

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

N°: SDRCC 23-0678

**ELEANOR BRUG
(CLAIMANT)**

AND

**ARCHERY CANADA
(RESPONDENT)**

AND

**STEPHANIE BARRETT
AMELIA GAGNÉ
AUDREY KHAN AREVALO
(AFFECTED PARTIES)**

Before:

Harveen Thauli (Arbitrator)

Appearances and Attendances:

On behalf of the Claimant: Eleanor Brug

On behalf of the Respondent: Kylah Cawley, Representative
Karl Balisch, Representative
Ron van der Hoff, Representative

On behalf of the Affected Party: Stephanie Barrett
Amelia Gagné, represented by Steve Gagné

DECISION

October 13, 2023

A. THE PARTIES

1. The Claimant, Eleanor Brug, is an athlete who competes in the sport of recurve target archery. She is nominated as the 1st non-travelling alternate to the Canadian recurve women's team (the **Team**) for the 2023 Pan American Games in Santiago, Chile from October 20, 2023 to November 5, 2023 (the **Pan Am Games**).
2. The Respondent, Archery Canada, is the National Sport Organization for the four primary disciplines of target archery, para archery, field archery and 3D archery. Archery Canada was represented by: Kylah Cawley, the High Performance Manager; Karl Balisch, the Executive Director; and Ron van der Hoff; the Team Leader/Coach.
3. The Affected Parties, Stephanie Barrett and Amelia Gagné, are athletes who compete in the sport of recurve target archery. Ms. Barrett is nominated as the 3rd place qualifier and Ms. Gagné, the 2nd place qualifier to the Team for the Pan Am Games.
4. The Affected Party, Audrey Khan Arevalo did not participate in these proceedings.

B. SHORT DECISION

5. On September 27, 2023, I was appointed pursuant to Article 5.3 under the Canadian Sport Dispute Resolution Code (the **Code**) to act as the Arbitrator to hear Ms. Brug's appeal of Archery Canada's decision to nominate her as the 1st non-travelling alternate to the Team.
6. The proceedings were conducted on an urgent basis because Archery Canada had to submit the names of the Team members to the Canadian Olympic Committee (the **COC**) by September 29, 2023.
7. On September 29, 2023, I chaired the hearing by videoconference. At the conclusion of the hearing, all parties confirmed that they had an opportunity to be heard. I informed the parties that I would issue my short decision before 5:00 p.m. (EDT) that day.
8. On September 29, 2023, I issued my short decision denying Ms. Brug's appeal with my reasoned decision to follow within the timelines prescribed by the Code.
9. At the outset, I wish to thank the parties for their cooperation and helpful submissions, particularly given the urgency of these proceedings. As I stated at the conclusion of the hearing, selection cases are difficult for athletes because someone is ultimately excluded from competition, which is undoubtedly very disappointing for that athlete. However, given my objective assessment of the facts, evidence, arguments and applicable jurisprudence, my decision in this matter is reasonable.

10. Although I have fully reviewed the submissions and carefully considered the arguments made, I refer to only the facts, evidence and arguments that I considered necessary to explain my reasoning in this decision.

C. BACKGROUND

11. Archery Canada has a Recurve Canadian Team Selection Policy (the **Policy**) that has been in force since October 31, 2021. The “Statement of Responsibility” in section 2 of the Policy discusses notifying athletes if any amendments are made to the Policy. It states, in part: “[...] *It is the intent to provide athletes with information if any selection impacting amendments are made to the selection policy. The general timeline is a three (3) month notification period before any amendment is adopted; this timeline may be amended by AC’s SAP [Archery Canada’s Selection Approval Panel].*”
12. Section 4.1 of the Policy includes the selection criteria that Archery Canada uses to nominate an athlete, including: defined competition(s), past performance, podium pathway evaluation, future potential, team dynamics and physiology. More particularly, section 4.1 states the following:

Archers being considered for selection in accordance with this policy, will be selected based on the addendum published for the specific event(s). Addendums may contain any combination of the below criteria. Multiple criteria may be included, and, unless otherwise outlined in the addendum, no order of priority or weighting is to be inferred. Athletes may be considered based on:

4.1.1) Defined Competition(s) – A specific competition or series of competitions intended to contribute to the evaluation and selection of athletes. Athletes may be required to meet a minimum performance standard to be eligible for participation in a Defined Competition.

4.1.2) Past Performance – Defined as athlete performance history and may include scores, rankings and final results from individual, team, and mixed team competitions as well as from the high performance training environment. Past performances may be weighted based on date, level of competition, quality of competitors and environmental factors.

4.1.3) Podium Pathway Evaluation – Quantitative athlete evaluation related to the Podium Results Track (PRT) and qualitative evaluation related the Gold Medal Profile (GMP). The two components may be used individually or in combination.

4.1.4) Future Potential –The evaluation may include but is not limited to the following 4 elements: general talent, technical ability, competing class, and program commitment. In addition, the role a particular event may play in the development of a specific athlete who has demonstrated strong future potential to support achieving AC’s stated performance objective may be considered.

4.1.5) Team Dynamics - Individual behaviours that may contribute to or detract from overall team performance. In competitions where the team or

mixed team round will be contested, this may also include an athlete's suitability to perform in a team event.

