



## INTRODUCTION

1. On 13 May 2026 Samuel McArthur filed an urgent appeal against the decision of Fencing New Zealand (FeNZ) not to select him for the Fencing World Championships to be held in Hong Kong from 22 to 30 July 2026.
2. Mr McArthur was one of several fencers competing for four spots in the Fencing New Zealand Men's Épée team. Charlie Bioletti (ranked 7<sup>th</sup>) and Nolan Peterson (ranked 8<sup>th</sup>) were selected ahead of Mr McArthur (ranked 5<sup>th</sup>). These rankings are based on Fencing New Zealand Open Rankings (Open Rankings) for Men's Épée.
3. Mr McArthur made a complaint to the FeNZ Disciplinary and Appeals Committee (Appeal Committee) against his non-selection, but his complaint was dismissed. He then appealed to the Tribunal.
4. The grounds of appeal were that:
  - a. the applicable selection criteria had not been properly followed and/or implemented;
  - b. the selection decision was affected by actual bias; and
  - c. there was no material on which the selection decision could reasonably be based.

## RESULT DECISION

5. On 19 June 2026, the Tribunal issued a Result Decision, given the urgency of the event registration deadline of 6 July 2026. The appeal was allowed on the ground that the selectors had failed to properly follow and/or implement the applicable selection criteria.
6. The reasons for allowing the appeal are now set out below.

## FENCING NZ SELECTION POLICY 2026

7. The material portions of the FeNZ Selection Policy 2026 (Selection Policy) state:

### 1.1 Purpose

....

The aim of this policy is to ensure that the strongest possible teams and individuals are selected for international competition, based on a transparent and equitable system that supports both long-term development and competitive success.

....

### 3. Selection Criteria:

For events where there is a requirement to have attended a specific competition, that competition should have been attended in the 12 months prior to the opening of nominations. However, where a New Zealand based qualifying competition is being held after nominations

open and before the event being nominated for is held, nominees can still meet the qualifying requirement and be selected by agreeing to compete in that qualifying event.

Ranking points used for selection will be from the 12 months prior to the close of nominations. The Selection Commission will liaise with those responsible for updating the Fencing New Zealand Rankings to ensure that rankings used for selection are up to date for the 12 month period.

#### **4. Eligibility:**

Fencers will only be considered eligible for selection if they meet the required National eligibility criteria for the event they are nominating for.

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#### **4. Selection Process:**

The process for Selection for an event with a maximum allowed entry number is as follows:

##### **Selection Steps**

##### **1. Identify Soft Cap Candidates**

- Identify all nominated fencers who fall within the **Soft Cap ranking range** (e.g., top 8).
- From this group, **identify which of them have met the minimum criteria.**

##### **2. Select from Soft Cap**

- Choose the top-ranked fencers (up to the team size) **from the Soft Cap group who have met the minimum competition criteria.**
- If this group provides a **full team**, selection is complete.

##### **3. Fill from Hard Cap if Needed**

- If the team is **not yet full**, select additional fencers from the **Hard Cap range** (e.g., top 20), until the team is complete.
- This Hard Cap pool **includes** any Soft Cap fencers who were not selected due to not meeting criteria.

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##### **World Championships**

- Individual
  - Participation in the New Zealand Open Championships.
    - Where a fencer resides overseas and cannot attend New Zealand competitions, participation in their country of residence's National Open Championship or equivalent level National circuit event.
  - A maximum of 4 fencers can be selected per event.
  - The 4 nominating fencers with the highest Fencing New Zealand Open ranking in each event will be selected, with selection caps set at:
    - Soft Cap 8
    - Hard Cap 20

....

##### **Exemptions and Appeals:**

##### **Medical**

- Where a fencer is injured and unable to compete in a required event for selection such as their respective age group National Championship, they may provide evidence that they have competed in an equivalent National level competition either in New Zealand or another country.
- If an injury has occurred that is serious enough to prevent competing at all for a period extending longer than 6 months before selection for an event is made, that fencer must:
  1. Provide a doctors [sic] certification that they are cleared to resume competing.

