matches the course in Paris and demonstrates that it suits his power profile.

21. He also submits that team dynamics are another element to consider and that has been overlooked by the Respondent. He submits that the benefit of having both MH3 riders racing together gives them a significant advantage. Their history of racing together allows them effectively to read and support each other during races, providing a competitive edge. Were it not for the unexpected introduction of a new rider who was reclassified from MH4 to MH3 1.5 months before the Games he would have secured a top 5 position.

22. Relying on the documentary evidence submitted in support of his appeal, Claimant 1 also argues that:

- He excels at tackling hilly courses similar to the one in Paris and has a proven track record of setting personal bests on difficult ascents due to his exceptional endurance, powerful arm strength and strategic pacing.

- His UCI ranking is 12<sup>th</sup> overall; higher than the Affected Party who has been selected in preference to him.
- He is showing an upward trend in his readiness for the Games, particularly in time trials, which are crucial for being close to the podium and for selection by Cycling Canada's INP which is based on performance.

23. Overall, Claimant 1 submits that all of the above elements reflect his consistently improving performance and his readiness for the Paris Paralympic Games. He does not believe that the Respondent's decision was made in accordance with the INP criteria and requests that the Respondent's decision be reviewed carefully and reconsidered, which should result in him being named to the team rather than as First Alternate.

## Claimant 2

24. Claimant 2 only has good things to say about the Respondent and does not wish for this appeal to cause a rift between the parties and CC. He is grateful to the Respondent for their staff, their expertise and underlines that they have placed much effort and care to "*connect with their athletes while they tread the difficult path of selections in a Major Games year.*"

25. While he does not contest that the INP was properly established and that its formal criteria were properly established, he appeals how CC applied its discretion in considering all relevant performances and results and came up with ranking between the athletes. He submits that it is in the ranking of the alternates and those who do not clearly meet criteria where it gets complicated and where there is a chance for different interpretations of the performance measures.

26. Claimant 2 also alleges that in 2023 he had also informed CC that a mistake was made in the selection process for the Parapan American Games and highlighted the data upon which he based this assertion. He alleges that CC agreed that they had made a mistake in their naming of alternate and indicated that he would be moved ahead to first alternate as opposed to second alternate. He feels again here that CC may have made a similar mistake in applying its discretion to the alternate spots for the Paralympic Games.

27. In review of the INP, and where he and his cycling pilot Ed Veal rank for team nomination, Claimant 2 submits that this appeal is an attempt to provide the data as he sees it (from his limited athlete perspective), in order to demonstrate how their rank in nomination order could be at least 1 spot higher. Claimant 2 argues that this data could be used to advocate that it supports a potential move from Second Alternate to First Alternate or into the fourth starter position on the team.

28. The data he relies upon to meet the Discretionary Provision includes:

- Being ranked 4th in the 2024 UCI Class Rankings.
- Winning a silver medal in a World Cup in the Paralympic Year.
- Meeting the Two Top 5 finishes required for selection.

29. On these three above facts alone, Claimant 2 alleges that he should be ranked ahead of Claimant 1 and moved into the First Alternate position.

30. Claimant 2 also provides a detailed list of key points and results. He argues that this additional data speaks to race readiness for the games and that he and Mr. Veal's results for 2024 are stronger in balance than Claimant 1 and the Affected Party leading into the games
31. Claimant 2 also submits that CC lists "extenuating circumstances" as a criterion in the INP. In his opinion, he alleges two considerable extenuating circumstances have not been taken into consideration by CC.
- His adored younger sister was diagnosed with terminal cancer prior to the first World Cup of the season and later passed away at the same time their beloved family pet also had to be put down due to cancer. The significant impact of acute grief all of this had on him, his training and his competitions can only be considered an extenuating circumstance.
  - The second extenuating circumstance known to the coaches is that of a significant mechanical issue in the Australian World Cup in January. He argues that "*this mechanical issue that led to us narrowly missing the criteria of '102% of a bronze medal time in a TT.' We were 4th place just out of the 102% needed because our chain came off the single chainring - requiring us to stop, reset and start again. Without this error we would have won at least a bronze medal that day and would have met all criteria for the nomination.*" He says this also would have pushed him ahead of both Claimant 1 and the Affected Party.
32. While speculative, the Claimant also points to a potential conflict of interest or bias in the selection process.
33. Claimant 2 highlights the respect and care he holds for his National Sport Organization and all the amazing coaches and staff at Cycling Canada as well as to honour his teammates. He reiterates that, while he submits that it is well reasoned, he does not want his appeal to cause any fractures within the team. He hopes that his intent, heart and values are able to shine through his submissions.

