

**BETWEEN            ANDREA MILLER**  
**Appellant**

**AND                    OLYMPIC WEIGHTLIFTING NEW ZEALAND**  
**Respondent**

**AND                    TRACEY LAMBRECHS**  
**First Interested Party**

**AND                    NEW ZEALAND OLYMPIC COMMITTEE**  
**Second Interested Party**

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**REASONS FOR DECISION OF SPORTS TRIBUNAL  
DATED 6 July 2016**

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**Tribunal:**            Sir Bruce Robertson (Chairperson)  
                              Ron Cheatley  
                              Rob Hart

**Hearing:**            5 July 2016 by telephone conference

**Present:**            Andrea Miller, Appellant  
                              Andrew McCormick, counsel for Appellant  
                              Tony Ebert, John Moss and Mike Reid, Olympic Weightlifting  
                              New Zealand  
                              John Rooney and Lucy Harris, counsel for Respondent  
                              Aaron Lloyd, counsel for Tracey Lambrechts  
                              Tara Pryor, New Zealand Olympic Committee

**Registrar:**        Megan Lee-Joe

## **INTRODUCTION**

1. The Tribunal conducted a hearing by telephone conference at 6pm on Tuesday 5 July and heard from all counsel and some of the witnesses. Those participating were the Appellant, Andrea Miller and her counsel Mr McCormick; Tony Ebert, John Moss and Mike Reid from Olympic Weightlifting New Zealand (OWNZ) and counsel Mr Rooney and Ms Harris; Mr Lloyd as counsel for Tracey Lambrechts; and Ms Pryor on behalf of the New Zealand Olympic Committee (NZOC). Shortly before 8pm that evening the Registrar of the Tribunal advised all involved that unanimously the Tribunal was satisfied that the appeal could not succeed and was accordingly dismissed and that reasons would be provided as soon as possible. These are the reasons.
2. The Appeal was against the decision of OWNZ not to nominate Ms Miller in the New Zealand weightlifting team to compete at the 2016 Rio Olympic Games (the Games).
3. OWNZ was allocated one quota spot for a female athlete at the Games by the International Weightlifting Federation (IWF). On or about 18 June 2016, OWNZ nominated Tracey Lambrechts for this spot and Ms Lambrechts' selection in the New Zealand Olympic team was confirmed by the NZOC on 28 June.
4. Ms Miller filed her appeal with the Tribunal on 25 June and contended that she should have been nominated in place of Ms Lambrechts. As an interested party in this appeal, Ms Lambrechts was represented by counsel.
5. While the NZOC had formally notified the IWF of the acceptance of the quota spot, Ms Pryor indicated that the names of the selected athlete and support personnel were to be advised by 5 July. This necessitated the hearing of this appeal with considerable urgency.

## **GROUND OF APPEAL**

6. The appeal was advanced upon the following grounds set out in clause 11 of the NZOC / NSO Rio Application, Nomination and Selection Agreement:
  - (a) that the nomination criteria was not properly followed and/or implemented; and
  - (b) the non-nomination decision was affected by apparent bias.

## NOMINATION CRITERIA

7. OWNZ's nomination criteria for the Games is set out in a document entitled "2016 Rio Olympic Games Nomination Criteria for Individual Events" expressed to take effect from 5 March 2015 (Selection Policy). The relevant provisions are:

- **Clause 4.1 Nomination Criteria:** The OLYMPIC WEIGHTLIFTING NEW ZEALAND Nomination Criteria for nomination to the Games Team is made up of two parts:
  - (a) the Over-Riding Nomination Criteria specified in clause 4.2; and
  - (b) the Specific Nomination Factors specified in clause 4.3.
  
- **Clause 4.2 Over-Riding Nomination Criteria:**
  - (a) In determining whether or not to nominate an Athlete to the Weightlifting Events, the OWNZ Selectors must be satisfied overall that:
    - i. the Athlete is or are capable of achieving a top 16 placing at the Games in the Weightlifting Event(s), with the potential to win an Olympic Diploma (top 8 placing); and
    - ii. the Athlete has competed in at least two Key Events during the Qualification Period; and
    - iii. the Athlete has or have a track record of sufficient quality and depth that OLYMPIC WEIGHTLIFTING NEW ZEALAND believes demonstrates the Athlete will be competitive at the Games and will perform credibly in the Weightlifting Event(s).
  - (b) Evidence: In determining whether or not the athlete has met the Over-Riding Nomination Criteria for Weightlifting Events in clause 4.2(a) above, the OWNZ Selectors shall consider the Athletes performances and results in the Weightlifting Event at which they seek to be selected for the Games in the following Key Events during the Qualification Period:
    - 2015 Senior Oceania Weightlifting Championships**
    - 2015 Senior Commonwealth Weightlifting Championships**
    - 2015 Senior World Championships**
    - 2016 Senior Oceania Weightlifting Championships**
  
- **Clause 4.3 Specific Nomination Factors:** When considering the Over-Riding Nomination Criteria above, the OWNZ Selectors may also take into account any one or more of the following factors about an Athlete:
  - (a) any other performances or results in competitions / events in addition to the Key Events; ...

