

## **MEDIA RELEASE**

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### **Sports Tribunal dismisses appeal by swimmer against non-selection for world championships and non-nomination for Olympics**

Kane Radford has unsuccessfully appealed to the Sports Tribunal against a decision of Swimming New Zealand Inc (SNZ) not to select him for the 2008 World Open Water Championships to be held in Spain and as a consequence the decision not to nominate him for the 2008 Olympics.

Mr Radford is a 17 year old swimmer who competes mainly in long distance freestyle events both in the pool and in open water. He aspired to represent New Zealand in the marathon 10 kilometre open water event which is being staged for the first time at the Olympic Games which will be held in Beijing this year.

In order to qualify for Olympic selection for the 10 Kilometre open water marathon, New Zealand swimmers had to compete, and perform highly, in the 2008 World Championship event in Spain.

In order to qualify for selection to compete in the World Championships, SNZ's 2007 selection criteria originally referred to performance at the 2007 Australian Swimming Championships in December 2007. However, before that event, Swimming Australia changed its entry policy and restricted entries to only swimmers who were eligible to represent Australia. As a result, SNZ changed its selection criteria and essentially changed the primary qualifying event for the World Championships from the Australian Championships to the February 2008 Oceania Championships. Swimmers were informed that selection for the World Championships would be "at the sole discretion of SNZ selectors who will take into consideration the overall standard and depth of the Oceania Championship field and the potential world competitiveness of New Zealand swimmers under consideration". After the Oceania event, which Mr Radford placed second in (to an Australian swimmer who was not selected to represent his country), the SNZ selectors decided that none of the New Zealand swimmers were at this stage potentially world competitive and decided not to select any swimmers to compete in the World Championships.

The Tribunal decided that, in the particular circumstances of this case, the decision not to select Mr Radford for the World Championships was essentially a decision not to nominate him for Olympic selection and the Tribunal was able to hear his appeal against not being nominated for Olympic selection.

Mr Radford appealed on various grounds including: that selection criteria were not properly implemented and followed; there was no material on which the selection decision could be reasonably based; and that there were breaches of procedural fairness and natural justice. Specific complaints were made about SNZ not consulting with swimmers about the changes in selection criteria and qualifying events and the lack of objective criteria by selectors having "sole discretion" in making their selection decisions.

However, the Tribunal rejected these grounds of complaint. While there were some matters that SNZ may have handled better with hindsight, the Tribunal found that there were no breaches of procedural fairness or natural justice. The Tribunal disagreed that the selection criteria had not been properly implemented or followed and disagreed that there was no material on which the selection decision could be reasonably based.

While the selectors considered Mr Radford had great potential, they formed the view that he was not likely to be world competitive at this stage of his young career. The selectors made a discretionary decision based in part on objective factors but in doing so applied subjective judgment and were obliged to use their knowledge and experience in making the decision. The Tribunal accepted that the selectors acted with best intent and came to a decision they were entitled to make. They had the experience to assess potential world competitors in this one event which was to be the chance for selection. There were no grounds for the Tribunal to determine that this was a decision that no properly qualified panel could make. There were no grounds based on procedural fairness or breach of natural justice to set aside the selector's decision. Therefore, the appeal was dismissed.

The decision in this case will be made available for download from the website of the Sports Tribunal ([www.sportstribunal.org.nz](http://www.sportstribunal.org.nz)). See *Kane Radford v Swimming New Zealand* (ST 02/08). Copies of the decision can also be obtained directly from Brent Ellis, Registrar, Sports Tribunal of New Zealand (telephone: 0800 55 66 80; e-mail: [info@sportstribunal.org.nz](mailto:info@sportstribunal.org.nz)).