



## **Introduction**

1. This is an appeal by Mr Madgwick against his non-selection in the New Zealand Mountain Bike team to compete at the 2006 UCI World Mountain Bike and Trial Championships to be held in Rotorua later this month.
2. Mr Madgwick was a candidate for selection in the elite men's cross country team. Seven members and two non-travelling reserves have been selected for that team, and Mr Madgwick is the first non-travelling reserve. He was advised that if he wished to receive feedback or to lodge a formal appeal against his non-selection, he was to follow a process which included lodging an appeal by 18 July 2006. Mr Madgwick lodged such an appeal with Mountain Bike.
3. After inviting athletes to appeal, Mountain Bike determined that there was no process for appealing under its constitution. Further, even if there had been an internal selection appeal review process, there would have not have been time to have allowed a further appeal to this Tribunal, because the New Zealand team must be confirmed to UCI by 11 August. Mountain Bike then asked this Tribunal to conduct the appeal. Rule 12.1.2 of the Tribunal's Rules give it jurisdiction to determine an appeal against the non-selection of a New Zealand representative if the parties to the appeal agree to do so in writing.
4. In accordance with the Tribunal's rules, those athletes who had been selected and "who may be affected by or who has a sufficiently close interest in the outcome of any proceeding, may be joined as an Interested Party". The Tribunal advised Mr Wilding a selected team member that he could become an Interested Party by giving notice to the Tribunal. He did not accept the invitation to become an Interested Party.
5. Because of the exigencies of time the parties agreed to the hearing being conducted by telephone conference.

## **Jurisdiction**

6. If a National Sports Organisation has an appeal procedure in its constitution or rules, all members of that National Sports Organisation are bound by those rules. Thus an appeal from a decision of a National Sports Organisation Appeal Committee to this Tribunal is binding on both the appellant and other athletes selected in the team. They, through the constitution or rules, have agreed to accept the jurisdiction of the Tribunal. In this case however, the matter comes before the Tribunal by agreement

between the athlete and Mountain Bike. As such, the powers of the Tribunal are more limited.

7. In selection appeals, if the appeal is allowed, the Tribunal may refer the matter back to the National Sports Organisation for determination in accordance with the applicable selection criteria. It also has the right to conclusively determine the issue of selection of the appellant in certain circumstances. In this particular case, if the appeal were to be upheld, another athlete would be affected by the decision. It is the Tribunal's view that it could not "deselect" an athlete who has not submitted to the jurisdiction of the Tribunal. In such circumstances if the appeal were to be allowed, it would be necessary to refer the matter back to Mountain Bike for it to determine the final selection in accordance with the applicable selection criteria and its own constitutional arrangements.
8. The observations in the previous paragraph highlight the need for a National Sports Organisation, if it intends to give a right of appeal against national selections, to have appropriate provisions in its own constitution.

### **Background Facts**

9. In December 2005, Bike NZ, of which Mountain Bike is a member, issued a document entitled "Selection Policy 2006". This was the selection policy for both the Oceania Championships held in Rotorua in March this year and the World Championships to be held later this month.
10. The selection policy for the World Championships contained the following:

#### *"Preferred Selection*

1. The first three NZ riders on 06 UCI points at May 29<sup>th</sup> 2006.
2. First three finishing positions in each category at Oceania Championships (including Junior).

#### *World Champs Training Squad*

Another 12 riders coming from:

- Top 12 riders in the NZ National Championships
- Top 12 NZ Resident riders in NZ National Series

Preference will be given to NZ National Championship results if tied i.e. if two riders finish 10<sup>th</sup> in either event the result in champs wins selection.

Competing at the NZ National Championships is a compulsory part of World Championship Team selection, unless extenuating circumstances apply (entirely at selection panels discretion).

Final selection will be made from this squad to the NZ World Championship Team based on further results (domestic and international) with preference given to international results.

- World Champs Training Squad named after the conclusion of Oceania Championships/NZ National Series in early March, 2006
- Full World Championships team named on 10<sup>th</sup> July 2006 after the Brazil World Cup.

**Note: all selections dependent on form and availability, at selection panels discretion"**

11. In late March 2006, Mr Madgwick, along with Mr Wilding, was selected as a member of the World Champs training squad in accordance with Selection Policy 2006.
12. After considering the selection criteria, Mr Madgwick elected to commit time and money to travel to Canada and the United States for the month of June to compete in international races. By his own admission his results were mixed.
13. Mr Madgwick received the results of the team selection while he was travelling back to New Zealand. Some of the riders selected in the team did not travel overseas at any time to gain international results or experience.
14. Mr Madgwick's ground of appeal is that Mountain Bike failed to adhere to its criteria as set out in Selection Policy 2006.

