

IN THE MATTER OF

Alberta Snowboard Association (Appellant)

vs.

Canada Snowboard (Respondent)

1. Pursuant to a Notice of Appeal by the Alberta Snowboarding Association (ASA) concerning Canada Snowboard (CS)'s selection of athletes for the 2011-2012 High Performance Program and National Freestyle Team, the ASA and CS agreed to participate in a mediation session to consider the issues under dispute and to explore solutions and agreements to resolve the disputes.
2. A copy of the Decision on the Notice of Appeal is attached as Appendix A.
3. A mediation session was held on August 29, 2011. The parties agreed to a pre-arranged protocol for the mediation which was conducted partly in person and partly by teleconference. A summary of the mediation session is attached as Appendix B.
4. Based on the agreements reached in the mediation session, the ASA withdrew its appeal, thus voiding the need for a Hearing.
5. It is understood that should the Appellant find that the Respondent has not adhered to the agreements as described in Appendix B, and if the failure to adhere to the agreements relate to the original grounds for appeal as described in Appendix A, the Appellant shall have the right to renew the Appeal and proceed to a Hearing in accordance with the CS Appeals Protocol. This right shall be in force for a period of 60 calendar days as of the date of this disposition of the Appeal.

Respectfully submitted,

Victor Lachance
Appeals Officer
September 8, 2011

DELIVERED BY EMAIL

**IN THE MATTER OF AN APPEAL BY
THE ALBERTA SNOWBOARDING ASSOCIATION
CONCERNING THE CANADA SNOWBOARD SELECTION
FOR THE 2011-2012 NATIONAL FREESTYLE TEAM**

DECISION ON THE NOTICE OF APPEAL

There are sufficient grounds for an appeal.

1. As one of Canada Snowboard's Appeals Officers, I received a copy of the Alberta Snowboarding Association's Notice of Appeal by way of email dated August 15, 2011 with supporting documentation. I relied on the Appellant's submission to determine whether or not there are sufficient grounds for an appeal, in accordance with Section 5 of Canada Snowboard's Appeals Protocol dated (revised through) November 19, 2009, available on the Canada Snowboard website.
2. The Appellant's Notice of Appeal relates to Canada Snowboard's selection of athletes for the Canada Snowboard High Performance Program for the 2011-2012 season, as announced on August 10, 2011. The Notice of Appeal was received within the deadline for appeals on this matter.
3. Based on the material submitted for review, the appeal may proceed on grounds 4 (b) and 4 (d) of the Appeals Protocol, being:
 - Failing to follow procedures as laid out in the bylaws or approved policies of Canada Snowboard; and
 - Failing to consider relevant information or taking into account irrelevant information in making the decision.
4. As to items raised in the submission with respect to the reasonableness of Canada Snowboard's decision(s), these may be raised within the context of the above-noted grounds for appeal.

A Hearing shall be held in accordance with the Canada Snowboard Appeals Protocol.

Victor Lachance
Appeals Officer
August 15, 2011

DELIVERED BY EMAIL

APPENDIX B

SUMMARY OF THE MEDIATION SESSION ATTENDED BY ALBERTA SNOWBOARD ASSOCIATION AND CANADA SNOWBOARD ARISING FROM AN APPEAL CONCERNING THE HPP/NATIONAL TEAM SELECTION FOR 2011-2012

The mediation session was agreed to by the parties to an appeal by the Alberta Snowboard Association concerning the selection process and procedures used to select athletes for Canada Snowboard's 2011-2012 High Performance Program and National Freestyle Team. The purpose of the mediation was to discuss issues that relate directly or indirectly to the appeal proper, and in so doing explore agreements that might resolve the disputes that underpin the appeal.

The parties to the appeal in question agreed to have me, Victor Lachance, serve as mediator in accordance with an agreed upon protocol for the mediation process. The parties agreed that the mediator would not be responsible for making any decisions related to the appeal, and that if the appeal in question proceeded to a Hearing, an Appeals Officer other than myself would conduct the Hearing.

The mediation session was held on August 29 at 5:30pm MST, partly in person at the Bob Niven Training Centre (BNTC) Boardroom at Canada Olympic Park, Calgary and partly by video teleconference for the mediator. The session concluded with the consent of all participants at 10pm MST.