4.1.6) Physiology – A minimum criteria outlined in any specific addendum and in accordance with the Archery Canada Fitness & Physiology Testing Protocol.

13. The “Selection Authority and Process” in section 4 of the Policy provides that Archery Canada will publish an addendum for each event to which the Policy applies and will outline the event specific criteria used to select the athletes.
14. On January 15, 2023, and pursuant to section 4 of the Policy, Archery Canada posted the Internal Nomination Procedure for the Pan Am Games (the **INP**) on its website. Section 7 of the INP established three methods for selection to the Team, summarized as follows:
 - 7a. Athletes who placed in certain top positions at the 2023 World Cup (the **World Cup**) or the 2023 World Championships (the **World Championships**) would automatically qualify for the Pan Am Games.
 - 7b. If quota spots remained unfilled after the World Cup and the World Championships, Archery Canada would hold a selection event to fill the remaining quota spots for the Pan Am Games. The competition format would take place over two days and have three components: a 720 round match (i.e., the ranking round); an individual team round match; and an individual round robin match. Athletes would be ranked based on a selection formula set out in the INP (the **INP Formula**).
 - 7c. If an athlete could not compete at the selection event because of an injury or illness, Archery Canada could still nominate that athlete to the Team. The athlete could be asked to support their status as injured or ill. In this case, the 3rd place finisher from the selection event would become the 1st non-travelling alternate and the injured athlete, the third member of the Team.
15. In January 2023, there was a technical leadership change to Archery Canada’s recurve program, and as a result, Mr. van der Hoff was hired as the Team Leader/Coach on January 30, 2023. He was previously the Netherlands National Coach.
16. Mr. van der Hoff, together with Archery Canada’s former High Performance Director (**HPD**), reviewed the INP Formula and decided to revise how athletes would earn points for the 720 round, the individual team round and the round robin matches (the **Revised Formula**) for the upcoming selection events.
17. On May 5, 2023, Archery Canada sent an email with an attachment to the athletes participating in the selection event for the World Championships. The attached memorandum had, among other things, a comprehensive explanation of the Revised Formula (the **May Memo**).

18. Between May 12 and May 14, 2023, the selection event for the World Championships took place in which Ms. Barrett and Ms. Brug participated. Ms. Barrett's total score was 23 points and Ms. Brug's, 12 points under the Revised Formula. Ms. Barrett participated in the World Championships; Ms. Brug did not.
19. None of the female athletes qualified for the Pan Am Games under section 7a. of the INP. Therefore, Archery Canada was required to hold a selection event to fill the available quota spots for the Pan Am Games (the **Selection Event**).
20. On August 31, 2023, the former HPD left Archery Canada, and Ms. Cawley became Archery Canada's High Performance Manager. Her official start date was September 1, 2023.
21. On August 31, 2023, the entries for the Selection Event closed.
22. On September 8, 2023, Archery Canada sent an email with an attachment directly to the athletes who submitted entries for the Selection Event. The attached memorandum included a comprehensive explanation of the Revised Formula (the **September Memo**).
23. Between September 15 and 17, 2023, the Selection Event took place. Ms. Barrett did not participate because of an injury to her shooting arm.
24. On September 20, 2023, Ms. Cawley sent an email to the athletes to inform them of the athletes nominated to the Team. The Team for the Pan Am Games consists of three athletes.
25. Virginie Chénier was nominated as the top qualifier and Ms. Gagné as the 2nd place qualifier. Ms. Barrett was nominated as the 3rd place qualifier to the Team under section 7c., the "Injury or Illness" provision of the INP. Therefore, Eleanor Brug, who finished in third place, was nominated as the 1st non-travelling alternate under section 7c. of the INP.
26. On September 21, 2023, Ms. Brug filed an appeal with Archery Canada through its internal appeal process. There are two aspects to Ms. Brug's appeal as follows:
 - i. Ms. Brug appealed Archery Canada's decision to select Ms. Barrett under section 7c. of the INP and sought to have her removed as a Team member.
 - ii. Ms. Brug appealed Archery Canada's decision not to follow its own procedures (i.e., calculating selection points under the INP Formula) as set out in the INP. She stated that had Archery Canada used the INP Formula to select its athletes, she would have been nominated as the 2nd place qualifier and Ms. Gagné would have been nominated as either the 1st non-travelling alternate or the 3rd place qualifier if Ms. Barrett was no longer on the Team.

In her request, Ms. Brug sought to be nominated as the 2nd place qualifier and Ms. Gagné as the 3rd place qualifier.

