

**BETWEEN**

**ANDI LIU**

**Appellant**

**AND**

**FENCING NEW ZEALAND**

**Respondent**

**AND**

**CHALLENGED FENCERS: ANDREAS SESUN, SHELDON  
OGILVIE, ISAAC RUSHOLME-COBB**

**Interested Parties**

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**DECISION OF SPORTS TRIBUNAL  
28 SEPTEMBER 2018**

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**Hearing** 27 September 2018

**Tribunal** Sir Bruce Robertson (Chairman)  
Alan Galbraith QC  
Ruth Aitken

**Present** Andi Liu, Appellant  
Kyle Macdonald, Head of Selectors for FeNZ

**By teleconference** Mark Rance, President FeNZ  
Steve Martin, Selector FeNZ

**Registrar** Neela Clinton

## Background

1. This appeal by Andi Liu is against the decision by Fencing New Zealand (FeNZ) not to select him for the Men's Epee team for the 2018 Commonwealth Senior Fencing Championships to be held in Canberra in November 2018.
2. Mr Liu was notified of his non-selection on 15 September and requested a written explanation and advice on appealing FeNZ's decision. On 19 September Mr Macdonald, Head of Selectors, advised him that only a small number of fencers met the published selection criteria and further selections were made in accordance with the FeNZ Board instructions.
3. On 19 September the New Zealand Senior Men's Epee team selected was posted on FeNZ's website. The five selected were Messrs Baker, Bishop, Sesun, Ogilvie and Rusholme-Cobb. Mr Liu did not challenge the selection of Mr Baker and Mr Bishop.
4. On 19 September Mr Liu filed an appeal with the Tribunal submitting that FeNZ had failed to properly apply the selection criteria. He stated as he had satisfied the selection criteria he should have been selected in place of one of Andreas Sesun, Sheldon Ogilvie or Isaac Rusholme-Cobb as they had not met the mandatory selection criteria.
5. The Tribunal noted that there were extreme time constraints in hearing this appeal. The cut-off for entries was 23 September. This was complicated by the fact that the internal review process had not been completed before the appeal was filed with the Tribunal on 19 September. While Mr Liu's correspondence was acknowledged as an appeal, and considered by the selectors, it had not yet been considered by the FeNZ Board and nor had a hearing date been confirmed to determine the internal appeal. The Tribunal therefore did not have jurisdiction at that point.
6. On 21 September the Tribunal Chairman convened a teleconference, following discussions that Mr Liu's correspondence sent to the FeNZ Secretary should be accepted as an appeal on behalf of the FeNZ Board, and a hearing panel urgently convened to determine the appeal. On 23 September FeNZ determined Mr Liu's appeal, which did not succeed, and upheld the selectors' decision.
7. At a further teleconference with the Tribunal Chairman on 24 September Mr Liu confirmed he wished to proceed with his appeal to the Tribunal. The challenged fencers were all notified as interested parties in this appeal and invited to participate in the hearing.

8. The hearing of the appeal took place in Auckland with Messrs Rance and Martin joining by teleconference. The Tribunal heard from the appellant himself and Mr Macdonald for the respondent. The challenged fencers all submitted statements in support of their position in lieu of attendance.
9. The Tribunal considered all the submissions and material filed by the parties, including:
  - Senior Men's Epee Results
  - Fencing Selection Criteria December 2017
  - Correspondence between the parties
  - FeNZ appeal decision 23 September 2018
  - FeNZ website announcements, Board minutes, and selection schedule
  - Submissions from challenged fencers.

### **The selection criteria**

10. The appeal was advanced upon the ground that the applicable selection criteria were not properly followed and/or implemented. The document relied upon was FeNZ Selection Criteria 2017 which detailed selection of a team based on three Tiers of priority and noted that should any fencers fail to meet the criteria, no fencers would be selected. The minimum qualifying criteria based on ranking points was 600 points for Tier 1, 500 points for Tier 2 and 400 points for Tier 3. In addition, for each Tier the following criteria were also listed:
  - Compulsory attendance at the 2017 National Senior Championship with a top 8 result; and
  - Guide results at a minimum of three identified competitions including from at least two non-New Zealand competitions in the previous 12 months.
11. Mr Liu submitted that of the five selected for the Men's Epee team only two clearly fulfilled the above criteria, the remaining three "challenged fencers" did not, as they had not achieved any overseas results in the previous 12 months and/or did not achieve top 8 position. In contrast Mr Liu said he had a top 8 position in the 2017 National Championship and had five other overseas results.
12. Mr Liu produced screenshots of the last 12 months' results from the FeNZ website to support satisfaction of the selection criteria. He noted his seven international competition results, noting 2017 AFC #4 31<sup>st</sup> place, 2018 Singapore International Open 25<sup>th</sup> place. Mr Liu argued that it appeared due to administrative error or otherwise, all

his applicable results had not been counted. He noted that the selection event requirements were identical for each Tier.