2. Compete in an event that earns Fencing New Zealand ranking points within 4 months of the deadline for Selection.

### **Residing Internationally**

- If a fencer resides internationally (outside New Zealand) and is:
  1. Unable to compete in required National level events in their country of residence due to nationality restrictions,
  2. Unable to have National Championships/Competitions in their country of residence included in the Fencing New Zealand Rankings,
  3. Unable to compete in either New Zealand or any other country's National Championships to achieve the required participation for selection,
- That fencer may apply for an exemption for selection, where the selectors will consider the comparative strength of events that fencer has competed in before deciding on whether or not that fencer is selected.

....

### **Other Extenuating Circumstances**

- If a fencer believes that they have been affected by some other extenuating circumstance which is not covered within this selection policy, they may provide details in the nomination form for that event before the close of the nomination period.

## **SUBMISSIONS**

### **Mr McArthur**

8. Mr McArthur contends that the selectors failed to apply the 2026 Selection Policy in accordance with its terms, resulting in his unjustified non-selection. He argues that the Selection Policy establishes a predominantly rankings-based framework, requiring selection in rank order, subject only to narrowly defined and strictly applied exemptions. In his submission, no valid exemption applied to justify the selection of lower-ranked fencers ahead of him.
9. In particular, Mr McArthur challenges the selector's reliance on the "Medical" exemption in respect of Mr Bioletti, as the criteria for that exemption were not met and were misapplied. He further argues that no other exemption (including "Other Extenuating Circumstances" or "Resides Internationally") was properly applicable. He submits that the selectors instead exercised an impermissible broad discretion, contrary to the policy's purpose of limiting subjective judgement and promoting objective and transparent selection criteria.
10. Mr McArthur also alleges actual bias and conflict of interest within the selection process, particularly arising from Mr Kyle Macdonald's coaching relationship with Mr Bioletti and his involvement in the decision-making.
11. On that basis, Mr McArthur submits that the decision lacked a reasonable foundation, was procedurally unfair, and was affected by bias. He seeks to have the selection decision corrected in accordance with the Selection Policy.

## **FeNZ**

12. Mr Upton, on behalf of FeNZ, argues that the appeal should be dismissed because the Tribunal lacks jurisdiction as the appeal is essentially framed as a challenge to the selection of another athlete (Mr Bioletti), rather than the non-selection of Mr McArthur. Mr Upton submits that is not permitted under the FeNZ Constitution and in support cites Tribunal and CAS authority.<sup>1</sup>
13. On the substantive merits, FeNZ argues that the Selection Policy has been correctly applied as the criteria provides no guarantee of selection to fencers based on the Open Rankings. It also allows discretion and evaluative decision-making, via the application of the exemptions. This enabled the selectors to take account of overseas results, injury, and limitations in the ranking system, all of which justified the selector's ability to elevate fencers over others. FeNZ submitted that a narrow interpretation of those exemptions was inconsistent with the Selection Policy's wording and purpose, stressing that a rigid ranking approach would undermine the aim of selecting the strongest possible team and would unfairly disregard relevant performance evidence.
14. In relation to the allegation of actual bias, Mr Upton submits there is no evidence of such on the part of Mr Macdonald or the other selectors. He further submits that, in any event, the appeal is against the decision of the Appeal Committee, not Mr Macdonald, and there is again nothing to suggest any element of actual bias by them either.
15. Accordingly, even if the Tribunal found it had jurisdiction to hear the appeal, FeNZ says the selection decision was reasonable and consistent with the Selection Policy. The appeal should therefore be dismissed.

## **Mr Bioletti**

16. Mr Bioletti supports the position of FeNZ and argues that the appeal should be dismissed, as it effectively challenges his selection, rather than Mr McArthur's non-selection. He also submits that the Selection Policy should be interpreted in a manner that allows selectors to identify the strongest possible team.
17. Mr Bioletti contends that his circumstances – including injury, overseas training, and competition context – were properly capable of consideration under the "Other Extenuating Circumstances" exemption within the policy framework.

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<sup>1</sup> *X, Y, & Z v Fencing New Zealand*, ST02/25, 13 March 2025 and *Yachting NZ v Murdoch & Ors*. (CAS, 2 April 2004) respectively.