27. On September 26, 2023, Ms. Brug and Archery Canada agreed to bypass Archery Canada's internal appeal process and proceed directly to the Sport Dispute Resolution Centre of Canada (the **SDRCC**) since Archery Canada's deadline to submit the names of the Team members to the COC was September 29, 2023.
28. On September 27, 2023, I was appointed to hear Ms. Brug's appeal.
29. On September 28, 2023, I chaired a preliminary meeting by videoconference during which I set the hearing for the following morning given Archery Canada's impending deadline. I asked the parties to submit a summary in bullet form of their respective positions and main arguments by 4:30 p.m. (EDT) for Archery Canada and 7:00 p.m. (EDT) for Ms. Brug, Ms. Barrett and Ms. Gagné. I also asked Archery Canada to provide the basis of its decision, including any relevant medical information, to nominate Ms. Barrett as well as a high level overview of the difference between the INP Formula and the Revised Formula.
30. On September 29, 2023, the hearing took place after which I denied Ms. Brug's request. My short decision read as follows:

*The Request by the Claimant that she be nominated to the Canadian Women's team as 2nd place qualifier and Amelia Gagné be nominated as 3rd place qualifier for the 2023 Pan American Games is **denied**.*

Archery Canada's current selection of the Canadian Women's team for the 2023 Pan American Games stands.

31. This is my reasoned decision.

D. SUBMISSIONS

I. The Claimant, Eleanor Brug

Written Submissions

32. Ms. Brug's written submissions included: her notice of appeal to Archery Canada; a timeline of important dates; a spreadsheet of calculations; her athlete's agreement with Archery Canada (the **Agreement**); other related documents that she had initially submitted to Archery Canada under its internal appeal process; her submissions to the SDRCC; an example of a calculation using the INP Formula; and a statement from Ms. Chénier. Her written submissions are summarized below.
33. In the first aspect of her appeal, Ms. Brug questioned Archery Canada's reliance on section 7c. of the INP to nominate Ms. Barrett as the 3rd place qualifier. She submitted that Archery Canada's decision was not based on any "*supporting evidence*" and it was "*patently unreasonable*." She further submitted that section

7c. should only be used when there is “*high confidence*” that an injured athlete would be ready to compete by the competition date. She wrote as follows:

[...]

The 7c criterion is a necessary tool to further this objective in the case that an athlete, who would normally be selected, is unable to compete in the selection due to illness or injury, so long as there is a high confidence that they will have returned to competitive form by the date of the competition. Based on the evidence below, I do not believe there is supporting evidence to say that Stephanie Barrett will be fully recovered and able to perform at her best at the Pan-American games starting in five weeks’ time.

[...]

34. Ms. Brug then described Ms. Barrett’s injury as a hand/finger injury that had been ongoing since June 2023 or earlier. She believed that Ms. Barrett did not have a formal diagnosis but she “*strongly suspected it to be nerve related and [Ms. Barrett] was doing nerve-related exercises with her physio.*” She opined that: “[...] *there must have been a return to play strategy that purports that she will be fully recovered in only 5 weeks or less despite the fundamental cause of her injury and therefore the success rate of her current treatment (physiotherapy) being unknown*” and Archery Canada’s “[...] *selection decision cannot have been made on complete information about the duration, severity and prognosis of the injury.*”
35. Ms. Brug added that Ms. Barrett “*is so badly injured that she would not reliably score highly enough to make the team at the [Selection Event] [...].*” Ms. Brug compared Ms. Barrett’s international competition results from this year to 2022 and stated: “*In comparison, in 2023 she consistently seeded in the bottom half, and at her most recent competition [of the World Championships], she did not make the cut for matches.*”
36. Ms. Brug has competed in one international event, the 2022 Pan American Championships. She highlighted that she placed 4th whereas Ms. Barrett placed 17th. She questioned whether Ms. Barrett would outshoot her, even uninjured.
37. Ms. Brug included a statement from Ms. Chenier, the top qualifier, who supported Ms. Brug’s position and questioned whether Ms. Barrett’s injury would be fully healed for the Pan Am Games.
38. In the second aspect of her appeal, Ms. Brug stated that Archery Canada failed to follow its own procedures because selection points were calculated based on the Revised Formula instead of the INP Formula. The INP Formula is based on arrow averages. According to her calculations, she would have finished as the 2nd place qualifier at the Selection Event. The calculations are as follows:

| Athlete | INP Formula | Rank |
|------------------|-------------|------|
| Virginie Chenier | 17.657 | 1 |
| Eleanor Brug | 17.10094 | 2 |
| Amelia Gagné | 17.0876 | 3 |

39. Ms. Brug then pointed to Section V, Team Selection & Eligibility of the Agreement, which provides that Archery Canada would minimize changes to policies, rules and regulations while a selection process is underway and would communicate the team selection and eligibility criteria by posting it on its website. Section 5, states, in part:

5. The NSO will, in accordance with and subject to the NSO's budget and policies:

[...]

c) *publish team selection and eligibility criteria for all Major Games National Teams at least eight (8) months before the selection of a Major Games National Team;*

[...]

d) *minimize changes to any policies, rules and regulations regarding an athlete selection while the selection process is underway as set out in the National Team Selection Policy;*

e) *communicate the team selection and eligibility criteria by posting it online [...]*

f) *conduct selection of members to all National Teams in conformity with the published selection criteria, process and generally accepted principles of natural justice and procedural fairness;*

[...]

40. In Ms. Brug's view, the above subsections of the Agreement clearly indicated that the selection criteria (i.e., the INP Formula) could not be superseded by the Revised Formula because the September Memo, which was emailed a week before the Selection Event, was never posted on Archery Canada's website. She further submitted that there were no stipulations in the May Memo that Archery Canada would use the Revised Formula for the Selection Event.