13. Mr Macdonald explained that the selectors' assessment was that only two candidates met the published selection criteria in Epee. He noted that Mr Liu "along with the majority of the other epee nominations failed to make the last 16 of an AFF event". The selectors took the view for the benefit of the sport, given the event was being held in Australia, it would be preferable to field enough to compete in all team events. They recommended to the Board the requirements be relaxed to increase the eligible candidates. On 3 September the FeNZ Board subsequently revised the criteria to open the field to other candidates and requested nominations from all qualifying fencers.
14. The revised selection decision was announced on FeNZ's website on 3 September. Mr Liu said he was not aware of this development. Mr Macdonald confirmed following the second nomination period that Mr Liu's existing nomination was reassessed along with four additional candidates.
15. Mr Liu asserted in his notice of appeal to FeNZ that the selection criteria had not been properly followed, that he had met the compulsory criteria and that if the criteria were to be relaxed that overseas competition results should have been given greater weight.
16. In determining Mr Liu's appeal the FeNZ panel determined that Mr Liu had not met the compulsory selection criteria and that the selectors had appropriately applied ranking points as the primary indicator of performance. The ranking points at the close of the nomination period for each of Mr Liu and the challenged fencers were as follows:

Sheldon Ogilvie	802
Andreas Sesun	750
Isaac Rusholme-Cobb	732
Andi Liu	447

## **Discussion**

17. We were able to make substantial progress at the hearing of the appeal because of the comprehensive submissions and material which had been filed by the appellant and FeNZ. It soon became apparent during the hearing that there were two distinct issues which required consideration.
18. FeNZ had revised their selection process of December 2017 and this had been posted on their website since that time. Pursuant to that, individual athletes were able to apply

to be included in the team to go to Canberra later this year. In each category five fencers could be selected including in respect of the Epee event.

19. On a proper application of the initial policy the selectors concluded that only two fencers fulfilled the criteria. Throughout the appeal there has been no challenge to the selectors' decision that Mr Baker and Mr Bishop met the compulsory criteria.
20. In the light of that primary assessment the selectors reported to the FeNZ Board and it was determined and agreed that because the international meeting was in Canberra, where it was easier and less expensive than other overseas countries, that the policy should be loosened so that there would be a team of five fencers in each event and they would be the best available fencers. Mr Liu was not selected as one of the additional three when that second phase of selection took place and he challenged that also.
21. In respect of that first issue, namely selection on the original criteria, it was soon apparent during the hearing that the matter really boiled down to the weighting and assessment to be made in respect of the Singapore International Open. It is clear that when consideration is being given to results for non-New Zealand competitions where there is no published Guide Result it is necessary for the selection panel to make a determination about the relative quality of that competition and whether the Guide Result level should be top 8, top 16 or top 32.
22. The selectors determined that the Singapore event would require a Guide Result of top 16. Mr Liu was 25<sup>th</sup>. This event could not be included for him. This meant that he had covered the compulsory attendance at the New Zealand Nationals and achieved a top 8 finish but only had one non-New Zealand result for consideration in which he had the required Guide Result. Mr Liu suggested that because the New Zealand Nationals in that year had also doubled as the Oceania Championship that his result in that competition could be counted both for the compulsory New Zealand Nationals requirement and also as an overseas competition. That suggestion was not accepted by the FeNZ selectors or the FeNZ appeal panel. The Tribunal agrees that the criteria are directed towards individual competitions not what would effectively be a double count of one competition.
23. It has not been demonstrated before us that the selectors' decision in respect of the Singapore event requiring a top 16 was not available to them. Accordingly, Mr Liu does

not satisfy us that there was an error in the initial selection based on the original published criteria.

24. The second issue of the case is that the FeNZ Board having decided to loosen the selection criteria and to look at overall results, without necessarily any non-New Zealand competition, was in error in excluding Mr Liu.
25. The Board was competent to amend the criteria and guidelines especially as in doing so there was no substantial disadvantage to anyone. Although the selectors were at pains to indicate that they had taken a wide perspective on the task their first consideration was of the relevant ranking points.
26. Although there was room for some degree of variation in assessing ranking points arising from the need to make a judgement about the equivalent weight to be given to non-specified overseas competitions, it is clear that Mr Liu's points were in the high 400s and the ranking points of the three challenged fencers were all substantially higher. Although the challenged fencers did not have non-New Zealand competition results Mr Liu was not disadvantaged having competed overseas as his results were calculated in his ranking points anyway.
27. It has not been demonstrated in that exercise the selection panel were in error and that the process undertaken by them was not properly available. Although Mr Liu is clearly a dedicated, determined and proficient fencer we are not satisfied that it has been shown that his non-selection was in error. Accordingly, the appeal must be dismissed.

## **Conclusion**

28. The Tribunal determines to uphold the FeNZ decision not to select Mr Liu.

Dated: 28 September 2018



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**Sir Bruce Robertson**  
Chairman