Present for the mediation session were:

Steven Hills, Canada Snowboard
Kathleen Crowley, Alberta Snowboard Association
Mike Duffield, Alberta Snowboard Association
Beth St. Amour, Alberta Snowboarding Association
Victor Lachance, Mediator

The parties agreed that, other than any agreements reached during the course of the mediation session, all statements, comments and discussions were to be strictly confidential.

The mediation participants discussed a number of issues, some relating directly to the substance of the ASA's appeal, such as the clarity of selection protocols around being a member or being in good standing, the events chosen by CS for competition assessments – notably the exclusion of provincial FIS events – and how well important information about new selection criteria was communicated to affected athletes. The process allowed participants to gain a better understanding of the intended and unintended outcomes of the new, more subjective selection process, and to explore ways of improving the selection system for the future. The mediation participants were then able to identify certain additional steps and sources of information that the CS could use to identify and assess junior athletes that could be added to the 2011-2012 Junior National Team.

The following items and actions were agreed to in the mediation session:

1. CS agreed to enhance the HPP/National Team selection process by developing a system to canvass provincial associations for information or nominations for candidates to the Junior National Team. Dustin Heise of the CS will likely be responsible for the development of this additional process where provincial (associations) will use common objective and subjective criteria of competition results, skills and future potential to assess junior athletes, and thereby nominate candidates to the Junior National Team. This enhancement is expected to rely on existing CS processes for policy development (for example, the CS-PSO meeting scheduled for September in Montreal) which should produce the desired enhancement by next spring. CS agreed that junior athletes should be ranked on different events than the national and international events currently on the freestyle ranking lists.
2. CS will immediately undertake a review of its communication responsibilities in order to improve the timing, the distribution (reach), the amount and the quality of information it provides to all those who have an interest and/or are affected by selection processes in general and the HPP/National Team selection process in particular. This will include best efforts to communicate with all stakeholders in a timely fashion and at the same time, with advance notice of policy changes. The mediation participants agreed that the CS website needs considerable improvement in order for it to be user friendly, informative and reliable.
3. With respect to CS communications about its selection processes, the CS agreed to “send a message” to its constituents through its various communication vehicles, including Facebook, about the fact that there have been some important changes to the selection approach, with more subjective criteria intended to better assess athletes destined for the HPP/National Team. The message would communicate that the CS is working on some of the unintended outcomes or effects that these changes may have on the HPP/National Team program, and that means that there will be discussions and disagreements along the way. However, the message would indicate that CS endeavours to encourage and assure that communications related to these kind of changes should be carried out in a professional and courteous manner. Any concerns about things that the CS may say or not say should be addressed to the CS, and anything the CS says or doesn't say should not be used for personal attacks on other people. The CS agreed that the message could also relate the extent to which the CS regrets that the state of its current communications system may have inadvertently contributed to such personal attacks and discourteous emails. The message could benefit from input from the ASA, and would be sent once the appeal is resolved.
4. CS is presently making best efforts to review/audit the ranking list it used in the HPP/National Team selection process to find any errors in that list. If materially relevant errors are found CS agreed that it will act upon such errors in a manner consistent with its past practices, such as adjusting the result of the HPP/National Team selection results to reflect the correct information, or to redo all or part of the selection process to obtain accurate, fair and reliable selection results. The CS indicated that the review/audit and determination of any errors should be completed and communicated to affected parties by Friday, September 2, 2011. CS agreed to

ultimately make public the spreadsheets showing each athlete's event results and the calculation of points. It was agreed that this would build trust, confidence and greater assurance that the final numbers are error-free, and provide greater transparency around the process – important in view of the number of errors contained in the posted lists.

