

COURT FILE NO.: 1403 08784
COURT Court of Queen's Bench of Alberta
JUDICIAL CENTRE Edmonton

PLAINTIFFS ALBERTA TAEKWONDO
ASSOCIATION, WTF TAEKWONDO
FEDERATION OF BRITISH
COLUMBIA, MANITOBA
TAEKWONDO 2009 INC., AND
TAEKWONDO ASSOCIATION OF
NEW BRUNSWICK

DEFENDANTS TAEKWONDO CANADA, TONY
NIPPARD, ANDREW ING, JAY PARK,
KATY PYKE, TINO DOSSANTOS,
DASHA PEREGOUDOVA, JEAN
FAUCHER, YOUNG SU CHOUNG,
and SEAN FITZGERALD

FIAT:
Let this Affidavit be
filed notwithstanding
that Exhibit "D" was
not notarized by the
Notary Public.

Date: July 8, 2014

Signed: "R. Wacowich"

DOCUMENT AFFIDAVIT
ADDRESS FOR SERVICE BISHOP & MCKENZIE LLP
AND CONTACT 2500, 10104 - 103 Avenue
INFORMATION OF PARTY Edmonton, Alberta T5J 1V3
FILING THIS DOCUMENT Attention: Nigel J. Forster
Phone: 780.421.2401
Fax: 780.426.1305
File No. 100462-007

master
Justice of the
Court of Queen's
Bench of Alberta

AFFIDAVIT OF TONY KOOK
Sworn on July 1st, 2014

I, Tony Kook, of Vancouver, British Columbia, MAKE OATH AND SAY THAT:

1. I am the Secretary General of the Plaintiff, the WTF Taekwondo Federation of British Columbia, and as such I have personal knowledge of the matters described herein, except where stated to be based on information and belief, in which case I believe the same to be true.

2. The WTF Taekwondo Federation of British Columbia ("Taekwondo BC") is a Voting Member Organization ("VMO") of the Defendant, Taekwondo Canada ("TC"), and is entitled to a minimum of 1 vote at any general meeting of the members of TC.
3. I have reviewed the Affidavit of Master Ken Froese of the Alberta Taekwondo Association in this action, and I agree that there is significant evidence of lack of transparency, lack of accountability to members, and unjust application of policy decisions, on the part of TC.

Voting Status

4. On or about May 31st, 2012, the former CEO of Taekwondo Canada, Eva Havaris advised Taekwondo BC in writing that we were no longer a "Voting Member".
5. We were told that the reasoning behind TC's decision was based on a "Governance Review" which included assessing Taekwondo BC's by-laws. Taekwondo BC then contacted our federation's lawyer, Mr. Michael Hwang from Amicus Lawyers and we confirmed that our current by-laws were sound and without conflict. We had requested that someone from TC contact our federation's lawyer to discuss and resolve whatever their concerns were, and no initiative by TC was taken.
6. Hoping to receive our Voting Member Status re-instated as soon as possible, Taekwondo BC emailed TC all the required forms on Sept. 9th, 2013. A copy of this email is attached to my Affidavit as Exhibit "A". Since this time we have followed up with phone calls, text messages, and emails in regards to our status, and we engaged in multiple communications with TC to provide them with all of the information they have requested. The only response we have received from TC is that they will be launching a 2nd VMO or "Governance Review". A copy of that email is attached to my Affidavit as Exhibit "B".
7. Taekwondo BC has not been able to cast a vote nor voice valid concerns at Taekwondo Canada's AGM for 2 years now, without any good reason being given for it. This is unjust.

Membership policy and insurance issues

8. Taekwondo Canada launched a membership and insurance initiative as described in the Affidavit of Ken Froese. Taekwondo BC made every possible effort to come into compliance in a timely manner. With TC pushing to have Taekwondo BC come into compliance with membership and insurance, Taekwondo BC made its best efforts to work out an agreement moving forward. An email from Taekwondo Canada, attached to my Affidavit as Exhibit "C", confirmed that our proposal was good.
9. The Board of Directors for Taekwondo BC had asked from both TC and the insurance underwriters that this agreement be officially made available in writing and not just a simple email. No such guarantee or confirmation was ever received.
10. I am concerned that the present Board of TC will try to go back on this agreement and, as seems to have been the experience of other VMOs in Canada, claim that non-compliance with the membership policy prevents us from having a vote.

