

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

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

**Nº: SDRCC 25-0764**

**FLORENCE BRUNELLE  
(Claimant)**

**AND**

**SPEED SKATING CANADA  
(Respondent)**

**AND**

**KIM BOUTIN  
DANAÉ BLAIS  
COURTNEY SARAULT  
CLAUDIA GAGNON  
(Affected parties)**

**Before :**

Patrice Brunet (Arbitrator)

**Appearances and attendees:**

For the Claimant: Mr. Jean-François Brunelle

For the Respondent: Mr. Joe Morissette  
Mr. Marc Gagnon  
Mr. Adam Klevinas (counsel)

For the Affected Parties: Kim Boutin  
Courtney Sarault  
Yves Sarault  
Rhonda Sarault

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**DECISION with REASONS**

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## **I. JURISDICTION**

1. The Sport Dispute Resolution Centre of Canada ("**SDRCC**") was created by federal Bill C-12 adopted on March 19, 2003.<sup>1</sup>
2. Under the *Physical Activity and Sport Act*, the SDRCC has the exclusive jurisdiction, notably, to provide the sport community with a pan-Canadian alternative dispute resolution service for sport disputes.<sup>2</sup>
3. All Parties have agreed to recognize the jurisdiction of the SDRCC in the present case.

## **II. THE PARTIES**

4. Florence Brunelle (the "**Claimant**") is a Canadian short-track speed skater. In 2021, at the age of 17, she joined the Senior National Team and competed in her first World Championships, placing in the Top 10 in both the 500 m and the 1,500 m events. In her Olympic debut at the Beijing Games in 2022, she helped the Canadian women's 3,000 m relay to a fourth-place finish. At the Canadian Short Track Speed Skating Championships in 2024, Florence Brunelle won the gold medal four times: twice in the 500 m distance and twice in the 1,500 m distance. Each distance (500 m, 1,000 m, and 1,500 m) had two finals.
5. Speed Skating Canada ("**SSC**" or "**the Respondent**") is the national organization responsible for the development and management of speed skating in Canada. Founded in 1887, it oversees the long-track and short-track disciplines, in collaboration with the provincial and territorial federations. SSC trains athletes, coaches, and officials, and ensures Canada's participation in international competitions, including World Cups and Olympic Games.
6. Kim Boutin, Danaé Blais, Courtney Sarault, and Claudia Gagnon (together, the "**Affected Parties**") are each members of the Canadian Women's Short Track Team. They have been selected to represent Canada at World Cups 5 and 6 of the 2024-25 World Short Track Speed Skating Tour (the "**World Cups**").

## **III. INTRODUCTION**

7. On February 3, 2025, I accepted my appointment as Arbitrator in these proceedings, in accordance with Section 5.3 of the *Canadian Sport Dispute Resolution Code* (the "**Code**").
8. Due to the urgency of the situation resulting from the fact that the World Cups began on February 7, 2025, a hearing was held by videoconference on February 4, 2025.

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<sup>1</sup> *Physical Activity and Sport Act*, S.C. 2003, c.2.

<sup>2</sup> Section 10 of the *Physical Activity and Sport Act*, S.C. 2003, c.2.

9. Following my appointment as Arbitrator, counsel for the Respondent Mr. Adam Klevinas ("**Mr. Klevinas**") noted in an e-mail to the Parties that when Mr. Joe Morissette was CEO of Triathlon Canada, he and I "*organized together*" multiple international-level triathlon events.<sup>3</sup>
10. I specified to the Parties that the contacts I had with Mr. Morissette were essentially a matter of protocol, with the management of triathlon events being entrusted to a third party. After informing the Parties of this clarification, I invited them to inform me at the beginning of the hearing of their observations, concerns, or objections to my appointment as Arbitrator in this context. No objections to my appointment as Arbitrator were raised, and the Parties expressed their satisfaction.
11. At this hearing, the Claimant, the Respondent, as well as Kim Boutin and Courtney Sarault (together, the "**Present Affected Parties**") completed their oral representations on their respective positions
12. A representative of the Sport Dispute Resolution Centre of Canada ("**SDRCC**") was also present. Danaé Blais and Claudia Gagnon were not present at the hearing.