- **Clause 4.4 any other factor(s) the OWNZ Selectors consider relevant. Own Enquiries:** In considering any one or more of the above factors, the OWNZ Selectors may make such enquiries of the Athlete, or other persons, as they see fit.
  
- **Clause 4.5 Weight to be Given to Specific Nomination Factors:** The OWNZ Selectors may give weight to any one or more of the Specific Nomination Factors and, if it does, to apply such weighting to one or more athletes. No particular factor shall be weighted more or less significantly by reason only of the order in which that factor appears in this Nomination Criteria.
  
- **Clause 4.6 Extenuating Circumstances:** in any decision regarding the nomination of Athletes to the Team, the OWNZ Selectors may, in their sole discretion, take into account any extenuating circumstances in accordance with clause 5 below.
  
- **Clause 5.1 Extenuating Circumstances:** In considering the nomination of Athletes in accordance with this Nomination Criteria, the OWNZ Selectors may, in their sole discretion, give weight to any extenuating circumstances which may include, but are not limited to, the following:
  - (a) injury or illness; ...
  
- **Clause 5.2 Athlete to Advise:** Athletes unable to compete at events, trials, or other attendances required under this Nomination Criteria, must advise the Chief Executive of the extenuating circumstances and reasons, in writing, with as much advance notice as possible and ideally seven (7) days prior to the commencement of the event, trial or other attendance. If the Chief Executive is not notified of any extenuating circumstances in accordance with this Nomination Criteria, then the OWNZ Selectors have no obligation to rely on such circumstances.
  
- **Clause 5.3 Medical Certificate:** In the case of injury or illness, Athletes may be required by the OWNZ Selectors to provide a medical certificate and / or to undergo an examination by a health practitioner/s nominated by the OWNZ Selectors, and to provide that opinion and / or report to the OWNZ Selectors. Any failure to agree to such a request may result in the OWNZ Selectors being unable to consider the injury or illness as an extenuating circumstance.
  
- **Clause 5.4 Case by Case:** In the case of any extenuating circumstance/s, the OWNZ Selectors will make a decision on a case-by-case basis.

### **Failure to follow and/or implement the Nomination Criteria**

8. The Appellant asserted that the selectors had failed to give sufficient weight to the following three factors and therefore wrongly exercised their discretion to nominate Ms Lambrechts instead of Ms Miller:
  - (a) the relevance and utility of the Sinclair Co-efficient (Sinclair) in comparing the results of two lifters in different weight divisions to assess clause 4.2(a)(i);
  - (b) Ms Miller's recent performances and Sinclair scores at events other than Key Events; and
  - (c) extenuating circumstances that affected Ms Miller's performance and ability to compete at one of the Key Events, the 2016 Oceania Championships.

### Comparison of athletes and Sinclair Co-efficient

9. Ms Lambrechts competes in the 75+kg division. Ms Miller took up competitive weightlifting in 2013 in the 69kg division after having a successful New Zealand representative record as a hurdler. In 2016, Ms Miller made the decision to compete in the 63kg division, and maintains that she was lifting the same or even heavier weights than when in the 69kg division. Ms Miller sought nomination in the New Zealand Olympic weightlifting team in the 63kg division.
10. On 15 June 2016, two of the OWNZ selectors, Tony Ebert (convenor) and John Moss met in person to consider the nominations. OWNZ stated that the third selector, Tim Prendergast, subsequently discussed the nominations over the phone with his fellow selectors. The following information is said to have been in front of the selectors:
  - (a) A compilation of the athletes' results in the four Key Events as well as "other events" between 6 July 2015 and 20 June 2016 prepared by Ron Mann, OWNZ's statistician and record keeper, as follows:

Key Events	Tracey Lambrechts (75+ kg)			Andrea Miller (63/69kg)		
2015 Oceania Champs (Jul)	223kg	2 <sup>nd</sup>	75+kg	Did not compete		
2015 Commonwealth Champs (Oct)	Did not compete			Did not compete		
2015 World Champs (Oct)	232kg	24 <sup>th</sup>	75+kg	196kg	36 <sup>th</sup>	69kg
2016 Oceania Champs (May)	240kg	2 <sup>nd</sup>	75+kg	Did not total		
<b>Other Events:</b>						
2015 National Champs (Oct)	235kg	1 <sup>st</sup>	75+kg	199kg	1 <sup>st</sup>	69kg
2015 Australian Open (Dec)	Did not compete			Did not compete		
2016 Australian Open (Mar)	Did not compete			197kg	2 <sup>nd</sup>	63kg

Mr Mann also advised the selectors in the same document that, based on the IWF Qualification Rankings for the period 23 July 2014 to 31 May 2016 compiled from selected key IWF events, Ms Lambrechts had a ranking of 20<sup>th</sup> based on her highest result of 240kg while Ms Miller had a ranking of 40<sup>th</sup> based on her highest result at a Key Event of 196kg competing in the 69kg division.