Unfair treatment of BC athletes and coaches

11. Like Ken Froese and the ATA, I feel that there has been unfair and harsh treatment of Taekwondo BC's members, that appears to be targeted selectively and Inconsistently.
12. Our concerns in this regard stem from Taekwondo Canada's rash and unfair treatment when concerns have been brought up. 2 coaches from Taekwondo BC have been treated very disrespectfully by the Defendants: Master Young Suh (current BC board member) and Master Mike Erdmann (current BC board member).
13. Off handed remarks from the Defendants such as "You can take it up with SDRCC but there's no point, you're just gonna lose" were made: these are both unprofessional and unwarranted. In recent conversations with Master Mike Erdmann and TC, representatives from TC were extremely rude and unhelpful. We feel that many of the Defendant Board of Director members on TC are

deliberately inconsistent with their implementation of policies and are very unhelpful and unprofessional in their communications.

14. Master Young Suh recently had an athlete, Ms. Rowena Lau (age 15) win the Junior Team Trials for Canada in November of 2013 for her right to represent Canada at the World Junior Taekwondo Championships. Rowena Lau is a minor but Taekwondo Canada forced her to sign an "Athlete Agreement" which outlined conditions without any default provisions. There were no signatures required from her legal guardian nor coach. After what TC deemed an alleged "breach of agreement" they summarily removed her from the team denying her right to represent Canada at the World Championships in February just weeks away from the World Championships. Taekwondo BC made clear why this should not be the case by outlining our reasons via email. Taekwondo Canada advised that their "legal counsel" had advised on such a ruling. We made repeated attempts to have our legal counsel talk with theirs but no communication was ever established by TC. In fact, despite several requests, TC would not even divulge who this "legal counsel" was.
15. Eventually, we appealed to SDRCC and won. The decision is attached as Exhibit "D". We strongly feel that the extra time, expenses, and stress incurred could have been easily avoided if the board members were diligent and objective in their evaluations. We also believe that this was an absurd and extremely unreasonable thing to do to a 15 year old student on the basis of a position that was plainly wrong, and that TC's lack of transparency and communicativeness, and harsh and stubborn reliance on their "legal counsel", demonstrates a significant lack of good faith in governance.

Irreparable Harm

16. I have reviewed the Affidavit of Ken Froese and I agree with his concerns about the harm that has come and may still come to Taekwondo BC and many other members of TC and the provincial associations if the Defendants are not prevented from continuing their conduct.
17. I share Master Froese's concerns about the lack of transparency to the members of the manipulations occurring at the TC Board level, and I too question the motivations for that.

18. Taekwondo BC has now been excluded as a voting member for more than two years, for no apparent reason, and the Defendants appear to be deliberately avoiding dealing with it. There is a real and substantial risk that they will attempt to exclude us from participation in a third consecutive AGM.
19. I make this Affidavit in support of an application for injunctive relief against the Individual Defendants, preventing them from continuing to govern Taekwondo Canada until the VMOs can elect a proper board and have their rightful and democratic say in the governance of TC at a properly called and run Annual General Meeting.

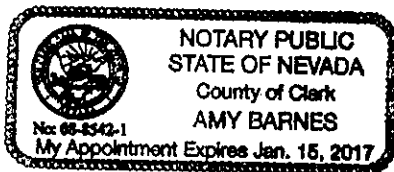
*State of Nevada
County of Clark*
SWORN BEFORE ME at Las Vegas, Nevada,
USA, on July 1, 2014.