#### **IV. BACKGROUND**

13. This case concerns the Respondent's decision, made by its High-Performance Advisory Council - Short Track (the "**HPAC-ST**"), to deny the Claimant's Bye request to be entered in the individual distances at the World Cups.
14. The World Cups are two stages that form part of the 2024-25 World Short Track Speed Skating Tour ("**World Tour**").
15. The World Tour is complemented by national selection competitions, including the Canadian Championships, held in Montreal from September 13 to 15, 2024, and the Canada Cup, held in Sherbrooke, Québec, from January 24 to 26, 2025 (the "**Canada Cup**").
16. On January 24 or 25, 2025, the Claimant was withdrawn from the Canada Cup by medical decision.
17. On January 26, 2025, the Claimant filed a Bye request with the HPAC-ST<sup>4</sup>, based on her injury sustained at the Canada Cup, so that she could compete in the 500 m, 1,000 m, and 1,500 m individual distances of the World Cups.
18. She submitted this Bye request because her ranking is not high enough to qualify under the selection process for individual distances set out in the 2024-2025 High Performance Short Track Master Bulletin (the "**Master Bulletin**").

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<sup>3</sup> Party filings, Exhibit R-02.

<sup>4</sup> Exhibit C-03.

19. In support of her Bye request, the Claimant highlighted her 2024 Canadian Champion title and her results obtained during the first half of the season, which testify to her ability to perform at a highly competitive level. At the time she submitted a Bye request, the Claimant was ranked third in the 500 m and eighth overall on the World Tour.
20. In her Bye request, the Claimant stated that she disagrees with the medical decision taken on-site at the Canada Cup to withdraw her from the competition, a decision she considers particularly prejudicial in light of upcoming competitive stakes, notably the World Short Track Speed Skating Championships to be held in Beijing, China, from March 14 to 16, 2025, as well as the 2026 Olympic Games.
21. On January 28, 2025, the HPAC-ST met to consider the Bye request submitted by the Claimant.
22. On the same day, the HPAC-ST refused the Claimant's Bye request.<sup>5</sup>
23. According to the Respondent's interpretation of the Master Bulletin, the Claimant's Bye request should not be considered, as this request was part of step 3 of the World Cup team selection sequence, whereas the Claimant had been selected for the team at step 2 of the selection sequence.
24. Furthermore, the Respondent submitted that the Master Bulletin does not allow the Bye request mechanism to be used to apply for entry to individual World Cup distances, but only for selection to the team.
25. In an e-mail sent to the Claimant on January 29, 2025, and signed by Mr. Joe Morissette in his capacity as Chief Executive Officer of SSC, the Respondent informed the Claimant of the decision of the HPAC-ST, as well as of the Claimant's right to appeal the decision under the Respondent's Appeal Policy.<sup>6</sup>
26. Given the urgency of the matter, the Respondent requested that the Claimant agree to have its appeal heard directly by the SDRCC, if necessary.
27. On February 3, 2025, the Claimant initiated proceedings before the Ordinary Tribunal of the SDRCC to contest the decision of the HPAC-ST.

## **V. APPLICABLE LAW AND STANDARD OF REVIEW**

### **5.1 APPLICABLE LAW**

28. Section 6.10 of the *Code* states that in team selection disputes, it is up to the Respondent to demonstrate that the criteria were properly established and that the contested decision was made in accordance with these criteria. Once

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<sup>5</sup> Exhibit C-04.

<sup>6</sup> Sec. 2.2 of the *Appeal Policy*, Speed Skating Canada, updated August 2023.

this has been established, it is then up to the Claimant to demonstrate that they should have been selected.

#### **6.10 Onus of proof in team selection and carding disputes**

*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.*<sup>7</sup>

[emphasis added]

29. Section 2 of SSC's *Appeal Policy* sets out the framework for its application. The type of decision contested by the Claimant must be listed in the section in order to be appealable.