- (b) A comparison of the two athletes' results compiled by John Moss on 15 June titled "Evidence to support Tracey Lambrecht's nomination to 2016 Rio Olympics". This document noted the two athletes' results at the four Key Events and commented on their respective IWF rankings and hypothetical placings at the 2008 Beijing and 2012 London Olympic Games based on those results.
- (c) Information provided by Ms Miller and Ms Lambrechts at the request of Mr Ebert to support their respective nominations. Among other information, Ms Miller advised she had the best female Sinclair total in OWNZ history of 265.15 by virtue of lifting a 199kg total in the 63kg class in 2016, a hypothetical placing of 7<sup>th</sup> at the London Olympics in the 63kg division, and also referred to her extenuating circumstances at the 2016 Oceania Championships which had resulted in hospitalisation.
11. The selectors considered this information and concluded that Ms Lambrechts was clearly the better candidate for nomination based on her performances at the Key Events, stronger track record overall, a significantly better IWF ranking than Ms Miller (Ms Lambrechts 20<sup>th</sup> in 2015 and 11<sup>th</sup> in 2016 compared to Ms Miller 37<sup>th</sup> in 2015 and no ranking in 2016), and better hypothetical placings at the last two Olympics.

12. Discussion took place at the hearing as to the value of the Sinclair which is an accepted statistical method used to compare performances in different weight classes in Olympic Weightlifting Events. It was the Appellant's submission that where a comparison is required to be drawn between two athletes competing in different weight divisions for a sole weightlifting spot in the New Zealand Olympic team, then the Sinclair should be a decisive factor in the assessment of the respective athlete's standing, in particular, as regards the overriding nomination criteria in clause 4.2(a)(i).
13. Further, the Appellant contended that the selectors ought to have taken into account her performances (and Sinclair) at events other than Key Events under clause 4.3(a) of the Selection Policy. Ms Miller's highest Sinclair is 265.157 (a New Zealand record for a female weightlifter) whereas Ms Lambrech's highest Sinclair is 249.54.
14. In response, OWNZ asserted that it had properly followed the nomination criteria in reaching its decision to nominate Ms Lambrechts. Under the over-riding nomination criteria, the selectors were entitled to give more weight to performances at the nominated Key Events which best replicated the competition that would be experienced at the Games. In the selectors' knowledge and experience, these Key Events presented a much tougher environment in which to perform due to travel stress, unfamiliar surroundings, higher standard of refereeing and depth of competitors. Unfortunately for Ms Miller, for the reasons discussed below, she was unable to produce a good enough performance to rival Ms Lambrechts at the second Key Event, the 2016 Oceania Championships.
15. While the selectors had taken into account Ms Miller's performances in the New Zealand National Championships and Australian Open, they were not afforded the same weight as the Key Events for the above reasons.
16. OWNZ also did not accept that the selectors were required to consider the Sinclair results of both athletes in making its nomination decision. It considered that the IWF Rankings were a more accurate indicator as to how the athletes would rank at the Games in their respective weight divisions and was also consistent with its selection approach for previous Olympic and Commonwealth Games nominations.

#### Extenuating circumstances

17. Ms Miller's counsel also asserted that the selectors failed to take into account extenuating circumstances that affected Ms Miller's performance at, and her ability to compete in, the 2016 Oceania Championships in Suva, Fiji.

18. In submissions, it was stated that the Appellant fell ill from gastroenteritis and "began to suffer the effects of the illness two days before the competition began, and lost 2kg of weight in two days, taking her from 63.5kg to 61.5kg. Despite this, she equalled the Oceania Senior Snatch record of 93kg in this first event, but by the time it came to compete in the clean and jerk event, she was dehydrated and over-heated and she therefore failed to complete her attempts. Immediately following that event, Ms Miller suffered from continuous and severe vomiting and was treated at Suva Hospital."
19. The OWNZ selectors asserted that they were aware of Ms Miller's extenuating circumstances and took this into account in making the nomination decision. Both Mr Moss and Mr Ebert attended the 2016 Oceania Championships. Mr Moss had discussed with Ms Miller's coach prior to the event that, at the least, she would need to lift a personal best of 205kg to equal Ms Lambrechts' then IWF One Per Country Ranking. The selectors considered, that even taking into account her illness, Ms Miller was unlikely to have achieved that.