## The Respondent

34. The Respondent first provides clarifications with regards to its International Nomination Policy (INP) which it explains was developed unchallenged in accordance with the process laid out in the INP (Section C Clause 1). The Respondent thus submits that the INP was properly established.
35. The Respondent further submits that its nomination decision for the Paralympic Games was made in accordance with the INP process:
- i. Coach Panel submits nomination recommendations to Head Coach and DHPS (Director of High Performance Services) for review;
  - ii. Recommendations then submitted to HPC (High Performance Committee) for review;
  - iii. Athletes informed of nomination status;

- iv. Athletes have seven days from communication of decision to declare intention to appeal.

36. Referring to the Coach Panel notes which it submits as an exhibit, the Respondent sets out how the Coach Panel made its recommendations. These notes are reproduced verbatim as follows:

*The Coach Panel, composed of Sébastien Travers, Phil Abbott and Nigel Ellsay, applied the criteria as outlined in the INP:*

- a. *Athletes were first assessed based on the results they achieved in identified events to become eligible [sic] for selection (see Appendix B);*
  - *[The Affected Party] achieved eligible performances twice;*
  - *Each of the Claimants only met half of the eligibility criteria, but the Coach Panel used its discretion to deem them eligible based on having partially met the criteria.*
- b. *The starters and alternates were then named from among the eligible athletes based on the nomination criteria.*
  - *Neither the [Affected Party] nor the Claimants met the criteria to be automatically selected*
  - *These athletes were then ranked based on:*
    - *Potential to win a Paralympic medal;*
    - *Their performances in the events listed in Appendix B;*
    - *Other Factors listed in Section C, Clause 3 of the INP.*
  - *Section C, Clause 3 of the INP reads: In addition to the Specific Nomination Criteria, nomination may take into consideration any one or more of the following additional factors, in no particular order, providing the factors are relevant to the event athletes are being nominated for. Only factors that can be applied to all athletes being assessed may be considered:*
    - *Past Individual performances and/or results in international competition;*
    - *The rider's potential to contribute to future World Championship, Olympic or Paralympic performances;*
    - *The rider's technical ability;*
    - *The rider's tactical ability;*
    - *The rider's physical ability / fitness;*
    - *The rider's suitability for the course / venue / environmental conditions of the event;*
    - *The rider's attitude, composure and behavior in high-pressure competitive environments;*
    - *The results of any of the rider's sport science tests conducted by CC, including biomechanical and physiological;*
    - *The rider's consistency and reliability in competition;*
    - *The ability of the rider to contribute to a team result;*
    - *The rider's attendance, performance, attitude and conduct in training whilst a member of national team program (DTE, training camp or competition)*
    - *The rider's level of communication with CC, including sharing training programs and reports with the relevant National Coach.*

c. *As stated in the selection rationale, the Coach Panel used only the following Other Factors as they could be applied fairly and objectively to all the athletes being considered for selection:*

- *Past Individual performances and/or results in international competition;*
- *The rider's suitability for the course / venue / environmental conditions of the event;*
- *The ability of the rider to contribute to a team result;*

37. Based on the above criteria and selection recommendation assessment, the Respondent's expert Panel ranked the Affected Party (1<sup>st</sup>), Claimant 1 (2<sup>nd</sup>) and Claimant 2 (3<sup>rd</sup>) in that order. Following some discussions and clarifications between the Coach Panel, the Head Coach and the Director of High Performance Services, all documented in the case file, the final recommendations with supporting rationale were submitted to the HPC on June 26. No questions or concerns were raised by the HPC, and the athletes were informed of the nomination decision on July 5.

