

**BETWEEN**            **JASON CHRISTIE**  
  
                             **Appellant**

**AND**                    **CYCLING NEW ZEALAND**  
  
                             **Respondent**

**AND**                    **NEW ZEALAND OLYMPIC COMMITTEE**

**AND**                    **CHALLENGED CYCLISTS: SHANE ARCHBOLD, ALEX FRAME,  
HAMISH BOND, JAMES ORAM, SAM GAZE AND HAYDEN  
MCCORMICK**  
  
                             **Interested Parties**

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**DECISION OF SPORTS TRIBUNAL**

**2 March 2018**

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**Hearing:**            28 February 2018 by teleconference

**Tribunal:**           Sir Bruce Robertson (Chairperson)

**Present:**           Caroline McCarthy, counsel for Appellant  
                             Jason Christie, Appellant  
                             Isaac Hikaka, counsel for Respondent  
                             Andrew Matheson, Chief Executive, Cycling NZ  
                             Martin Barras, High Performance Director of Cycling NZ  
                             Tara Pryor, for New Zealand Olympic Committee  
                             Paul David QC and Jacob Barry, counsel for challenged cyclists

**Registrar:**        Anne Scanlan

## BACKGROUND

1. This appeal by Jason Christie (the Appellant) is against the decision by Cycling New Zealand (CNZ) not to select him for participation in the 2018 Commonwealth Games. Although initially not clear this turned out to be an appeal against the Discipline Panel's decision not to recommend him to the Nomination Panel to be part of the Commonwealth Games men's cycling team.
2. The Appellant contends there were failures in the process and that he should have been selected on the merits in place of one of Messrs Shane Archbold, Alex Frame, Hamish Bond, James Oram, Sam Gaze or Hayden McCormick. These "challenged cyclists" were all notified as interested parties in this appeal and invited to participate in the hearing and most were represented collectively by counsel at the appeal hearing.
3. The New Zealand men's road cycling team selected for 2018 Commonwealth Games is: Jack Bauer (road race), Shane Archbold (road race), Alex Frame (road race), Hamish Bond (time trial and permission to start the road race), James Oram (road race) and Sam Gaze (mountain bike with permission to start in the road race). The reserve for the team is Hayden McCormick.
4. Aaron Gate was named in the original team but could not take up his place because of professional commitments. James Oram took his place in the team. Sam Gaze was included in the road race team. The Appellant does not dispute Jack Bauer's place in the team.
5. The Appellant asked that the Tribunal select him to compete in the 2018 Commonwealth Games. He submitted that CNZ had failed to properly apply the selection criteria. The Tribunal was advised that a decision in favour of the Appellant would need to involve a re-consideration of the selection of the whole New Zealand team, to determine who to de-select as there are limited places in the cycling team.
6. A number of pre-hearing teleconferences took place between the parties to identify relevant issues, deal with a number of preliminary matters, update information and developments. A summary of all those discussions and material is noted but have not been fully detailed here.

7. The Tribunal notes the time constraints in hearing this appeal, the number of parties involved both in New Zealand and those currently training overseas, and the constantly evolving situation of this matter as it progressed over the course of a week from when the appeal was filed on 19 February 2018.
8. In the course of the proceedings, another place on the Commonwealth Games team became available and NZOC offered that quota place to CNZ. This place was accepted and after consideration by the Discipline Panel it was recommended that Hayden McCormick be offered this place and the Appellant be a non-travelling reserve for the team. This nomination has been forwarded to the NZOC which makes the final decision.
9. The hearing of the appeal took place by teleconference before the Chair sitting alone as agreed by the parties, on the basis of prepared statements of evidence upon which there was cross-examination. The Tribunal heard from the Appellant himself and for the Respondent, from Martin Barras (High Performance Director and selection panel convenor for CNZ), and Tara Pryor, for NZOC.
10. In addition, the Tribunal considered the material filed by the parties, including:
  - Statements filed by Jason Christie, Martin Barras, Craig Geater, James Oram, Hamish Bond, Shane Archbold and correspondence from other challenged cyclists
  - NZOC Nomination and Selection Regulation
  - NZOC Selection Policy (V3)
  - NZOC Sport Entry Guide
  - Cycling NZ Nomination Criteria
  - Nomination Forms for challenged cyclists
  - Commonwealth Games List for submission and nominations
  - Emails between CNZ and NZOC

## **GROUND OF APPEAL**

11. The appeal was advanced upon the following grounds:
  - a. the applicable nomination criteria were not properly followed and/or implemented;

- b. the Appellant was not afforded a reasonable opportunity to satisfy the application nomination criteria; and
- c. there was no material on which the nomination decision could reasonably be based.

## **THE SELECTION CRITERIA**

- 12. The overriding document in making selection decisions is CNZ's "Nomination Criteria for the 2018 Commonwealth Games" ("the Nomination Criteria"). The relevant parts are:
  - a. Clause 4.3 – considerations for the Discipline Panel to consider
  - b. Clause 4.4 – the Discipline objectives
  - c. Clause 6 – the nomination factors, and
  - d. Clause 8 – any extenuating circumstances, if applicable.
- 13. Clause 4.4 sets out the requirement for each nominated athlete to be capable of achieving a medal at the 2018 Commonwealth Games or a medal at the 2020 Olympic or Paralympic Games.
- 14. Clause 6 sets out the nomination factors, including the key results and performances in specified events held in the period 20 February 2017 until the panel recommendation date (called the 'nomination window').
- 15. Clause 8 provides that the Discipline Panel may take into account extenuating circumstances (in this case Mr Christie's crash during the 2018 national time trial race) when making selection decisions.
- 16. The Appellant also referred to relevant clauses in the NZOC's Selection Policy, in particular the selection criteria for individual events (Clause 3.5.2) and for team events (Clause 3.6.2), which set out the NZOC's expectations in terms of results at the 2018 Commonwealth Games.