Amy Barnes

A Notary Public in and for
the State of Nevada

Tony Kook

TONY KOOK



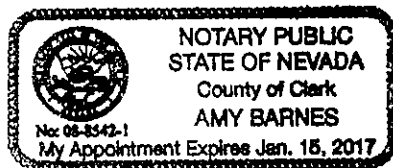
State of Nevada
County of Clark
This is Exhibit A to the Affidavit of
Tony Kook, sworn before me
this 1 day of July, 2014



A Notary Public in and for
the State of Nevada



Tony Kook



From: Master Tony Kook [northshoretkd@shaw.ca]
Sent: Monday, September 09, 2013 1:18 PM
To: 'president.wtfcanada@gmail.com'; 'Eva Havaris'; 'Michelle Robb'; 'Master Tommy Chang'
Cc: 'wtfbccanada@gmail.com'; 'Song-Chul Kim'; 'Mike Erdmann'; 'Brett Fee'; 'Paul Bozman';
'nicelsd@yahoo.ca'
Subject: BC Taekwondo VMO forms
Attachments: BC VMO Membership Compliance - pg 1.jpg; BC VMO Membership Compliance - pg 2.jpg;
BC VMO Membership Compliance - pg 3.jpg; BC VMO Membership Compliance - pg 4.jpg;
BC VMO Membership Compliance - pg 5.jpg; BC VMO Membership Compliance - pg 6.jpg;
BC VMO Participant Registry.jpg

Dear Taekwondo Canada,

The BC Taekwondo PSO would like to extent our gratitude for Taekwondo Canada's ongoing efforts and for offering helpful and supportive feedback to help get our voting status back.

Please find attached the Membership Compliance forms and Participant Registry for your review and evaluation.

We would like to express that we will be very proactive in ensuring that we can be a positive contribution to the Taekwondo community in Canada.

FYI, cc'd in this message is the Executive of B.C.

If possible, we would love to have your approval and regain our voting right before this year's AGM at the end of this month where our provincial president, GM Dae Lim will be attending.

Once again, thank you for your contributions and work. We look forward to working together in compliance to build and stronger and more unified Taekwondo community in B.C. and Canada.

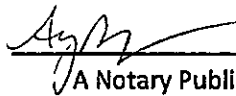
Should you have any questions, please advise.

Respectfully,
Tony K

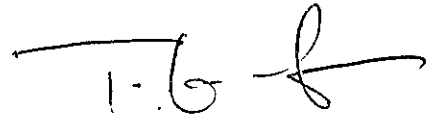
Master Tony Kook
direct: 604-986-5558
North Shore Taekwondo
www.northshoretaekwondo.com

Sec. General & Treasurer
World TKD Federation of B.C.
web: www.taekwondobc.com

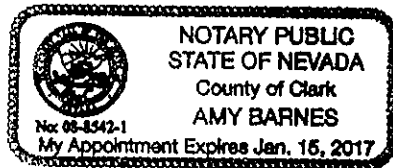
state of Nevada
This is Exhibit B to the Affidavit of
Tony Kook, sworn before me
this 1 day of July, 2014



A Notary Public in and for
the State of Nevada



Tony Kook



From: Eva Havaris [ehavaris@taekwondo-canada.com]
Sent: Tuesday, April 01, 2014 9:44 AM
To: Master Tony Kook
Cc: 'wtfbccanada'; 'Song-Chul Kim'; 'Brett Fee'; 'Mike'; 'Paul Bozman'; worldtkda@gmail.com; Sean FitzGerald; Tino Dossantos, ChPC; Ms.Kathy Pyke; Andy Ing; Master TONY NIPPARD
Subject: Re: VMO status

Hello Tony,
BC Taekwondo's status remains unchanged from the first VMO review process by Taekwondo Canada. The Board is in the process of preparing for the second VMO review process in accordance with TC's new bylaws. All organizations of TC (regardless of status) will receive notice and instructions on the process along with the required minimum benchmarks to be met.

Regarding a purported upcoming meeting in May, this is a rumour. There has been no discussion of a members meeting at the Board level since last summer and no meeting is scheduled.