With specific regard to Claimant 1's claim

38. Canada was awarded four quota spots for the men's para-cycling competition at the 2024 Paralympic Games. The Respondent ranked Claimant 1 (Mr. Desjardins) fifth in its selection order, making him First Alternate.

39. While Claimant 1 disputes his selection as First Alternate and wishes to be named among the starters, CC submits that he both fails to provide credible evidence that CC's Paralympic INP was not appropriately established and that CC's selection decision was not made in accordance with the INP.

40. The Claimant's arguments are based on his own analysis of his fitness and performances in international competition. However, he includes several elements that are not mentioned in the INP. In making the selection decision, CC followed the INP to the letter and appropriately applied its expertise in considering all relevant performances and results.

41. The details of this analysis are contained in CC's selection rationale submitted along with CC's submissions which were reviewed and approved by CC's Coach Panel, Head Coach, Director of High Performance Services, and High-Performance Committee. The resulting selection decision was one which considered all relevant information, which did not consider irrelevant information and which is a reasonable one based on the available evidence.

42. The Respondent therefore asks that the Claimant's appeal be denied and that its selection decision upheld.

With specific regard to Claimant 2's claim

43. Canada was awarded four quota spots for men's para-cycling competition at the 2024 Paralympic Games; CC ranked Claimant 2 (Mr. Taylor) sixth in its selection order, making him Second Alternate.



44. Claimant 2 disputes his selection as Second Alternate and wishes either to be named First Alternate or among the starters. However, Claimant 2 neither alleges nor provides evidence that CC's Paralympic INP was not appropriately established, nor does he allege or provide evidence that the decision was not made in accordance with the INP.
45. Claimant 2's arguments on the merits are based on his own analysis of his fitness and performances in international competition and a desire for CC to exercise greater discretion in the decision. However, he includes elements that are not mentioned in the INP. CC asserts that, in making the selection decision, it followed the INP to the letter and appropriately applied its expertise and discretion in considering all relevant performances and results.
46. The details of the Respondent's analysis of Claimant 2 are contained in CC's selection rationale, submitted to the Arbitrator, which was reviewed and approved by CC's Coach Panel, Head Coach, Director of High Performance Services, and High Performance Committee. The resulting selection decision is a reasonable one based on the available evidence.
47. With regards to C2's speculative submission of possible bias, the Respondent vehemently rejects Claimant 2's insinuation that this employee, who does not work in high performance, has any influence over selection decisions.

#### Conclusion on both Appeals

48. The Respondent alleges that it has demonstrated that the INP for the Paris Paralympic Games was appropriately established and that the INP was followed correctly in naming the Paralympic Team. The onus therefore falls on the Claimants to demonstrate that they should be selected in accordance with the INP and the Respondent's position is that the Claimants have not been able to do so
49. The Respondent thus respectfully submits that its selection decision on the whole was a reasonable one based on the available information and requests that both appeals be denied and its selection decision be upheld.

#### **Affected Party**

50. The Affected Party submits that he has fulfilled the Respondent's INP for the 2024 Paralympic Games in establishing :
  - His 3<sup>rd</sup> place in the time trial at the 2023 Para Cycling World Championships.
  - His 7<sup>th</sup> place finish at the Road race at the 2023 Para Cycling World Championships
51. He submits that the Respondent's decision to select him fourth to the team for the Paralympic Games was correct and made in accordance with the INP criteria, that both appeals should be dismissed, and that CC's July 5, 2024 Selection Decision should stand.