#### **Nomination decision affected by apparent bias**

20. The second ground of appeal advanced by the Appellant was that the non-nomination decision was affected by apparent bias. The OWNZ Selectors listed at clause 2.1 of the Selection Policy are Tony Ebert, Tim Prendergast and John Moss.
21. It was alleged by Ms Miller's counsel that Mr Moss' position, personal relationships and comments to Ms Miller evidenced apparent bias on his part in relation to the non nomination decision. Mr Moss is the President of the North Sport City Weightlifting Club of which Ms Lambrechts is a member. Mr Moss is also the father of Ms Lambrecht's training partner, Charlotte Moss. Ms Miller also stated that "Mr Moss spoke to her before the 2015 World Championships and said words to the effect that "if he put his North Sport hat on he could eliminate her from being eligible for the Olympics so that his Club's athlete (Ms Lambrechts) could attend"".
22. OWNZ contended to the contrary, that Mr Moss had in fact supported Ms Miller's campaign throughout for Olympic nomination. Ms Miller had not met the required qualification standard to attend the 2015 World Championships and Mr Moss said he had been instrumental in enabling her to compete. He also considered that the statement in the paragraph above was inaccurate and had been taken out of context and had actually said that as Ms Miller had not qualified for the 2015 World Championships, if he had not pushed her case and advocated for her, then she would not have been able to attend.



23. The nomination decision of the OWNZ selectors was stated to be unanimous. The nomination was subsequently approved by the OWNZ Board 5-1. Mr Moss sat on the Board also and cast his vote in favour of Ms Lambrechts' nomination. The one dissenting Board vote was cast by Julian Dempsey, Ms Miller's New Zealand based coach (Ms Miller currently resides in Australia).
24. OWNZ argued that even if Mr Moss' votes on the selection panel and Board are discounted, the nomination decision would still have resulted in Ms Lambrechts' nomination.
25. Counsel for the Appellant relied upon the applicable test for apparent bias stated by the Supreme Court in *Saxmere Company Limited v Wool Board Disestablishment Company Limited* [2010] 1 NZLR 35 (SC) that a decision maker is disqualified from making a decision if a fair-minded lay observer might reasonably apprehend that the decision maker might not bring an impartial mind to the resolution of the question the decision maker is required to decide. This test has been adopted in subsequent Tribunal cases.
26. The Appellant accordingly sought a direction from the Tribunal that OWNZ convene a new selection panel, not including Mr Moss, to consider the two athletes for nomination utilising all relevant information including comparable Sinclair scores and the extenuating circumstances relating to Ms Miller's performance at the 2016 Oceania Championships.

## **DECISION**

27. Having carefully assessed the available evidence and the comprehensive written and oral submissions of all counsel, we concluded that the OWNZ selectors had responsibly applied the nomination criteria. They made a considered analysis of two highly capable athletes and placed appropriate emphasis on performances at Key Events, proven track records, and IWF World Rankings. There is no evidence to suggest that the selectors did not properly consider and assess Ms Miller's extenuating circumstances at the 2016 Oceania Championships. As her counsel responsibly acknowledged, there is a substantial hurdle for a person like the Appellant challenging an expert determination. The Tribunal's role is not to undertake an independent assessment of the competing merits in a contest between two competent athletes when there is only one available slot at Rio. The exercise undertaken by OWNZ was unquestionably within the available discretion and no relevant flaw in the process adopted has been revealed.

28. There being a clear basis to nominate Ms Lambrechts, the selectors felt that it was not necessary to place weight on the Sinclairs for each athlete, which might be reserved for closer tied situations. We find no reason to challenge this approach in the circumstances.
29. We were quite satisfied that a reasonable fair minded lay observer would not attribute bias to the involvements of Mr Moss. While it might have been the better course of action for Mr Moss not to vote as a board member and potentially act as a selector, we do acknowledge that this is a sport where it will be difficult to find selectors without any association to athletes in contention. Mr Moss' actions in supporting Ms Miller's ability to compete at the World Championships and the Australian Open indicate that he was supportive of Ms Miller's aspirations despite his association with Ms Lambrechts' club.
30. Accordingly, the Tribunal was unanimously of the view that the appeal could not succeed. As Mr Tony Ebert, the convenor of selectors, told us during the hearing Ms Miller is a particularly talented athlete in her new field of endeavour with clear potential but on a reasonable and available application of the selection regime it was clearly open for OWNZ to conclude that Ms Lambrechts had a stronger case for the sole slot.

Dated 6 July 2016



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**Sir Bruce Robertson**  
**Chairperson**