#### **2. Application**

*2.1 This Policy applies to all Participants. Any Participant who is directly affected by a Decision made by SSC shall have the right to appeal that Decision provided that it is a Decision that is subject to appeal pursuant to this Policy under Section 2.2, provided that there are sufficient grounds for the appeal under the Section 5.1 of this Policy, and provided that the appeal has been filed in accordance with Section 4 of this Policy.*

*2.2. This Policy will only apply to SSC Decisions relating to:*

- a) Eligibility*
- b) Selection*
- c) Conflict of Interest*
- d) Disciplinary Decisions made pursuant to SSC's relevant and applicable policies*
- e) Membership.*

*Such Decisions must be appealed under this Policy before any other appeal or challenge may be taken.*<sup>8</sup>

[emphasis added]

30. The Master Bulletin refers to two concepts that are at the heart of the present dispute, and which it is important to define at this stage: "Selection" and "Bye request".

#### **The notion of "Selection":**

31. Skaters are selected for World Cups according to the criteria set out in the Master Bulletin, "World Tour" tab. Using these criteria, a maximum of six

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<sup>7</sup> Section 6.10 of the *Code*.

<sup>8</sup> Section 2 of the *Appeal Policy*, Speed Skating Canada, updated August 2023.

skaters are selected for the World Cups<sup>9</sup>. Together, these skaters form the racing pool.

32. The selection criteria provide for a three-step selection sequence that must be followed in order to form the racing pool<sup>10</sup>.
33. According to the first step, the first three (3) skaters per distance in the racing pool ranking<sup>11</sup> are selected, up to a maximum of six (6) skaters.
34. If fewer than six (6) skaters are selected by applying the first step, the second step provides that any remaining position(s) will be filled on the basis of the current national ranking, up to a maximum of five (5) skaters selected.
35. If fewer than six (6) skaters are selected after the second step, the third step provides for Bye requests to be considered to complete the racing pool.
36. Once the racing pool has been put together, selections are made for the individual distances, which take place at the World Cups<sup>12</sup>. There are three individual events: 500 m, 1,000 m and 1,500 m. For each individual distance, a country may select three skaters.
37. Selections for the individual distances follow a two-step process. In the first step, the three best skaters per distance out of the six (6) skaters in the racing pool are selected. In the second step, if one of the skaters selected in the first step does not race the distance for which he/she has priority, the available spot will be filled by a discretionary choice made by the head coach assigned to the competition.
38. No selection for an individual distance on the basis of a Bye request is provided for in the Master Bulletin

#### **The notion of "Bye request":**

39. The "General Information" tab of the Master Bulletin outlines the principles for granting a Bye request. The relevant parts of this tab provide:

##### ***Principles of a Bye***

*An athlete may apply for a Bye to obtain a place on a Team or entry to the field of a competition in accordance with the following guidelines. A Bye provides the opportunity to be selected to a Team for an athlete who demonstrated excellent international results during the past year and, due to exceptional circumstances and through no fault of his/her own, is unable to qualify for the team through the normal selection*

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<sup>9</sup> Master bulletin, "World Tour" tab, cell C52 (Quota).

<sup>10</sup> Master bulletin, "World Tour" tab, cell E52 (Selection Sequence).

<sup>11</sup> The Master Bulletin provides that to assist in the nomination of athletes to the racing pool, a distance ranking of the racing pool will be created using current national ranking points and adding international podium points.

<sup>12</sup> Master bulletin, "World Tour" tab, cell G52 (Individual Distance Selection).

*competition(s) or selection process. The basic philosophy for granting a Bye is that the athlete being given the Bye has demonstrated superior performance in previous competitions.*

*All details around the following order of procedure to request a Bye can be found in the Bye Request tab:*

- 1. Bye Eligibility (an athlete must first be eligible to request a Bye, based on the situation/event)*  
*If an athlete is eligible to request a bye, then these steps apply:*
- 2. Rules for requesting a Bye (appropriate time/deadline to submit the bye request)*
- 3. Conditions for granting a Bye (HPAC-ST will follow these conditions)*
- 4. Process for Reviewing a Bye (HPAC-ST will follow this process during the analysis)*
- 5. SSC Appeal Policy (if applicable)*

40. The "Bye request" tab provides a framework for Bye requests. It details the different types of requests, and the persons entitled to submit them, the rules for submitting a request, the conditions for granting a Bye, and the process for reviewing requests.