## DELIBERATIONS

52. The first hurdle to Section 6.10 of the Code is for the Respondent to satisfy its onus that the INP criteria were appropriately established and that the disputed decision was made in accordance with such criteria.
53. The Respondent has tendered ample evidence in this regard. This includes internal and external Cycling Canada email correspondences seeking out comment, approval and improvements to the INP whilst drafting it, and extensive notes taken by the Respondent when arriving at its selection decision, all of which mirror the INP criteria and demonstrate that a thorough, professional and thoughtful assessment of each rider was made based on the INP criteria. Nothing brought forward by either Claimant dispels the conclusion that the INP was appropriately established and that the Respondent's selection decision was made in accordance the INP, thereby clearing the first hurdle.
54. Therefore, the only issue in contention is whether or not either Claimant can successfully satisfy its onus or proving that the Respondent's decision was not reasonable. That is the standard of review. If based on all the evidence before her, the Arbitrator concludes that the Respondent's decision was reasonable, both appeals must be dismissed.
55. At the outset - the Arbitrator reiterates that there is little question that all three athletes involved in this case are deserving. Both Claimants have submitted compelling evidence and submissions as to why they believe they should have been chosen to the Team rather than as alternates and their achievements to date and upward trajectories are remarkable.
56. The Arbitrator has carefully considered all Parties' submissions and supporting documentary evidence. The Claimants have both raised arguments that were clearly taken into consideration by the Respondent and have also both raised arguments that are irrelevant to the INP criteria. The Respondent has conversely provided ample evidence which quite simply carries more weight that that of the Claimants'.
57. The Respondent has in fact provided extensive, logical, reasonable and objective INP-criteria-based explanations that rebut all of the Claimants' arguments and has demonstrated that great care was taken by its Coach Panel, HPC and DHPS in selecting the Paralympic Team.

### *Claimant 1*

58. More specifically, with regards to Claimant 1, the Respondent submits that the following Claimant 1's arguments refer to elements not cited in the INP. They were therefore not considered in the selection decision:
  - a. Progression from 2023 to 2024 - Claimant 1's performances have been noted, but he did not achieve better results than Mike in the selection events; progression on its own does not meet any of the selection criteria.
  - b. Status as Canadian champion - Canadian titles are not cited in the selection criteria as the level of competition at Canadian championships is too low to be representative of international competition.
  - c. The fact an athlete from another nation has been reclassified from H4 to H3 and has been immediately competitive, affecting Joey's results - this is not relevant; the results reflect the current depth of field in his class.

- d. Current UCI ranking - UCI rankings are not cited in the selection criteria because they do not necessarily reflect an athlete's performance potential.
59. In making its selection decision, the Coach Panel considered the following elements cited in Claimant 1's appeal:
- a. Race results - The Respondent notes that Claimant 1 did achieve strong results in World Cup III. While this event was not one of the events listed in Appendix A of the criteria, the Coach Panel did consider it in the context of Other Factors. Nevertheless, Claimant 1's result in Maniago was not better than the Affected Party's best result, at the 2023 World Championships, during the selection period.
  - b. Ability to execute team tactics - this is noted among the Other Factors, and Claimant 1 is ranked at the same level as the Affected Party.
  - c. Claimant 1's suitability to the course in Paris - this is noted among the Other Factors, and Claimant 1 is ranked at the same level as the Affected Party.
60. The Claimant raised possible bias in the Respondent's decision-making process because its second selection phase only considered alternates. The Arbitrator does not find any bias occurred in this sense as the first phase of the Respondent's selection process was clearly to identify athletes eligible for the main team, and the second phase was to rank the alternates.
61. Finally, Claimant 1 argues that the Respondent's decision-making process crucially lacked some clarity and fairness, notably with regards to the weight given to World Championship results. Claimant 1 valiantly argues that World Championships should not be given more weight than World Cups that have taken place closer to the Paralympic Games. To the Arbitrator, it is common knowledge that due to its multiple classes and the depth and quality of field, a World Championship is closer to the equivalent of depth of field and competitiveness of Paralympic Games. In cycling, as in all sports, World Championships are a pinnacle event and have greater importance than World Cups. For the Respondent to give more weight to World Championship results than World Cup results in its selection process is a reasonable selection criterion, which the Arbitrator also finds is implicit in the INP.
62. The Arbitrator accepts the Respondent's evidence and submissions for all of the above and finds it more compelling than those of Claimant 1. The Arbitrator finds that the Respondent followed the INP as drafted in making its selection decision, carefully assessed all the relevant information, did not consider the information that was irrelevant to the INP selection decision and based its decision on the applicable criteria expressly set out in the Discretionary Provision, and Section C Clause 3.