41. Ms. Brug referred to a sentence in section 6 of the INP to support her position that Archery Canada should have retracted the INP and published an updated one for the Selection Event. It read: "*Unless otherwise required by exceptional and unforeseen circumstances related to the impact of these diseases, Archery Canada will respect this published Selection Addendum as written.*"

The Hearing

42. Ms. Brug lived and competed in the United Kingdom before returning to Canada two years ago. She could not compete internationally while living overseas because she did not have British citizenship. She confirmed that her first and only international event was the 2022 Pan American Championships.

43. There are two national events, the Canada Cup East and the Outdoor National Championship, that take place in Canada every year. Since her return to Canada, Ms. Brug has competed in these events. She mentioned that in one event, Ms.

Barrett beat her but in another, she beat Ms. Chénier. Ms. Brug has also competed in local events.

44. Ms. Brug confirmed that she first read the INP when she received it by email in February 2023. She then reviewed the INP in July 2023 to find out information about the Selection Event, when she learned that none of the female athletes qualified for the Pan Am Games at the World Championships. She lastly reviewed the INP on September 20, 2023, after she learned that she was nominated as 1st alternate to the Team.
45. Ms. Brug testified that her primary purpose for reviewing the INP on September 20, 2023, was to examine section 7c. to find out how an injured player could be selected. She stated that she had initially planned to base her appeal solely on Archery Canada's decision to rely on section 7c. to nominate Ms. Barrett.
46. At that time, Ms. Brug noticed the INP Formula. She stated she was feeling down, so she decided to prepare an excel spreadsheet, which she claimed helped her to relax. She then realized that she would have finished in 2nd place and above Ms. Gagné by 0.01334 points under the INP Formula. She then decided to appeal Archery Canada's decision not to follow its own procedures by using the Revised Formula instead of the INP Formula. She confirmed, however, that she is not disputing the results.
47. Ms. Brug acknowledged that the May Memo and the September Memo were identical but she maintained that the May Memo did not include any statement that the Revised Formula would be used for future selection events.
48. When Ms. Brug received the September Memo, she read it but she did not question it at that time because she was not aware of any changes.
49. Ms. Brug confirmed that she has no medical training, except for first aid training.

II. The Respondent, Archery Canada

Written Submissions

50. Archery Canada's submissions included: the Policy; the INP; the September Memo; a summary of its position and arguments including medical information about Ms. Barrett; a summary of the differences between the INP Formula and the Revised Formula; documents related to the selection event for the World Championships, including the May Memo; spreadsheets of calculations and an explanation of how round robin match points were calculated. The written submissions are summarized below.
51. Ms. Cawley and Mr. van der Hoff decided the nominations to the Team as Archery Canada's selection approval panel.

52. In response to the first aspect of Ms. Brug's appeal, Archery Canada provided a timeline from August 10 to September 12, 2023, during which Ms. Barrett provided status updates about her injury. On September 12, 2023, Ms. Barrett's medical team, including two doctors, a physiotherapist and a registered massage therapist agreed that she needed more time of reduced training before returning to full competition. Although Ms. Barrett withdrew from the Selection Event, she attended as an observer and volunteer.
53. Since the conclusion of the Selection Event, Ms. Barrett has provided Mr. van der Hoff with daily updates on her treatment and training as part of her "Individual Performance Plan". Ms. Brug was not privy to this information.
54. Ms. Barrett's nomination under section 7c. of the INP for the Pan Am Games was based primarily on the factors of her past performance and team dynamics as set out in subsections 4.1.2 and 4.1.5 of the Policy, as follows:
- In 2023, Ms. Barrett competed at the Antalya World Cup, the Medellin World Cup and the Berlin World Championships;
 - Ms. Barrett's overall competitive scores throughout the season ranked her higher than Ms. Brug;
 - Ms. Barrett finished higher than Ms. Brug by 11 points at selection event for the World Championships; and
 - Ms. Barrett has been a member of the Canadian National Team since 2019 and she plays a "*key leadership role.*"
55. On September 28, 2023, Ms. Barrett submitted a confidential letter from her sports medicine physician who provided a comprehensive discussion of her injury and her treatments. In his opinion, he anticipated that Ms. Barrett would make a full recovery based on the information from her appointments, investigations and therapists.
56. The final decision on whether Ms. Barrett will compete at the Pan Am Games will be decided on October 14, 2023. If she does not compete, Ms. Brug will replace her pursuant to the COC's Late Athlete Replacement Policy.
57. In response to the second aspect of Ms. Brug's appeal, Archery Canada submitted that the change to the Revised Formula was a procedural change and not a material one, particularly since the competition format (i.e., the 720 round, the individual team round and the round robin matches) remained the same. This procedural change did not have any impact on how athletes prepared for the Selection Event.
58. The decision to change the calculation of selection points from the INP Formula to the Revised Formula happened because matches are won by points, not arrow averages and the Revised Formula more closely simulates what would occur in an international competition. Archery Canada's explanation is as follows:

Points versus Arrow Averages: In Recurve archery, matches are won by set points, not overall score or arrow average. Therefore in international events, if an archer shoots a miss, which would score a 0, they may lose that end,¹ but still have 4 ends in which to recover and win the match. In a system with points awarded based on arrow average, that miss would drastically affect the overall arrow average, and thus reduce the athletes points, but doesn't simulate what would occur on the international stage.