### **Mr Madgwick's Submissions**

15. Mr Madgwick's position is that after seeing the selection criteria in Selection Policy 2006, he committed time and money to travel overseas to race at international events in order to comply with the criteria. He did this entirely at his own cost and terminated his employment to do so. While overseas he travelled with other members of the squad, all of them believing this was necessary to fulfil Mountain Bike's criteria.
16. His New Zealand results prior to travelling overseas were at least on par with other members of the squad who have gained selection in the final team despite the fact that they elected not to travel overseas to compete. In particular, Mr Madgwick refers to the position of Mr Wilding. At the conclusion of the National Series 2006, only 3 points separated these two athletes. It is Mr Madgwick's position that he continued to build on these results by competing and exposing himself to the harsh level of racing internationally.

### Mountain Bike's Submissions

17. Mr Madgwick was not a preferred selection as that category is defined in Selection Policy 2006. The provision of the Policy which applies to him is that which states
- "Final selection will be made from this squad to the NZ World Championship team based on further results (domestic and international) with preference given to international results."
18. After announcement of the World Cup squad, the only results of Mr Madgwick which the selectors had, were those from his international races. In the selectors' views these were of poor quality and were not substantial enough to place him ahead of the riders named in the team.
19. Mr Madgwick competed in five international races, namely:
- (a) He was 35<sup>th</sup> out of 78 in the Canada Cup. The comments of the selection panel were that he was 17 minutes behind the winner and 11 minutes behind another squad member who finished 13<sup>th</sup> and who was the fastest squad member. A second squad member finished 21<sup>st</sup>.
  - (b) He was 8<sup>th</sup> in a short course Canada Cup event on the following day. The selection panel's comment was that this was not a race of any note. It was a short course.
  - (c) Quebec Cup – Mr Madgwick did not finish due to "cold".
  - (d) Mount Snow (Norba) – Mr Madgwick was unable to continue after a crash caused mechanical damage.
  - (e) Mount Sainte-Anne World Cup – He was 86<sup>th</sup> out of 118. The selection panel's comment was that Mr Madgwick was aiming for a strong result here but finished three laps behind the winner. He did not beat any squad members who entered.
20. Mr Wilding also did not meet the preferred selection standard and did not compete internationally. He did however finish ahead of Mr Madgwick in the three domestic results which were the most important. In the National Championships he finished 18<sup>th</sup> to Mr Madgwick's 30<sup>th</sup>, in the Cornet Peak round of the National Series he finished 6<sup>th</sup> to Mr Madgwick's 14<sup>th</sup> and in the Rotorua finals (the Oceania Championships), he finished 7<sup>th</sup> to Mr Madgwick's 8<sup>th</sup> among New Zealand riders.

21. In addition, Mr Wilding competed in three other events and in one, a 30 kilometre race, he was 3<sup>rd</sup> behind two other athletes who were selected for the team but ahead of another two who were also selected. Three of these four athletes had performed well overseas and the selectors considered Mr Wilding's result a good one in the circumstances. They also took into account the Crater Classic where he was 1<sup>st</sup> over what they said was a strong field of under 23 riders. Further he beat another athlete selected for the team by 3 minutes in a hill climb which the selectors considered "another good show of superior conditioning".
22. The summary from the selectors was that they carefully considered all results from these two athletes and determined against the selection information policy for this event, that while it was a close decision between the two athletes, Tim Wilding had posted superior performances and was more deserving for the final team placing than Tim Madgwick.

### **Discussion**

23. As noted in another appeal decision being given today (*Lawton v Mountain Bike New Zealand* STD 16/06), the selection criteria does contain objective elements but also contains subjective factors. The selectors' task was to pick the strongest team. This was to be based on results both domestic and international with a preference being given to international results. In the Tribunal's view, this does not mean that an athlete who has travelled overseas to gain experience is entitled to be selected in preference to another athlete who has remained in New Zealand, but whom the selectors have judged on proper grounds to be superior.
24. The policy of preferring international results is obviously far easier to apply if both athletes in contention compete overseas. It is far more difficult when one competes overseas and one remains in New Zealand. The selectors are required to take into account conditions both of the course and the weather, distances and the standard of competition amongst other matters and endeavour to make a fair assessment between athletes. While international results are to be preferred, the weight to be given to those results must diminish considerably if the results are not of the quality the selectors expect.
25. In this case the selectors were entitled to considerably discount any weight to be given to Mr Madgwick's international results. They made an assessment that on the domestic results, particularly those that they focused on, Mr Wilding was to be

preferred to Mr Madgwick. They also had other results of Mr Wilding's between March and the selection of the team which supported his case. They acknowledge that at the end of the day it was a close decision. It was however in the Tribunal's view a decision that they were entitled to make in accordance with their selection criteria. There is no reason why the Tribunal should intervene.

26. The Tribunal understand Mr Madgwick's disappointment. At some cost to himself he travelled overseas to enhance his prospects of selection. It is unfortunate that his international results were not sufficiently good to influence the selectors.

### **Result**

27. The appeal is dismissed. Because of the way in which this appeal came to the Tribunal, the filing fee is remitted.



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**Hon B J Paterson QC**  
**Chairman of Sports Disputes Tribunal**  
**7 August 2006**