Sincerely,
Eva



TAEKWONDO CANADA

Eva Havaris
CEO

ehavaris@taekwondo-canada.com
Phone: 647-504-6936
taekwondo-canada.com

Connect with Taekwondo Canada

 www.facebook.com/Taekwondo.Canada  @TKD_Canada

This email contains confidential information that is proprietary to WTF Taekwondo Association of Canada in all respects. This information is intended only for the person(s) named in the destination address. Unauthorized distribution, copying or disclosure is strictly prohibited. If you receive this email in error, please delete it immediately.

From: Master Tony Kook <northshoretkd@shaw.ca>
Date: Monday, 31 March, 2014 9:13 PM
To: Eva Havaris <ehavaris@taekwondo-canada.com>
Cc: 'wtfbccanada' <wtfbccanada@gmail.com>, 'Song-Chul Kim' <scktkd@hotmail.com>, 'Brett Fee' <brettcfee@gmail.com>, 'Mike' <mc_erdmann@yahoo.com>, 'Paul Bozman' <bozman@citytel.net>, <worldtkda@gmail.com>
Subject: VMO status

Hi Eva,

Taekwondo BC is formally requesting the status of our VMO review submitted a few months ago.

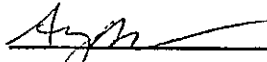
We would like to participate as a Voting member for the upcoming meeting in May.

Thank you.
Tony K

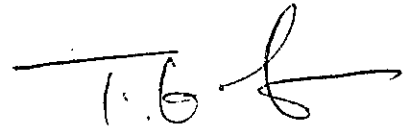
Master Tony Kook
direct: 604-986-5558

State of Nevada
County of Clark

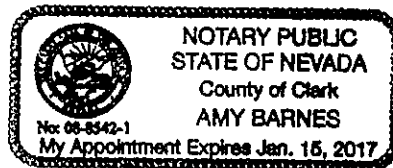
This is Exhibit C to the Affidavit of
Tony Kook, sworn before me
this 1 day of July, 2014



A Notary Public in and for
the State of Nevada



Tony Kook



From: Master Tony Kook [northshoretkd@shaw.ca]
Sent: Monday, February 17, 2014 4:06 PM
To: 'Eva'
Subject: RE: BC Taekwondo federation issues

Eva,

Wonderful, great news – thank you!!

I will let our Executive know right away and be in touch with you soon as well as Jones Brown.

Will you be in Vegas this week?

Tony K

From: Eva [mailto:ehavaris@taekwondo-canada.com]
Sent: Monday, February 17, 2014 3:43 AM
To: Master Tony Kook
Cc: Brent Brandham
Subject: Re: BC Taekwondo federation issues

Hi Tony

We are good to proceed with the insurance and membership plan for BC Taekwondo based on your proposal below. This is a first step towards full compliance and I will work with you to fully transition BC over the next year.

I have copied Brent from Jones Brown and he will follow up with you directly this week to get everything set up.

We will require club information and payment from you as well.

Also, in order to ensure full coverage of all BC taekwondo events we will need a full listing of all participants at every event to ensure they are in the system and covered.

I am away this week returning next Tuesday but Brent will connect with you right away and I will connect with you when I am back to make sure all went well.

Thanks

----- Original message -----

From: Master Tony Kook <northshoretkd@shaw.ca>
Date: 02-14-2014 1:18 PM (GMT-05:00)
To: 'Eva Havaris' <ehavaris@taekwondo-canada.com>, jdossantos@taekwondo-canada.com
Cc: 'wtfbccanada' <wtfbccanada@gmail.com>, 'GM Su Hwan Chung' <president.wtfcanada@gmail.com>

Subject: BC Taekwondo federation issues

Hi Eva and Taekwondo Canada,

As per the phone message I left you:

1) Our PSO is very upset and shocked to see that Taekwondo Canada has taken the very drastic step to eliminate our athlete Rowena Lau from the National Team. As per the athlete agreement, she did fail to compete at the Canada Open but every measure and avenue was taken to try and remedy this by their coach, Master Young Suh, after he was alerted of the infraction. Your answers to specific questions below are greatly appreciated:

a) Which specific steps as per 3 (b) and 3 (c) were taken by Taekwondo Canada to help remedy this situation? It is clear that none were taken or was decided to be by-passed.

b) Direct us to where it states in the Athlete agreement explicitly, "that failure to comply will result in default of National Team Member standing" or similarly implied because our federation lawyers have made it clear that "WHEREAS in consideration the right to compete at the 2014 Jr World Taekwondo Championships Team, from March 22-26, 2014 in Taipei" does not directly imply that failure to meet one of the criterion will directly result in default.

c) Who(m) from Taekwondo Canada was directly involved making the ultimate decision that Rowena be cut and not be given a warning or suspension with time to remedy?

d) On a legal note, the signature belongs to Rowena Lau (a minor under the age of 18) with no signature from the parent or legal guardian, only a signature from the "Witness" which is Master Young Suh, her coach. The witness signature only confirms that Rowena Lau (the athlete) has signed the form. Master Young Suh signing the form does NOT guarantee that he has read the form or will guarantee the athlete will carry out the duties and responsibilities as signed. Therefore, Taekwondo Canada is entering into an agreement with the athlete (a minor) without a signature from the Legal Guardian. Then from here, based on an infraction, it is decided to cut her from the team entirely! This seems VERY suspicious with a hidden agenda. Does this not seem problematic? Rowena spends an average of over 1,200 hours per year in training, committed herself to Montreal (THE JUNIOR TEAM TRIALS) in November, won by a total score of 22-3 against all of her opponents to win her the right to represent Canada. Is not one of the duties by Taekwondo Canada to send the best athlete representative to the International Games?

e) Rowena is one of B.C.'s brightest young stars and to eliminate her from the National Team because of this one infraction is extremely severe and unfair in light of point (b) above. She comes from a single mother, working class family that absolutely loves Taekwondo and makes every possible effort to make ends meet to allow her to continue training. In the letter Master Suh provided to you, lack of monetary funds was a big reason why they opted out of the Canada Open and instead decided to compete at the US Open. What is even more disappointing is that there were NO steps taken from Taekwondo Canada to help remedy this situation before the decision to cut her from the team. **Could you not have given her a warning, probation, or temporary suspension, etc ?** Instead, a quick and drastic decision was taken to simply cut her from the team without any indication of support. I really must question what I am supporting here at Taekwondo Canada. My hope was to help develop and support an NSO that was working towards something promising and fair through athlete development and support. I am extremely saddened that this line of drastic action was taken without an opportunity for a workable solution. With this line of action that Taekwondo Canada is taking towards its National athletes I trust that if any athlete were to wear a plain t-shirt or plain pants or some other form of "unofficial clothing" during their time in Taipei, they will be directly escorted back on a plane to Canada due to their infraction of 2 (h) on the athlete agreement? Sounds ridiculous and unfair doesn't it? But this is the exact same line you have taken with our athlete due to her infraction of 2 (c). She paid her dues and made the National team and now it seems Taekwondo Canada is looking for ways to cut her from the team instead of sustaining her status on the team.

2) Insurance and membership issues – we are still waiting for your answer on this. Our other option is to renew with our existing insurance provider for another 6 months and then have both our membership and insurance begin effective September 1st in accordance with Taekwondo Canada's year-end. But this still has the issues that I brought up regarding the Commercial and Community numbers and registration. We need an answer immediately please. I am trying hard here to help BC to come into compliance with Taekwondo Canada but without your support and feedback this will be very difficult.

We look forward to your feedback to points 1 and 2 as set out above and **I sincerely hope** we can come to a reasonable solution by working together through effective communication and dialogue. It is our hope that Taekwondo Canada can help our athlete Rowena be allowed back on the team and also aid Taekwondo BC come into compliance with both membership and insurance through a workable solution.