59. Unlike the INP Formula, the Revised Formula permitted bonus points to mitigate any external factors that may impact an athlete and her score during a selection event over a weekend. Archery Canada's explanation is as follows:

Bonus points were added to act as an "equalizer". It was recognized that a single weekend trial does not favor any particular archer in terms of performance, and may not always result in selecting the "best" archer for an event. Therefore bonus points are awarded based on all scores (Ranking Round, Individual Team Round, and Round Robin) and their arrow averages to mitigate any factors that may affect all archers and their scores over the trials weekend.

60. Archery Canada provided the total points and ranking based on the Revised Formula for the Selection Event, as follows:

| Athlete | Revised Formula | Rank |
|------------------|-----------------|------|
| Virginie Chénier | 37 | 1 |
| Amelia Gagné | 23 | 2 |
| Eleanor Brug | 19 | 3 |

61. The Revised Formula was first introduced at the selection event for the World Championships in which Ms. Brug participated. All the participating athletes were made aware of the Revised Formula and had an opportunity to seek clarification. The same was true for the Selection Event.

62. Archery Canada's timing and the method of communication for the Selection Event was consistent with how Archery Canada notified athletes of previous selection events.

The Hearing

63. Ms. Cawley has worked for Archery Canada since 2017. She officially started her new role as High Performance Manager on September 1, 2023. This position was previously part-time but is now a full-time position. She worked with the former HPD for only one week before he left on August 31, 2023

¹ An "end" is a term used in archery to describe a group of arrows shot consecutively before calculating the score and retrieving them from the target. The number of arrows shot in each end can vary depending on the type of competition and the skill level of the athletes. In most competitions, an end typically consists of three to six arrows shot in succession by each athlete. This range can vary depending on the competition, with some events requiring as many as 12 arrows per end.

64. In response to the first aspect of Ms. Brug's appeal, Ms. Cawley testified that Ms. Barrett was working with a strong team of professionals who were helping her with her rehabilitation.
65. Ms. Cawley also testified that Ms. Barrett was selected pursuant to the selection criteria in section 4.1 of the Policy, primarily based on the criteria of her past performance (subsection 4.1.2) and team dynamics (subsection 4.1.5). She stated that Ms. Barrett is an experienced athlete who had competed in two world championships, eight world cups, the 2022 Pan American Championships and the Tokyo 2020 Olympics.
66. When I asked about Ms. Barrett's future potential (subsection 4.1.4 of the Policy), Ms. Cawley responded that Ms. Barrett is committed to her sport, as evidenced by her volunteer work at the Selection Event, and has been a valuable leader.
67. Mr. van der Hoff described Ms. Barrett as a "*great team leader*" who supported her other teammates and put the team first. He further confirmed that he deliberately advised Ms. Barrett not to shoot so that she could rest her arm. On October 14, 2023, he will test Ms. Barrett to determine whether she can shoot a specific number of arrows, which he did not disclose. If so and subject to medical advice, she will compete at the Pan Am Games.
68. Ms. Cawley commented that Ms. Brug based her judgment of Ms. Barrett's injury on her opinion alone.
69. In response to Ms. Brug's question about whether Archery Canada had carried out any probability analysis of whether Ms. Barrett would be able to compete, Ms. Cawley answered that Ms. Barrett would be tested on October 14, 2023, for that purpose.
70. In response to the second aspect of Ms. Brug's appeal, Mr. Balisch testified that Archery Canada did its best not to amend selection policies. He confirmed, however, that Archery Canada had authority to change the calculation of selection points to the Revised Formula under section 2 of the Policy. Archery Canada also had authority under section 6 of the INP. He referred to a different sentence than Ms. Brug in section 6, which read as follows: "*Further, situations may arise that do not allow this selection addendum to be modified or applied as written due to time constraints or other exceptional and unforeseen circumstances.*" He emphasized that it was unforeseen that Archery Canada would have two leadership changes between January 31 and August 31, 2023.
71. Mr. van der Hoff explained that he helped develop the Revised Formula in the Netherlands. He stated that it is more representative of a competition and prevented "*fluke outcomes.*" The Revised Formula has been used in the Netherlands for five to six years for competitions but not all of them.

72. Ms. Cawley confirmed that Archery Canada used email as its standard form of communication and that the September Memo was sent directly to participating athletes, after entries closed on August 31, 2023. The September Memo was not communicated on a wide-scale basis. She stated that Ms. Brug did not question the Revised Formula at the Selection Event and if she had, the technical leadership would have explained it to her. She further mentioned that athletes had a QR code where they could check their results at the end of each day of the Selection Event.
73. In specific response to Ms. Brug's questions, Ms. Cawley responded as follows:
- Archery Canada tries to post amendments at least three months in advance. However, the specific dates of the Selection Event were also not communicated three months in advance. Athletes did not receive information about the Selection Event until August 18, 2023.
 - She did not know why the previous HPD did not post an updated INP on Archery Canada's website because she started her position on September 1, 2023, when the selection process for the Pan Am Games was already underway.