18. Finally, he rejects any suggestion of actual bias arising from his connection to Mr Macdonald, stating that no special treatment was sought or received. The relationship was disclosed and properly handled by the other selectors, in a way that did not provide him with any unfair advantage.

### **Mr Peterson**

19. Mr Peterson submits that the Selection Policy must be interpreted as a coherent whole, rather than by applying the “top four on the ranking list” criterion in isolation. He emphasises that the Selection Policy expressly incorporates participation requirements and exemptions – particularly the “Residing Internationally” exemption – which are integral to how the ranking criterion operates.
20. In his view, the “Residing Internationally” exemption is designed to address the limitations of the domestic ranking list, by allowing selectors to assess overseas-based fencers on the strength of their international results. He argues that the exemption does not override the ranking criterion, but instead informs and adjusts its application, based on the text and purpose of selecting the strongest possible team.
21. Applying that framework, Mr Peterson maintains that the selectors were entitled to select fencers based on overseas performance, notwithstanding a lower domestic ranking. He further contends that a narrow or mechanical reading of the ranking criterion would undermine the Selection Policy’s structure, render the exemption ineffective, and disadvantage New Zealand fencers training abroad, contrary to the intent.

## **DISCUSSION**

### **Jurisdiction**

22. In its Result Decision, the Tribunal rejected the challenge by FeNZ, relying on *Yachting NZ v Murdoch & Ors*<sup>2</sup> and *X, Y, & Z v Fencing New Zealand*<sup>3</sup>, to the Tribunal’s jurisdiction to hear the appeal.
23. The Tribunal does not propose to expand on the reasoning set out in its Result Decision.<sup>4</sup> Mr McArthur was entitled to question how it was that Mr Bioletti and Mr Peterson, as lower-ranked fencers, were selected ahead of him. He was also entitled to appeal against his non-selection, on the basis that the selectors had failed to properly implement the Selection Policy.

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<sup>2</sup> (CAS, 2 April 2004)

<sup>3</sup> ST02/25, 13 March 2025

<sup>4</sup>Refer paras. [6]-[7] of the Result Decision.

### **First ground: Failure to properly implement the Selection Policy**

24. As set out in the Result Decision, the Tribunal found that fundamentally selection is to be based on the Open Rankings.
25. The criteria for the World Championships event is clear: the “4 nominating fencers with the highest Fencing New Zealand Open ranking in each event will be selected...” [emphasis added]. The “Selection Process”<sup>5</sup> also makes clear that selection is based on rankings, when it refers to selecting from the Soft Cap<sup>6</sup> as the selectors must choose “the top-ranked fencers”.
26. The only discretion afforded to selectors under the Selection Policy that allows them to depart from the Open Rankings sits in the “Resides Internationally” exemption. A fencer must apply for this exemption, reside internationally, and meet the three numbered requirements to allow the selectors to “consider the comparative strength of events that fencer has competed in before deciding on whether or not that fencer is selected”. This is not a *general* discretion that sits across all other exemptions; it is a *specific* and directed exemption, the criteria for which must be met by a fencer before the selectors’ comparative discretion is activated.
27. The remaining exemptions in the Selection Policy provide no such comparative discretion. The “Medical” and “Other Extenuating Circumstances” exemptions came under scrutiny, but the Tribunal considers that these exemptions can only be considered and applied by the selectors at the “Eligibility” stage<sup>7</sup> and not in relation to the selection criteria. They allow fencers to be eligible for an event in circumstances where they might not otherwise have met the “minimum competition criteria” and would therefore have been ineligible. However, beyond that, these exemptions cannot be used to override or alter the Open Rankings.
28. The Tribunal is satisfied that in selecting Mr Bioletti, a lower ranked fencer, ahead of Mr McArthur the selectors failed to follow the Selection Policy in two respects:
  - a. They wrongly assumed that the policy aim of ensuring that the strongest possible teams and individuals are selected, provided them with a broad or general discretion to override or adjust the Open Rankings; and
  - b. Having correctly conceded that Mr Bioletti did not meet either the “Medical” or “Residing Internationally” exemptions, the selectors wrongly treated his injury

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<sup>5</sup> Refer clause 6 at pages 6-7 of the Selection Policy.