Respectfully,

Tony Kook

Master Tony Kook

direct: 604-986-5558

North Shore Taekwondo

www.northshoretakwondo.com

Sec. General & Treasurer

World TKD Federation of B.C.

web: www.taekwondobc.com

From: Master Tony Kook [northshoretkd@shaw.ca]
Sent: Friday, February 07, 2014 3:45 PM
To: 'Eva Havaris'
Subject: FW: phone message

From: Master Tony Kook [mailto:northshoretkd@shaw.ca]
Sent: Monday, January 27, 2014 4:50 PM
To: 'Eva Havaris'
Subject: RE: phone message

Hi Eva,

Anytime after lunch is good for me.

Here's what the B.C. Executive is proposing:

Currently, our Federation consists of approx. 70 clubs (55 Main and Branch commercial clubs and 15 Community clubs). Commercial clubs pay \$100 membership and the Community clubs pay \$50 annual membership. Most of these clubs then take advantage of our group insurance plan which is \$700 for commercial and \$550 for community clubs. Our insurance provider and the federation work together and base these premiums on 80 students for commercial schools and 50 students for community schools as these are the median averages for most clubs. Our insurance provider does not require names of the students, they simply confirm with the club owner if the student making a claim was in fact a student in good standing at the time of the accident.

Since membership and insurance must be paid to Taekwondo Canada, BC would like to comply based on the same average numbers as above.

Example:

Commercial club: 80 members x \$15 membership and insurance fee = \$1,200

Community club: 50 members x \$15 membership and insurance fee = \$750

The PSO proposes to collect all of these fees from our member clubs and submit on an annual basis to the NSO. The reasoning behind this is that we know that clubs would not be willing to do this on a monthly basis as it creates too much paper work and administrative office duties. Also, based on the above amounts all member clubs would see an increase on their expenses but at least we would be complying with Taekwondo Canada and it offers a good compromise/starting point to finally implement the National membership and Insurance plan.

Anyways, think about this and give me your thoughts when we chat tomorrow.

Thank you!

Tony K

Master Tony Kook
direct: 604-986-5558
North Shore Taekwondo
www.northshoretakwondo.com

Sec. General & Treasurer
World TKD Federation of B.C.
web: www.taekwondobc.com

From: Eva Havaris [<mailto:ehavaris@taekwondo-canada.com>]

Sent: Monday, January 27, 2014 2:15 PM

To: Master Tony Kook

Subject: phone message

Hi Tony,

I got your phone message. What's your day like tomorrow for a call?



TAEKWONDO CANADA

Eva Havaris
CEO

ehavaris@taekwondo-canada.com

Office: 416.426.7328

Cell: 647.504.6936

taekwondo-canada.com

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This is Exhibit D to the Affidavit of
Tony Kook, sworn before me
this ____ day of July, 2014

A Notary Public in and for
the State of Nevada

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

No. SDRCC 14-0221

Between:

Rowena Lau

Claimant

and

Taekwondo Canada

Respondent

REASONS

These reasons follow the Decision of March 4, 2014 and are delivered as required by Rule 6.21(c) of the *Canadian Sport Dispute Resolution Code* (the "Code").

Hearing:

1. The hearing was conducted by conference call on March 3, 2014.

Issue:

2. The decision of Taekwondo Canada ("TC") to remove Ms. Lau from the Canadian 2014 Junior World Taekwondo Championship team (the "Team").

Preliminary Matters:

3. I was appointed arbitrator by the SDRCC on February 26, 2014. A preliminary meeting with the Party representatives was conducted by conference call on February 28, 2014.
4. Identification was required of any "affected party" within the meaning of the Code. TC confirmed that if Ms. Lau was ordered reinstated nobody would be removed from the Team. Notwithstanding, TC suggested that the remaining Team members were "affected parties" because reinstatement of Ms. Lau would denigrate the achievement of those making the Team. The other athletes had competed at the 2014 Canada Open Championship (the "Open") held in February, 2014. TC contends that each athlete was required to compete at the Open. However Ms. Lau did not compete which is the reason she was removed from the Team.
5. I ruled that none of the other athletes was an "affected party" within the meaning of the Code as none was at risk of losing a position on the Team should Ms. Lau's appeal be successful.
6. The Parties agreed that delivery of these Reasons could be postponed to April 1, 2014.