III. The Affected Parties, Stephanie Barrett and Amelia Gagné

Written Submissions

74. Ms. Barrett submissions included: emails about her injury and progress; a comprehensive timeline of her treatments from August 9 to October 18, 2023; and medical notes/letters from her treating practitioners.
75. Ms. Gagné submitted a statement in which she wrote, in part:

In my opinion, the updated information about the selection process was sent out a week prior to the selection trials, providing ample time for Brug to speak to the judges or other officials about the changes made. However, by participating in the [Selection Event], it appeared that she accepted the changes like the other athletes that competed in the selection camp. [...]

The Hearing

76. Ms. Barrett and Ms. Gagné relied on the testimony of the Archery Canada's representatives.
77. Ms. Barrett clarified that not all athletes competed in the two Canadian events that Ms. Brug raised in her testimony because some were competing in international competitions taking place at the same time.
78. When specifically asked about team dynamics, Ms. Barrett confirmed that she always put the team first.

E. ANALYSIS

79. Before commencing an analysis of the facts and evidence, it is necessary to set out the onus of proof in selection disputes.
80. According to section 6.10 of the Code, Archery Canada has the onus to demonstrate, on a balance of probabilities, that the criteria were appropriately established, and that the selection decision was made in accordance with such criteria. More particularly, section 6.10 reads as follows:

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.

81. If Archery Canada is able to satisfy its burden, the onus shifts to Ms. Brug to demonstrate, on a balance of probabilities, that she should have been nominated to the Team for the Pan Am Games.
82. Subsection 6.11(a) of the Code provides that, once appointed, I have the “*full power to review the facts and apply the law*” and in particular, I may substitute my decision for the decision that gave rise to the dispute. Subsection 6.11(b) provides that the hearing must be *de novo* where the sporting organization (i.e., Archery Canada) did not conduct its own internal appeal process, which is the case here.

I. Nomination of Stephanie Barrett

Selection Criteria

83. Ms. Brug appealed Archery Canada’s decision to nominate Ms. Barrett under section 7c. of the INP.
84. The first question to ask is whether Archery Canada demonstrated that the criteria were appropriately established.
85. Ms. Brug did not challenge the selection criteria in section 4.1 of the Policy. The INP, which was the addendum to the Policy, established the process by which an athlete could be selected to the Team for the Pan Am Games. The three selection methods under the INP were: qualify automatically after finishing in a top position at either the World Championships or the World Cup under section 7a.; qualify after finishing in a top position at the Selection Event under section 7b.; or qualify under the “Injury or Illness” provision under section 7c. of the INP.

86. Ms. Brug did not challenge section 7c. of the INP. Rather, she challenged Archery Canada's decision to rely on it. She stated:

The 7c criterion is a necessary tool to further this objective in the case that an athlete, who would normally be selected, is unable to compete in the selection due to illness or injury, so long as there is high confidence that they will have returned to competitive form by the date of the competition.
[...]

87. Since Ms. Brug did not challenge the selection criteria in section 4.1 of the Policy and agreed that section 7c. is a "necessary tool", Archery Canada has appropriately established its selection criteria and satisfied the first hurdle of section 6.10 of the Code for this aspect of Ms. Brug's appeal.

Decision under the Selection Criteria

88. The next question to ask is whether Archery Canada demonstrated, on a balance of probabilities, that its decision was made in accordance with the selection criteria.
89. In analyzing the evidence, I am aware that arbitrators have acknowledged that selection panels are often the most knowledgeable and experienced persons available and in the absence of a reviewable error or proof of bias, arbitrators have deferred to the judgment of selection panels.²
90. Since there was no allegation of bias, Archery Canada's decision can only be overturned if there is a reviewable error. A reviewable error is one that cannot stand up to probing examination.³
91. The decision to rely on section 7c. of the INP was a discretionary one, which necessarily involved examining the selection criteria in section 4.1 of the Policy. In justifying its decision, Archery Canada examined Ms. Barrett's past performance, her future potential and the team dynamics. There was no requirement that all the selection criteria had to be considered nor was there any order of priority or weighting. More particularly, Archery Canada considered the following:
- Ms. Barrett has more international competition experience than Ms. Brug. She has competed in two world championships, eight world cups, the 2022 Pan American Championships and the Tokyo 2020 Olympics whereas Ms. Brug has competed in the 2022 Pan American Championships only.
 - Ms. Barrett's overall competitive scores throughout the season ranked her higher than Ms. Brug.
 - Ms. Barrett finished higher than Ms. Brug by 11 points at the selection event for the World Championships.