<sup>6</sup> It was accepted that each of the fencers involved in this proceeding meet the Soft Cap criteria.

<sup>7</sup> Refer point #4 at page 5 of the Selection Policy.

and overseas results as coming under the “Other Extenuating Circumstances” exemption so as to justify his selection ahead of Mr McArthur.

29. As set out in the Result decision<sup>8</sup>, there were in fact no exemptions that applied to Mr Bioletti. The selectors could not rely on the “Other Extenuating Circumstances” exemption to take into account factors that were already covered under the specific exemptions. The wording of the exemption precludes that:<sup>9</sup>

If a fencer believes that they have been affected by some other extenuating circumstance which is not covered within this selection policy, they may provide details in the nomination form for that event before the close of the nomination period.

[emphasis added]

30. Accordingly, as no exemptions applied to Mr Bioletti, it means there was no basis for adjusting his ranking and no discretion for the selectors to do so. That meant the selectors were bound to select Mr McArthur ahead of Mr Bioletti, as Mr McArthur was the higher-ranked fencer based on the Open Rankings.
31. The Tribunal has some sympathy for Mr Bioletti, given that he spent time training and competing overseas while recovering from an injury and he had a commendable result at a Luxembourg Eurofence event that appears not to have been captured or calculated within the Open Rankings. Yet, there is no provision within the Selection Policy that allows for that particular result to be taken into account by the selectors to override or adjust the selection criteria for the World Championships.<sup>10</sup>

### **Second ground: Bias**

32. Mr McArthur submitted that there was actual bias in the selection process arising from the part played by Mr Kyle Macdonald who was one of the three selectors and he had been Mr Bioletti’s personal coach for at least 10 years. While Mr Macdonald appropriately disclosed his conflict of interest and did not vote on the selection decision, he was still involved in the selection discussions with the other selectors. He was also involved with subsequent emails to Mr McArthur to explain the rationale behind the selection decision.
33. In the Tribunal’s view, it is understandable that Mr McArthur had concerns about Mr Macdonald’s involvement and, although fencing has a small sporting community in New Zealand, it would have been preferable if Mr Macdonald had fully stepped aside

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<sup>8</sup> Refer paras. [16]-[17] of the Result Decision.

<sup>9</sup> Refer page 25 of the Selection Policy.

<sup>10</sup> There may be good policy reasons for why the Selection Policy is drafted in this way. It reduces the amount of subjectivity in the selection process and encourages fencers to attend events that will be calculated into the Open Rankings.

and played no part in the selection process at all in relation to Mr Bioletti (including explanations about why Mr Bioletti was selected).<sup>11</sup>

34. Although in New Zealand law it is generally unnecessary to establish actual bias, establishing apparent or perceived bias is sufficient to invalidate a decision, the position in this case is that r. 53(g) of the Tribunal's Rules requires proof of *actual* bias. Acknowledging then that proving actual bias is a much more onerous task, the Tribunal is not satisfied that it has been established.
35. As actual bias has not been established this second ground of appeal fails.

**Third ground: No material on which the decision could reasonably be based**

36. Although in its Result Decision, the Tribunal found the first ground of appeal was established, and that was its focus, it is also satisfied that this third ground of appeal is made out. The first and third grounds are entwined.
37. As none of the exemptions applied to Mr Bioletti there was no proper basis for the selectors to select him as the 7<sup>th</sup> ranked fencer ahead of Mr McArthur as the fifth ranked fencer.
38. Mr McArthur was entitled to have the Selection Policy applied correctly and, had that occurred, there was no material on which his non-selection could reasonably be based.


**DECISION**

39. The appeal is allowed on the basis that the selection criteria had not been properly followed and/or implemented and as there was no material on which the decision could reasonably be based.

**PUBLICATION**

40. The Tribunal will publish this decision in the usual way on its website.

Dated: 24 June 2026

  
**John Macdonald**  
Chair

  
**Andrea Twaddle**  
Deputy Chair

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<sup>11</sup> As Stephen Peterson (father of Nolan Peterson), a FeNZ Board member, appropriately did at the Appeal Committee panel stage in relation to his son.

*Ruth Aitken*

**Ruth Aitken DMNZ  
Tribunal Member**