Evidence:

7. The evidence consists of the materials filed by the Parties and sworn testimony of Ms. Lau, Young Suh, Jamie Dos Santos, and Eva Havaris. Mr. Suh is Ms. Lau's coach. Ms. Dos Santos is TC's High Performance Manager. Ms. Havaris is the Chief Executive Officer of TC. The materials filed include a document on TC letterhead entitled "2014 JR World Championship Team Athlete Agreement" (the "Agreement"), and the signature page of the Agreement signed by Ms. Lau on January 2, 2014.
8. On February 19, 2013, TC posted the Team selection criteria on the TC website with notice emailed to TC members of the website posting. Among the 20 eligibility requirements were the following 2 criteria:
 13. Athletes must sign an Athlete Agreement as required by Taekwondo Canada.
 14. The athlete must participate in the required competitions recognized by Taekwondo Canada.
9. On December 20, 2013, TC emailed Ms. Lau an invitation to the Team, a 3 page information letter and a blank form of the Agreement. At that time Ms. Lau was 15 years old. On January 2, 2014, Ms. Lau signed the signature page of the Agreement. Mr. Suh signed as witness. On January 3, he emailed the signature page, a medical release authorization and a copy of Ms. Lau's passport to TC. Ms. Lau stated that before she signed the Agreement she "skimmed over it." Mr. Suh did not read the Agreement before he signed and emailed the signature page to TC.
10. TC did not sign the signature page or any form of the Agreement although the signature page has lines for the "CEO" and a witness to sign. Nothing was returned to Ms. Lau or Mr. Suh.
11. Paragraph 2c) of the Agreement provides that, "The Athlete shall agree:... To compete at 2014 Canada Open and 2014 Canadian National Championships."
12. On January 23, 2014, Ms. Dos Santos sent a mass email providing Team apparel and travel information. The email contained the following statement:

As a reminder, Canada Open registration is closing soon, if you have not registered for this event, please do so immediately.

The email addresses were those Ms. Dos Santos had for Team athletes and parents. She did not know if the addresses were for parents or athletes.
13. In fact, Canada Open registration closed that same day, January 23, 2014. Ms. Lau did not register for the event. Neither Ms. Lau nor Mr. Suh knew of TC's expectation that Ms. Lau would compete at the Open.
14. On February 7, Ms. Dos Santos advised Mr. Suh that Ms. Lau was not registered for the Open and of the obligation under the Agreement to participate in that competition. He immediately asked how to correct the problem and register Ms. Lau. He followed up with TC several times over the next 2 days but did not receive any reply. On February 10, Ms. Dos Santos advised him that late registrations would not be accepted. On February 13, TC notified Ms. Lau that she was removed from the Team for not competing at the Open.

15. TC acknowledged that another athlete who had not competed in the Open due to injury had not been removed from the Team.

Argument:

16. TC submits that the Agreement required Ms. Lau to compete at the Open. She did not and was therefore removed from the Team.

17. The following submissions are made on behalf of Ms. Lau:

- a. The Agreement was not signed and delivered by TC, and therefore is not a valid and binding contract;
- b. Ms. Lau is a minor and therefore the Agreement is not binding on her;
- c. The Agreement does not specify any penalty for any default or breach;
- d. The Agreement does not allow for exemption from competing in the Open for medical reasons. TC's treatment of Ms. Lau and the injured athlete were not comparable, and therefore biased;
- e. The penalty of removal from the Team far exceeds the reason for not competing which was failure to read the Agreement.