² *Fergusson v. Equestrian Canada*, SDRCC 22-0598; *De Haître v. Speed Skating Canada*, SDRCC 22-0539

³ *Fergusson v. Equestrian Canada*, SDRCC 22-0598; *St-Jules v. Speed Skating Canada*, SDRCC 16-0288

- Ms. Barrett has been a member of the Canadian National Team since 2019 and plays a “*key leadership role*”. She is committed to the sport and despite not being able to participate, she volunteered at the Selection Event.
 - In his testimony, Mr. van der Hoff was very forthright when he described Ms. Barrett as a “*great team leader*” who supported her other teammates and put the team first.
92. Ms. Barrett submitted medical notes/letters and related information as part of this appeal. On reviewing this information, it is evident that she has taken proactive steps to treat her injury and has kept Archery Canada informed of her progress. In his letter of September 28, 2023, Ms. Barrett’s sports medicine physician anticipated a full recovery based on the information from her appointments, investigations and therapists.
93. The ultimate decision on whether Ms. Barrett will compete at the Pan Am Games will happen on October 14, 2023, after Mr. van der Hoff tests her ability to shoot a certain number of arrows. If she cannot compete, Ms. Brug will replace her.
94. It has long been recognized that national sport organizations have injury or illness clauses similar to section 7c. of the INP. This is to ensure that a high level athlete, who is injured or sick, still has an opportunity to compete for her country. After reviewing the facts and evidence, my view is that Archery Canada’s decision stands up to a probing examination. It is evident that Ms. Cawley and Mr. van der Hoff examined the selection criteria, are keeping abreast of Ms. Barrett’s progress and will ultimately test her shooting ability before the Pan Am Games.
95. Although I acknowledge Ms. Brug’s fourth place finish at the 2022 Pan American Championships and her experience competing against highly ranked British athletes, I defer to the judgment of Ms. Cawley and Mr. van der Hoff, who are both experts in the sport of archery. They are in the best position to compare not only the skills and abilities of both athletes but also the totality of their results at competitions.
96. I find that Archery Canada demonstrated, on a balance of probabilities, that its decision was made in accordance with the selection criteria.

Onus on Eleanor Brug

97. The onus now shifts to Ms. Brug to demonstrate, on a balance of probabilities, that she should have been nominated to the Team in accordance with the selection criteria.
98. Although I have found that Archery Canada’s decision stands up to a probing examination, I must address Ms. Brug’s allegation that its decision to nominate Ms. Barrett under section 7c. of the INP was not based on any “*supporting evidence*” and it was “*patently unreasonable.*” I disagree.

99. Archery Canada did not have an obligation to share any of Ms. Barrett's medical information or her return to play plan with Ms. Brug, after Ms. Barrett was nominated to the Team. This was confidential information. It was shared as part of this appeal and I have already provided my comments on this information.
100. Ms. Brug concluded that Ms. Barrett is too injured to compete based on her opinion of what she knew about Ms. Barrett's injury or heard about it. Despite not having any medical training, Ms. Brug did not provide any evidence supporting her conclusion. I find that many of her statements were purely speculative and biased. While I understand that she may have concerns, Ms. Brug does not have Mr. van der Hoff's coaching experience nor is she in the same position as Ms. Cawley and Mr. van der Hoff to assess Ms. Barrett's skills and abilities as well as her progress with her treatments.
101. Ms. Brug further submitted that section 7c. should only be used when there is "high confidence" that an injured athlete would be ready to compete by the competition date. This is not a requirement of this section. In any event, if Ms. Cawley and Mr. van der Hoff lacked confidence about Ms. Barrett's ability to compete, I doubt that they would have undergone the exercise of assessing the selection criteria in section 4.1 of the Policy to justify their decision to rely on the "Injury or Illness" section of the INP. Furthermore, Ms. Barrett's sports medicine physician anticipated a full recovery. It is not my place to question the opinion of a medical professional, nor is it Ms. Brug's for that matter.
102. Ms. Brug stated that the decision was patently unreasonable because Archery Canada had no supporting evidence for its decision. She wrote:
- [...] I believe that there is no supporting evidence for the decision to place her on the team and that this decision is patently unreasonable as it requires not only that the current treatment method is the correct one despite the unknown etiology, as well as the incredibly rapid healing and a rapid re-acclimatisation to training.*
103. Ms. Brug is correct that the applicable standard of review to be applied in these appeals is reasonableness.⁴ Reasonableness is a deferential standard, and provided a sporting organization's decision was not made in bad faith, in an arbitrary or discriminatory manner, arbitrators should rarely, if ever, interfere.⁵
104. A decision is reasonable if it can stand up to a probing examination and it falls within a range of possible, acceptable and defensible outcomes.⁶

⁴ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; *De Haître v. Speed Skating Canada*, SDRCC 22-0539

⁵ *Fergusson v. Equestrian Canada*, SDRCC 22-0598; *De Haître v. Speed Skating Canada*, SDRCC 22-0539; *St-Jules v. Speed Skating Canada*, SDRCC 16-0288

⁶ *Fergusson v. Equestrian Canada*, SDRCC 22-0598; *Christ v. Speed Skating Canada*, SDRCC 16-0298; *Marchant and DuChene v. Athletics Canada*, SDRCC 12-0178

105. I have already found that Archery Canada's decision stands up to a probing examination after analyzing the facts and evidence. It naturally follows from that same analysis that nominating Ms. Barrett under section 7c. falls within the range of possible and acceptable outcomes.
106. I find that Ms. Brug did not demonstrate, on a balance of probabilities, that she should have been nominated to the Team in accordance with the selection criteria.