5. CS and the ASA agreed that the recently completed HPP/National Team selection process could now be enhanced with an additional step to obtain more information relevant to the selection of the current Junior National Team to see if any junior athletes were “passed over” by the new, more subjective selection process. The mediation participants were willing to rely on the past assessment system of FIS race-level -results and FIS slopestyle and halfpipe rankings to see if doing so generates relevant information about junior athletes who, in the old system, would have been identified as strong candidates for the Junior National Team, but in the new system were “passed over”. If this additional step did indeed identify such junior athletes, CS will add junior athletes to the 2011-2012 Junior National Team as long as they maintain the basic eligibility for junior worlds (age primarily and legal ability to attend) and that there are no other compelling reasons not to invite them (coaches or parents do not want us to). The mediation participants agreed that there might be other ideas or methods that will surface as ways to assess “passed over” junior athletes, and to make best efforts to use appropriate mathematical calculations along with the FIS points system. The mediation participants agreed that they were not sure how long this additional step would take, but that CS staff would make best efforts to consult with stakeholders, including the ASA prior to implementation, and to find a “second set of eyes” to review the mathematical results generated by the inclusion of FIS rankings. The CS estimated that this process could be completed in two to three weeks.
6. CS offered to update and strengthen the methods and tools used to assess the more subjective skill and future potential components of the HPP/National Team selection process, to enhance their credibility and reliability, using best practices from other sports that use similar methods. CS agreed to track skill and potential of current national team athletes against mathematical matrices over the coming season and on an ongoing basis. The mediation participants agreed that CS staff will carry out this work, in consultation with others such as the ASA, including an updating of methods and tools, which should take about a month to complete.
7. Based on these agreements, the ASA agreed to withdraw its appeal. The mediation participants agreed that the way to do so would be to have the Mediator summarize the agreements (this document), and the ASA would submit the summary as the reason for its withdrawal of the appeal. CS would then acknowledge the agreements, and inform all the CS Appeals Officers that this particular appeal has been withdrawn, with a copy of the summary (this document), which may be of benefit to the future work of the Appeals Officers. It was also agreed that the content of this agreement can be made public.
8. The ASA proposed and the mediation participants agreed that there should be more confidentiality built into the appeals process, especially at the Notice of Appeal stage. The mediation participants discussed ways in which the appeal process and Appellant's identity

could or should remain confidential, acknowledging that there would be instances where the CS staff would need to know the identity of the Appellant in order to know the implications of a potentially successful appeal. CS agreed to make changes to its Appeals Policy to maintain confidentiality to the greatest extent possible based on the following approach: an appellant will no longer be required to send his or her Notice of Appeal to CS. Notices of Appeal will be sent solely and confidentially to the Appeals Officer selected by the appellant. The appellant is assured complete confidentiality at this stage, but there would still be requirement to pay the administration fee, ideally in a manner that maintains confidentiality. If the Appeals Officer determines that there are grounds to proceed with an appeal, that ruling is then sent in confidence to the Executive Director of CS. The appellant would then make their formal appeal submission (perhaps exactly as submitted in the Notice of Appeal, or perhaps amended by the appellant as they see fit based on the Appeals Officer's decision on the grounds to proceed to a Hearing), which will be submitted to CS, and CS will then respond. The Executive Director will keep the name of the appellant confidential unless CS can provide satisfactory reasons to the Appeals Officer as to why the appellant's name should be disclosed and to whom (for example CS technical staff, or a potentially affected athlete) in which case the name of the appellant may be shared as approved by the Appeals Officer. (The overall intent is for athletes to be as comfortable as possible in launching an appeal and to keep the information as closely held as possible to minimize any risk, or the perceived risk, of any backlash for the appellant). CS agreed to pursue the proposed changes through the CS policy making process.

It was acknowledged in the mediation session that the new, more subjective selection process for the HPP/National Team might be more susceptible to appeals and that the above agreements would likely help to mitigate that possibility.

In my role as Mediator I made certain comments during the course of the mediation session, and two in particular are noted here:

1. As an Appeals Officer, I have had occasion to comment in the past on the quantity and quality of the CS's communications and information to athletes and others affected by the CS's decisions. As a Mediator in this case, I felt it important to note this as a means of emphasizing the points made by mediation participants about the importance of good, timely and reliable information about how selection decisions are made and why. It was evident from all of the participants' comments and discussion that, as has been noted in the past, improved communications would go a long way in avoiding problems, enhancing collaboration and resolving disputes.
2. I found it disconcerting to hear about the kind of personal attacks and discourteous emails that had resulted from information about this appeal being made public. I was particularly saddened to hear about the emails received by three of the mediation participants who were trying to make the best of a difficult situation. I would hope that the above agreements and the goodwill that made this possible will reinforce once again the need for good communications when it comes to selection processes.

I wish to sincerely thank the mediation participants for their professionalism, expertise and goodwill in producing this impressive list of agreements for the benefit of snowboarding in Canada. I commend the ASA for bringing the issues forward in this manner, and Canada Snowboard for taking advantage of this opportunity to improve the selection process.

Respectfully submitted,

Victor Lachance

September 5, 2011