41. Section 1 of the "Bye request" tab of the Master Bulletin sets out the types of Bye requests, and the eligibility of skaters to submit such requests.

42. The conditions to be met in order to be eligible to request a Bye for a World Cup are different for individual and relay races.

43. The conditions for individual races are:

- 1. Top 8 in any distance of the current 2024-25 World Tour, or*
- 2. Top 8 in any distance in the 2023-24 World Cup Final Classification, or*
- 3. Skated in an individual A Final at the 2024 World Championships, or*
- 4. Won a distance at the 2024 Canadian Championships OR/AND at the 2025 Canada Cup.*

44. Section 2 of the "Bye request" tab in the Master Bulletin sets out the rules for requesting a Bye. For the purposes of this dispute, it is not necessary to reproduce this section.

45. Section 3 of the "Bye request" tab in the Master Bulletin sets out the Conditions for Granting a Bye. It states:

- a) When considering whether or not to grant a bye, the HPAC-ST must first evaluate:*
  - i) Eligibility of the athlete for the position/team requested;*
  - ii) The medical condition of the athlete;*
  - iii) The degree to which the athlete has followed the prescribed rehabilitation process and medical team directives in*

- recovering from their injury;*
- iv) *The athlete's readiness to compete according to feedback received [sic] the medical team and the athlete's coach(es).*
- b) *The bye request may be refused on the basis of any of the points above prior to further evaluation of the athlete.*

*In all cases, the HPAC-ST Chair has the right to award a "Conditional Bye" to skaters recovering from injury or illness. In this situation, the skater may have certain conditions imposed. The HPAC-ST should be provided confirmation (medical or other, if not a medical problem) that there is no significant physical/psychological limitation to compete. The HPAC-ST must also receive assertion from the coach that the athlete is ready to compete at the appropriate level for the competition in question.*

46. Section 4 of the Bye request tab of the Master Bulletin sets out the process for considering eligible Bye requests. For the purposes of this dispute, it is not necessary to reproduce this section.

## **5.2 APPLICABLE STANDARD OF REVIEW**

47. The standard of reasonableness is the standard of review applicable by the SDRCC in team selection disputes, as confirmed by arbitrator Pound in the *Larue* decision<sup>13</sup> based on the landmark *Dunsmuir* decision<sup>14</sup>, which was subsequently confirmed and clarified by the Supreme Court of Canada in the *Vavilov* case.<sup>15</sup>
48. In *Vavilov*, the Supreme Court clarified the approach applicable to the review of decisions made by administrative decision-makers, including the applicable standard of review and the concept of reasonableness. In light of this decision, it appears that the SDRCC must show due deference to the initial decision-maker, the Respondent, and its expertise. Nevertheless, the latter must adequately justify its decision, in the sense that its reasoning must be intrinsically intelligible, transparent, and justified to be valid.<sup>16</sup>
49. An SDRCC arbitrator must be able to trace the Respondent's reasoning without stumbling upon a decisive flaw in the overall logic and must also ensure that there is a line of analysis in the reasons given that allows the SDRCC to arrive, based on the evidence before it, at the conclusion reached by the Respondent in its decision.<sup>17</sup>
50. The SDRCC must determine whether the result of the selection process was achieved in accordance with the selection criteria and whether the reasoning adopted by the Respondent is intrinsically reasonable within the meaning of *Vavilov*.

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<sup>13</sup> *Larue v. Bowls Canada Boulingrin*, SDRCC 15-0255.

<sup>14</sup> *Dunsmuir v. New Brunswick*, 2008 1 SCR 190.

<sup>15</sup> *Canada v. Vavilov*, 2019 SCC 65.

<sup>16</sup> *Idem*, para. 15.

<sup>17</sup> *Idem*, para. 102.