## DISCUSSION

17. Mr Christie argued that, had the Discipline Panel followed the Nomination Criteria, their consideration would have demonstrated that he had a greater likelihood of winning medals at the 2018 Commonwealth Games than the other athletes selected. In support of this Mr Christie advised of several performances he had attained both in New Zealand and internationally over the year, as well as technical aspects of his riding. The Tribunal notes the careful, comprehensive and exhaustive analysis advanced about the comparative strengths of those selected and Mr Christie. There was no dispute all the persons in focus were experienced capable cyclists.
18. For the respondent, Mr Barras replied with a comprehensive report of the selectors' views and analysis of the selected cyclists. The focus at times was deflected as some selected cyclists had sought and been given permission to ride in additional events as well as those for which they had been initially selected.
19. It was clear to the Tribunal that the selectors involved in the recommendations from the Discipline Panel were expert in the field with extensive knowledge and experience. There was a detailed consideration of the relevant selection criteria, and the strengths and weaknesses of all the cyclists were identified and evaluated.
20. The Nomination Criteria for the 2018 Commonwealth Games for cycling had a three-stage process:
  - 1) the Discipline Panel recommends to the Nomination Panel the cyclists it considers should be nominated to the NZOC.
  - 2) the Nomination Panel nominates to the NZOC those athletes it considers should be selected for the New Zealand team.
  - 3) the NZOC decides whether the cyclists nominated will be selected to be New Zealand team members.
21. In this case the Road Discipline Panel which covers both road race and time trial events for both men and women, Mr Christie was on the Long List and was in contention before the Panel. As is now clear the recommendations made by the Discipline Panel did not include Mr Christie to the Nomination Panel.
22. It is accepted that when Mr Christie initiated his appeal he understood he had been recommended. Mr Christie should have been advised he had not been recommended

by the Discipline Panel and that it was not at the Nomination Panel stage that he had failed. The Tribunal accepts the time pressure under which busy selectors operate but there should be a clear summary of what has occurred at each step and a bullet point coverage of critical issues both positive and negative which have been of importance in the decision taken.

23. Given there was no recommendation from the Discipline Panel there was no nomination from the Nomination Panel which is the second step and obviously no selection by NZOC.
24. It was submitted that the process was not fair and that there were errors in both acts and omissions of those involved in the selection process. It would be unhelpful to chronicle all the allegations in this regard. Some would have to be categorised as immaterial or technical but critically none had any effect or influence on the substantive decision making. By way of example a great deal of energy was expended in concerns about the fact that Mr Christie was not on the original Long List for cycling created about a year ago and was not invited to the 2017 World Championships. If he had attended the Worlds, his performance there would have been a mandatory factor to be assessed, but the Selection protocol did not make participation there a prior condition. The advice of non-selection should have averted to the appeal rights which existed, but notwithstanding Mr Christie was aware of the right and exercised it.
25. The Discipline Panel members were unanimous in their recommendations and it was not a majority position which could have had consequences as there was some common membership between the Discipline Panel and the Nomination Panel.
26. In the Tribunal's view, the level of communication from the parties was well below par and there was a serious failure to hear and understand on each side. It is particularly regrettable that within the sport's internal appeal process which involved a meeting held on 12 February the parties failed to flush out critical factual and procedural matters. This led to a great deal of time and energy being expended on non-productive areas.
27. Without any question the entire process could have been better handled but there is nothing which requires the Tribunal to conclude that the selections which emerged were so tainted as to be unsustainable.

28. Mr Christie understandably placed substantial emphasis on his winning the 2018 National Road Race, third in the Time Trial and particularly as he had also come second in the 2017 NZ National Road Championships and the Time Trial. The Tribunal considered these factors and Mr Christie's long history and involvement both in New Zealand and abroad. Also examined with particular care were matters within the nomination window and weighed matters outside that period. These factors were also considered by the Discipline Panel in the selection recommendations.
29. Ultimately, while acknowledging Mr Christie is undoubtedly a talented cyclist who deserved and received serious consideration, the Tribunal cannot conclude that his omission was irrational or beyond the properly available discretion of the Discipline Panel. There is no material to suggest that regard was had to matters which were not relevant or that all his history and experience were not properly assessed.
30. The Tribunal notes that as the matter progressed rather slowly toward a hearing date an additional potential place for a cyclist attending the Commonwealth Games emerged. As a result, the selection panel and CNZ more generally had the opportunity to address again the relative strengths of potential participants. Even after considering the additional material which emerged during the past 10 days there was no change of heart. The Tribunal cannot say CNZ were wrong, Mr Christie was considered along with 20 other athletes, and there was no evidence to support a failure in this system in the failure to select Mr Christie.
31. It should be noted Ms McCarthy for the Appellant submitted that if the appeal were to succeed, the Tribunal itself should involve itself directly in the selection process. The Tribunal has never done so when it would have involved removing from a team a person whom already has been selected. Had the challenge been found to have validity, the Tribunal would have referred the matter back to CNZ for re-selection. There was never a possibility of the Tribunal imposing its assessment over and above the views and opinions of experts in the field.

## **CONCLUSION**

32. Having carefully assessed the available evidence and the comprehensive written and oral submissions of counsel and all other parties, the Tribunal concludes the appeal cannot succeed.

33. While the Tribunal does not have a role in proceedings such as this to audit CNZ's selection process or re-examine nomination criteria, this appeal is regrettable. It should have been able to be avoided by a more disciplined approach to the recording of decisions and the proper and timely communication of relevant information.

Dated 2 March 2018



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**Sir Bruce Robertson**

**Chairperson**