II. The Revised Formula

Selection Criteria

107. Ms. Brug appealed Archery Canada's decision not to follow its own procedures by calculating selection points based on the Revised Formula instead of the INP Formula as set out in section 7b. of the INP.
108. The first question to ask is whether Archery Canada demonstrated that the Revised Formula was appropriately established.
109. At the outset, Archery Canada did not change the competition format of the 720 round, the individual team and round robin matches for the Selection Event. Therefore, there was no consequential impact to an athlete's training for such an event.
110. The formula change did not result in any advantage for one athlete over another. In recurve archery, athletes win matches on points, not arrow averages. Mr. van der Hoff explained that the intent behind developing the Revised Formula was to prevent "*fluke outcomes*" and create a more objective process that simulates scoring in international competitions. This objectivity is apparent when the scores are compared. The scores under the Revised Formula were 37, 23 and 19 whereas under the INP Formula, they were 17.657, 17.10094 and 17.0876 for the 1st, 2nd and 3rd place qualifiers, respectively.
111. Furthermore, the athletes were made aware of the Revised Formula before the selection events. Ms. Cawley stated that Archery Canada normally communicates by email. Ms. Brug and the other athletes received the May Memo and the September Memo by email, one week before each selection event. Nobody, including Ms. Brug questioned or objected to the formula change before, during or after each selection event in May and September. Ms. Gagné also commented in her statement that Ms. Brug had "*ample time*" to speak to judges or other officials if she had concerns with the Revised Formula.
112. I agree with Ms. Brug that it would have been preferable if Archery Canada had posted an updated INP on its website or informed athletes of the Revised Formula at least three months before the Selection Event pursuant to section 2 of the Policy. However, these are technical breaches that bore no substantive impact on the selection process nor do they negate the fact that she had notice of the Revised Formula. However, to allay any concerns about timelines, Archery

Canada had the authority to shorten the notice period. Section 2 of the Policy provided that the “*general timeline*” to inform athletes of any amendments is three months and this notice period may be shortened by the selection approval panel, and section 6 of the INP contemplated situations where the INP could not be modified or applied, as written, due to exceptional and unforeseen circumstances. Mr. Balisch was credible when he testified that it was unforeseen that Archery Canada would have two significant leadership changes between January 31 and August 31, 2023. Archery Canada was undoubtedly in a state of flux during this timeframe when two important selection events were being planned.

113. I further question whether posting an updated INP or providing three months’ notice would have made a difference. Ms. Brug reviewed the INP when she first received it in February, then in July after the World Championships, and lastly in September to review the “Injury or Illness” section. She intended to base her appeal solely on Archery Canada’s decision to nominate Ms. Barrett. It was by happenstance that she noticed the INP Formula and then prepared her spreadsheet of calculations. In my view, when she discovered that she was ahead of Ms. Gagné by 0.01334 points, she would have only then reverse engineered her arguments to support her position.
114. Archery Canada’s decision to adopt the Revised Formula was justified and reasonable for these reasons: there was no change to the competition format; the athlete’s training was the same; the Revised Formula simulates scoring in international competitions and is more objective; the athletes had sufficient notice of it; none of the athletes questioned or objected to it; and Archery Canada had the authority to make the change. I further defer to the judgment of Mr. van der Hoff, who was involved with developing the Revised Formula in the Netherlands, which has been used there in competitions for the past several years.
115. I find that Archery Canada demonstrated that the Revised Formula was appropriately established.

Decision on Selection Criteria and Onus on Eleanor Brug

116. Since the second aspect of Ms. Brug’s appeal centered on the selection criteria itself, it is probably unnecessary to analyze any further. However, for the sake of completeness, I find that Archery Canada demonstrated, on a balance of probabilities, that its decision was made in accordance with the selection criteria. Archery Canada calculated points at the Selection Event based on the Revised Formula and ranked its athletes accordingly. Archery Canada produced spreadsheets of calculations for the Selection Event in its submissions.
117. Ms. Brug confirmed that she did not dispute the results of the Selection Event. Therefore, I find that Ms. Brug did not demonstrate, on a balance of probabilities, that she should have been nominated to the Team in accordance with the INP Formula.

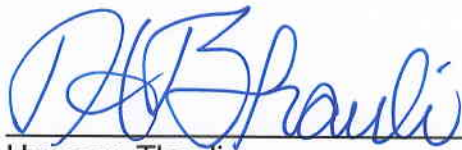
F. CONCLUSION

118. I find that Archery Canada's decisions to rely on section 7c. of the INP to nominate Ms. Barrett and the adoption of the Revised Formula were not made in bad faith, in an arbitrary or discriminatory manner.
119. I understand that the outcome of being selected as 1st alternate for the Team is disappointing for Ms. Brug. There is no doubt that Ms. Brug is a talented athlete who will have opportunities to compete internationally for Canada in the future. I hope for the sake of the Canadian recurve women's team that she can repair any damage to relationships that may have resulted from these proceedings.

G. ORDER

120. Ms. Brug's appeal is dismissed.
121. The matter of costs was not discussed during the hearing. I am not inclined to award costs, but if a party seeks costs, I am prepared to retain jurisdiction should any party file submissions on costs no later than seven (7) days from the issuance of this decision.

Signed in Vancouver, British Columbia, this 13th day of October, 2023.



Harveen Thauli