Findings:

18. The Agreement has several deficiencies which include but are not limited to:

- a. The identity of the "Athlete" is not defined in the Agreement. After the title, the Agreement reads "(Hereinafter referred to as the "Athlete")". This type of phrase is used to simplify forms and contracts. If Jane Doe is "hereinafter referred to as the "Athlete" then "Jane Doe" does not have to be repeated in document. The term "Athlete" throughout the document means "Jane Doe". The Agreement is blank before the phrase, "(Hereinafter referred to as the "Athlete")" nor is there any indication that a name should be inserted or of a place to do so.
- b. The term "NSO" is used but not defined.
- c. The first words of the Athlete's Obligations in paragraph 2 are, "The Athlete *shall agree ...*" (emphasis added). These words create an agreement to agree. Such an agreement is unenforceable. As written, "*shall agree*" implies a subsequent agreement to be made. This is compared to the initial words of the NSO Obligations in paragraph 1 which are, "Taekwondo Canada shall provide..., organize..., communicate , etc." Paragraph 2(c) does not state that the Athlete will or is required to compete at the 2014 Canada Open. The provision is that the Athlete shall agree to compete at the 2014 Canada Open, presumably at a time and on terms yet to be determined.
- d. The Default of Agreement section in Paragraph 3 provides that if one party feels that the other has not fulfilled obligations, then written notice is to be given to the offending party of the default, and the steps to be taken within a reasonable time to correct the default. If the default is not corrected within the required time, then a formal complaint hearing and appeal procedure shall be commenced as, "referred to in paragraph 1(n)." The Agreement does not contain a paragraph 1(n). On February 7, 2014, TC gave Mr. Suh verbal notice of Ms. Lau's failure to register for the Open but did not give any remedial steps to be taken. TC did not act in accordance with the terms of

the Agreement on which it purports to rely.

- e. The Agreement does not contain any disciplinary, enforcement or penalty provision and does not allow for the imposition of any penalty for any violation of the Agreement by an athlete. Therefore, Ms. Lau's failure to compete at the Canada Open was not sanctionable by TC.
- f. The Agreement does not provide any authority to TC to grant an exemption to an athlete from competing in the Open for medical or other reason.

The Agreement is uncertain and ambiguous. The extent of the deficiencies renders the Agreement void and unenforceable, assuming that it was properly signed and delivered by Ms. Lau and TC, which it had not.

- 19. Ms. Lau is a minor. The Agreement, if it is otherwise enforceable, is voidable at her option. The law in British Columbia and Ontario is similar. A contract with a minor cannot be enforced against the minor unless the contract is beneficial to the minor. If the Agreement was otherwise valid, TC could not enforce it against Ms. Lau. There isn't any evidence that the Agreement is beneficial to her.
- 20. TC did not sign or deliver the Agreement or the signature page to Ms. Lau or her coach. With that omission, TC failed to satisfy a basic requirement in the creation of any enforceable, binding contract – signing and delivering the document to the other party. TC cannot enforce a non-existent contract against Ms. Lau.
- 21. The Team selection criteria specified that athletes would be required to compete in unspecified events. The December 23, 2013 invitation letter provided much information but no reference to any requirement to compete in the Open or later competition. The only evidence of the required competitions is paragraph 2c) of the Agreement. TC did issue a reminder to register for the Open but only on the same day registration for the event closed. The apparent failure of TC to provide clear and timely information is concerning.
- 22. It is not necessary to consider any disparity in treatment of Ms. Lau and the injured athlete.

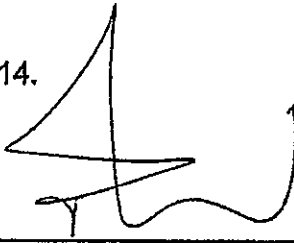
Decision:

- 23. Ms. Lau's appeal is allowed and she is ordered reinstated to the Team effective March 4, 2014.

Costs:

- 24. Neither Party mentioned costs. Therefore no costs are awarded to either Party.

Dated at Calgary, Alberta, on April 1st, 2014.



John H. Welbourn, Arbitrator