## **VI. POSITIONS OF THE PARTIES**

### **6.1 CLAIMANT'S POSITION**

51. In her proceedings before the Ordinary Tribunal of the SDRCC, conducted in accordance with section 6.1 of the *Code*, the Claimant is seeking two solutions<sup>18</sup>:
1. That her Bye request be accepted for the purposes of allocating individual entries (500 m and 1,000 m events) at World Cups;
  2. That the regulation on Bye requests for individual distances be clarified to reassure the national team skating community.
52. The Claimant presented four arguments in favour of granting its Bye request.<sup>19</sup>
53. First, the Claimant submits that the Respondent has misinterpreted and restricted the Master Bulletin by concluding that the Byes apply only to team selection, and not to individual distances. According to the Claimant, the "Bye request" tab does not specify that Bye requests are exclusively limited to team selection, leaving room for a broader interpretation consistent with the objective of sports justice.
54. Secondly, the Claimant submits that the absence of a Bye compromises competitive equity and penalizes an athlete who has demonstrated their level of performance. By being ranked third in the 500 m world rankings and eighth in the overall world rankings, she has already demonstrated her level of performance. Had she not been withdrawn from the Canada Cup for medical reasons, she would have had the opportunity to accumulate sufficient points to maintain her spots in the individual distances. The absence of a Bye therefore creates an inequity by penalizing her for a medical situation beyond her control.
55. Thirdly, the Claimant submits that the current interpretation of the Master Bulletin could encourage risky practices, such as concealing concussion symptoms to avoid being excluded from competitions, putting athletes' health at risk.
56. Fourthly, the Claimant submits that a refusal of her Bye request would set a harmful precedent that could impact other competitors facing medical withdrawals. A rejection of her Bye request would set a precedent whereby any athlete withdrawn for medical reasons would be deprived of the possibility of qualifying for individual distances.
57. Finally, the Claimant states that she is aware that the granting of her Bye request could have an impact on the composition of the individual distances at the World Cups for the Affected Parties, and that she feels deep empathy

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<sup>18</sup> Exhibit C-01.

<sup>19</sup> Exhibit C-02.

for the athletes who could see their participation in future distances affected by this decision.

## **6.2 RESPONDENT'S POSITION**

58. In its reply filed in accordance with section 6.4 of the *Code*, the Respondent seeks a solution, namely that the Claimant's request be rejected.<sup>20</sup>
59. The Respondent states that it refused the Claimant's Bye request because it considered that its Master Bulletin did not allow such a Bye request to be used to award entries [for individual distances] at World Cups, but only to be selected to the team.
60. Moreover, since the Claimant had been selected to the team at a step in the selection sequence that preceded the time when Bye requests were to be considered, the Respondent did not consider her Bye request.
61. Finally, the Respondent explains that the Claimant was granted an individual entry (500 m individual distance at World Cup 5) on the basis of a discretionary choice by the Respondent made in accordance with the Master Bulletin<sup>21</sup>, and that the Claimant could receive other individual entries depending on whether any of the athletes selected before her decline any of their individual entries for the World Cups.
62. At the hearing, Mr. Klevinas explained the process laid down in the Master Bulletin for selecting members to form the World Cup racing pool.
63. As the selection process has already been described in section V of this decision (paragraphs 31 to 38), I will limit myself to reporting on the concrete application of the process in this case, as described by Mr. Klevinas.
64. Using the first step of the selection order, four (4) skaters qualified for the racing pool: Kim Boutin, Danaé Blais, Courtney Sarault, and Claudia Gagnon.
65. This left two (2) spots to be filled in the racing pool.
66. By using the second step, the Claimant was selected into the racing pool.
67. Despite being in the racing pool, the Claimant did not qualify for any individual distance at the World Cups under the individual distance selection system.
68. As the Master Bulletin does not provide for the possibility of requesting a Bye in order to participate in individual distances, the Claimant was nevertheless selected for the 500 m individual distance of the World Cup 5 by discretionary choice made by the head coach assigned to the competition.

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<sup>20</sup> Exhibit R-01.

<sup>21</sup> Master bulletin, "World Tour" tab, cell G52 (Selection of individual distances).