### *Claimant 2*

63. With regards to Claimant 2, the Respondent rebuts his arguments that he should be selected ahead of Claimant and the Affected Party as follows:
- That he was ranked 4th in UCI ranking is irrelevant. UCI rankings are not cited in the INP selection criteria because they do not necessarily reflect an athlete's performance potential.
  - That he and his pilot won a silver medal at World Cup was considered in making the selection decision. However, these results were achieved at the Adelaide

World Cup and need to be placed in context as the Adelaide World Cup had the weakest field of any event in the selection period.

- That he and his pilot achieved two top-5 finishes in World Cups during the selection period was considered.

64. The Respondent also rebuts Claimant 2's additional arguments about his recent performances being better than the Affected Party and Claimant 1 and that he scored more Olympic qualification points than them. The Respondent submits that the INP does not give greater weight to results that are more recent. Rather, the athlete's best result in the selection period is more important. Just as UCI rankings, Olympic ranking points are not cited as a selection criterion in the INP.
65. The Respondent also successfully rebuts Claimant 2 allegation that he can race in four events in Paris (two track events, in addition to two road events), giving him more opportunities to compete. The Respondent submits to the contrary that Claimant 2 has not demonstrated Paralympic medal potential in track cycling (he did not finish in the top 8 or first half of starters at either the 2023 or 2024 track world championships). Rightly, this was not considered in the selection.
66. While the Respondent concedes that Claimant 2 had one better result numerically in one event, it also clarifies that differentiating athletes between 11<sup>th</sup> and 19<sup>th</sup> place makes little sense as CC's focus is on good results. They would rather like to focus on peak results than to try to weight lower ranking results. On the whole, the Arbitrator accepts that Claimant 1 had better results than Claimant 2 and the scaled tipped in favour of Claimant 1.
67. As did the Respondent, the Arbitrator also recognizes the extenuating circumstances that Claimant 2 raised in his submissions with regards to the tragic death of his sister. The Respondent recognizes that acute grief had had an impact on Claimant 2's performances at certain events. Yet, the INP considered multiple events over a 10-month period to assess the athletes' level of performance. The Arbitrator also accepts the Respondent's argument that Claimant 2 had opportunities in the 10 events in which he competed over the 10 month selection period to clearly differentiate himself from the others in various different criteria and factors and, simply, fell just short of this objective in a few different ways, for example (i) the ability to compete and contribute to the team (the Respondent has established that Claimant 1 is better suited to compete in a team) and (ii) suitability of terrain/course (given that Paris is a hilly course rather than flat).
68. The Arbitrator finds that Claimant 2's speculative allegation of bias in the Respondent's decision-making process is unsubstantiated and not established to the required standard of proof.
69. Claimant 2 has argued that the Discretionary Provision implies that a wide discretion is provided in the decision-making process for alternates and that his extenuating circumstances should have been given more importance. However, the Discretionary Provision is not wholly discretionary (and rightly so as this would undoubtedly lead to numerous appeals based on lack of certainty). The Discretionary Provision is in fact expressly limited to the Respondent's assessment of (i) The riders' potential to win a Paralympic medal (ii) The riders' performances in the events listed in Appendix B (which does implicitly state that results in World Championships have greater importance than World Cup results) and (iii) Other Factors in Section C, Clause 3 of the policy. The Arbitrator finds that these elements, factors and criteria, were the basis for the Respondent's reasonable decision, as anticipated in the INP.