### **6.3 AFFECTED PARTIES' POSITION**

69. Affected Parties have this status because if the Claimant's appeal is granted, one or more of them could lose their spot in the individual distances at the World Cups.
70. At the hearing, the Affected Parties present were given the opportunity to share their comments.
71. Courtney Sarault had no comment to add.
72. Kim Boutin explained that she would not want to give up her spot in the 1,000 m individual distance at the World Cups, having qualified for the Canadian team according to the individual distance selection criteria set out in the Master Bulletin.

## **VII. ANALYSIS AND CONCLUSIONS**

73. As a preliminary matter, the role of the Arbitrator hearing an appeal of a selection decision was defined by arbitrator Pound in *Larue v. Bowls Canada Boulingrin*<sup>22</sup>. This decision establishes that, in the absence of evidence of a manifest error, I must consider that HPAC-ST applies the Master Bulletin in a compliant manner. My role is to determine whether the outcome of the team selection process is consistent with the selection criteria, and whether it is among the reasonable possible outcomes that can be justified in light of the facts and the team selection criteria. It is not my role to substitute my personal opinion for the decision that has been or could have been made.
74. Considering that this appeal concerns a dispute over the selection of team members, it is for me to determine whether the Claimant has met her burden of proof to demonstrate that she should have been selected for the individual distances according to the criteria set out in the Master Bulletin.<sup>23</sup>
75. The Master Bulletin explicitly states that the Bye request is the third step in the racing pool selection order<sup>24</sup>. Thus, if an athlete is selected for the racing pool according to the application of the first or second step of the selection order, a Bye request filed by the same athlete need not be considered.
76. Once the racing pool has been established, selection for the individual distances is made<sup>25</sup>. The process for selecting skaters for individual distances makes no mention of Bye requests.
77. The first argument raised by the Claimant to the effect that the "Bye request" tab of the Master Bulletin does not specify that Bye requests are exclusively limited to team selection cannot be accepted. Rather, reference must be made to the "World Tour" tab to conclude that Bye requests apply only in the

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<sup>22</sup> *Larue v. Bowls Canada Boulingrin*, SDRCC 15-0255.

<sup>23</sup> Section 6.10 of the *Code*.

<sup>24</sup> Master bulletin, "World Tour" tab, cell E52 (Selection order).

<sup>25</sup> Master bulletin, "World Tour" tab, cell G52 (Selection of individual distances).

context of racing pool creation, and not in the context of selection for individual distances.

78. The three other arguments raised by the Claimant in support of her appeal, although expressed clearly and concisely, remain hypothetical and do not allow the Claimant to discharge her burden of proof.

79. However, I note the following question raised by the Claimant's representative at the hearing. Indeed, it may seem inconsistent for the "Bye request" tab of the Master Bulletin to specify the conditions that must be met in order to be eligible to submit a Bye request for individual races if, when the time comes to select athletes for these individual distances, it is not possible for an athlete to submit a Bye request in order to be selected. Why provide eligibility conditions for the submission of a Bye request for individual distances if, when the time comes to submit such a request, the selection steps for individual distances do not provide for a Bye request to be submitted? There appears to be a blind spot, which I encourage the Respondent's management to address in subsequent revisions of the Master Bulletin, if only to clarify that it has been considered. However, this blind spot, if there is one, was not serious enough for me to rewrite a portion of the Master Bulletin for the Respondent.

80. I therefore conclude that the decision of the HPAC-ST to refuse the Claimant's Bye request was made in accordance with the selection criteria set out in the Master Bulletin. Indeed, the Claimant had already been selected for the World Cup racing pool at the second step of the selection sequence, which preceded the step where Bye requests had to be considered in order to finalize the team selection, i.e. the third step. Furthermore, the Master Bulletin as currently drafted does not provide for Bye requests in the selection process for individual distances.

81. The decision rendered by the Respondent is confirmed, the Respondent having rendered a reasonable decision based on the applicable criteria set out in the Master Bulletin.

## **VIII. DECISION**

82. I therefore dismiss the Claimant's appeal and confirm the contested decision.

Montreal, February 18, 2025.

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Patrice Brunet, Arbitrator