70. Finally, with regards to Claimant 2 citing an error that was made in the ranking of alternates for the 2023 Parapan Am Games, the Respondent submits that this is of no relevance to this dispute as Claimant 2 has not provided evidence any errors were made in the current selection decision. The Arbitrator accepts this evidence.
71. The Arbitrator accepts the Respondent's evidence and submissions for all of the above and finds it more compelling than those of Claimant 2. The Arbitrator finds again that the Respondent followed the INP as drafted in making its selection decision, carefully assessed all the relevant information, did not consider information that was irrelevant to the INP selection decision and based its decision on the applicable criteria expressly set out in the Discretionary Provision, and Section C Clause 3.

*The Respondent's assessment*

72. The table below, which summarizes the Coach Panel's, HPP and HSPD's assessment of the 3 athletes in accordance with the Discretionary Provision and INP criteria and the Respondent's selection decision further to the same, is conclusive.

	Mike Sametz	Joey Desjardins	Lowell Taylor
Potential to win a Paralympic medal	Good	Fair	Low
Performances in the events listed in Appendix B	Good	Fair	Fair
Other Factors:			
Past Individual performances and/or results in international competition	Good	Fair	Fair
The rider's suitability for the course / venue / environmental conditions of the event	Good	Good	Fair
The ability of the rider to contribute to a team result	Good	Good	Low

73. While Claimant 1 argued that this table lacks information and highlighted some discrepancies between the graph and the Respondent's selection decision notes, the Respondent aptly explained that the ranking process is tricky because of the diversity of classes in paracycling and that all information was taken into weighted consideration. The Arbitrator does not find the discrepancies to be significant enough so as to render the Respondent's decision unreasonable. Rather what emerges is that an extensive analysis of all riders was made based on all the information available and the INP criteria.
74. While deference to a Governing Body is certainly not absolute, the Arbitrator accepts that with its knowledge of all its athletes and expertise in the sport, a Governing Body is best placed to select the strongest team possible for Major Games like the Paralympics so long as this decision is based on the myriad of factors outlined in its carefully drafted selection criteria. On the evidence, the Respondent has done so.
75. On the whole of the evidence and circumstances, the Arbitrator finds that the Respondent's Selection Decision was neither biased, unreasonable or unfair.

**DECISION**

76. Selection cases are never easy, especially when coveted spots to participate in Paralympic are in play. The three athletes who are Parties to this arbitration certainly are world class athletes and have all put their best effort forward, notwithstanding various

and utterly heart-breaking extenuating circumstances in order to try to qualify for the Canadian cycling team for the Paralympic Games. Inevitably, two athletes were going to fall short of this objective this time around, but as alternates, these two athletes may still be called upon to compete in Paris.

77. Pursuant to Section 6.10 of the Code, on a preponderance of the evidence, the Respondent has satisfied its onus of demonstrating that it both properly established its INP in a vigorous drafting and approval process and that it properly applied this same approved INP selection criteria for the 2024 Paralympic Games.
78. Conversely, on the preponderance of the evidence, neither Claimant 1 nor Claimant 2 have met their onus of establishing that they should have been selected to the Canadian Cycling Team for the 2024 Paralympic Games other in that in their current alternate positions, as nominated by the Respondent. On the evidence before the Arbitrator, and taking into careful consideration all the relevant INP criteria and each Parties' compelling evidence, the Arbitrator finds that the Respondent's selection decision was reasonable.
79. In other words, neither Claimant was able to establish that the Respondent's decision was not reasonable; and that is the applicable standard of review in appeals arising from selection decisions.
80. Both Claimant 1 and Claimant 2's appeals are thus denied and the Respondent's July 5, 2024 selection decision is upheld.

## **ORDER**

81. The Claimants' appeals are denied.
82. The Arbitrator retains jurisdiction over all ancillary matters to this dispute and decision.
83. Pursuant to Section 6.12 of the Code, this decision is final and binding on all parties.

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Signed in Beaconsfield, this 13th day of August, 2024.



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Janie Soublière, Arbitrator