



## Introduction

1. Samuel McArthur (the Appellant) filed an urgent appeal against the decision of Fencing New Zealand (“FeNZ” and the Respondent) not to select him to attend the Fencing World Championships to be held 22 to 30 July 2026 in Hong Kong.
2. Mr McArthur was one of several fencers competing for four spots in the Fencing New Zealand Men’s Épée team. The FeNZ Selection Committee selected Charlie Bioletti (ranked 7<sup>th</sup>) and Nolan Peterson (ranked 8<sup>th</sup>) 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. The grounds of appeal are that:
  - a. the applicable selection criteria have 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

4. The Tribunal issues this Result Decision given the urgency of the registration deadline of 6 July 2026 and will later provide full reasons for its decision.
5. The result is that the appeal is allowed on the ground that the selectors failed to properly follow and/or implement the applicable selection criteria.

## Challenge to jurisdiction

6. As a preliminary issue, FeNZ, relying on the CAS decision in *Yachting NZ v Murdoch & Ors.*<sup>1</sup>, submitted that the Tribunal had no jurisdiction to hear the appeal as Mr McArthur could not appeal against the selection of another athlete.
7. The Tribunal does not accept that submission as Mr McArthur had a clear right of appeal to the Tribunal against a non-selection decision by FeNZ under the FeNZ Constitution.<sup>2</sup> Mr McArthur’s situation is also factually distinguishable from those in *Yachting NZ v Murdoch & Ors*<sup>3</sup> as, in that case, the appellants had not met the nomination/eligibility criteria, therefore their appeals could only be viewed as being

---

<sup>1</sup> (CAS, 2 April 2004)

<sup>2</sup> Refer FeNZ Constitution clauses 18.18 and 18.19.

<sup>3</sup> (CAS, 2 April 2004)

against the nomination (or selection) of another athlete. In contrast, Mr McArthur met the eligibility and selection criteria and therefore his appeal is properly against his own non-selection, and not against the selection of the two interested parties, Mr Bioletti and Mr Peterson.

### **Failure to follow the Selection Policy**

8. It will be explained in detail when the Tribunal provides its full reasons for allowing the appeal, but in essence the selectors' failure to follow the FeNZ selection policy (Selection Policy) occurred in two respects.
9. First, in selecting Mr Bioletti there was a failure to properly apply the exemptions available under the Selection Policy. Despite FeNZ conceding that the "Medical" and "Residing Internationally" exemptions did not apply to Mr Bioletti, the selectors nonetheless chose to treat an injury and his living overseas as coming under the "Other Extenuating Circumstances" exemption. However, the exemption could only apply to matters not already covered within the Selection Policy, which was not the case here.
10. Second, the selectors had wrongly assumed that the policy aim of ensuring that the strongest possible teams are selected could override or ignore the selection criteria, which was based on rankings.
11. The failure to follow the Selection Policy in the manner just discussed, not only resulted in the selection of Mr Bioletti and Mr Peterson, but it also resulted in Mr McArthur not being selected, which is the basis for his appeal.

### **Guidance to FeNZ**

12. For the World Championships event, an individual fencer must participate in the New Zealand Open Championships (or if residing overseas different criteria apply) and a maximum of four (4) fencers can be selected – being:

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

(emphasis added)

13. The "Selection Process"<sup>4</sup> also makes clear that selection is based on rankings, when it refers to selecting from the Soft Cap.<sup>5</sup> The selectors must choose "the top-ranked fencers".

---

<sup>4</sup> Refer clause 6 at pages 6-7 of the Selection Policy.

<sup>5</sup> It was accepted that each of the fencers involved in this proceeding meet the Soft Cap criteria.

14. The only identifiable discretion available to the selectors in the Selection Policy exists in the “Residing Internationally” exemption. However, as already mentioned, FeNZ conceded that it did not apply to Mr Bioletti.
15. The position with respect to Mr Peterson is unclear. If he had applied for an exemption and otherwise met the criteria for “Residing Internationally” then the selectors are able to “consider the comparative strength of events that fencer has competed in before deciding on whether or not that fencer is selected.”<sup>6</sup>
16. In respect of Mr Bioletti, as already mentioned, 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>7</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]

17. 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.
18. However, the selectors might still have a decision to make as between Mr Bioletti and Mr Peterson in terms of which fencer should receive the one remaining selection spot. That will depend on how the selectors rank them having considered the possibility that the “Resides Internationally” exemption applies to Mr Peterson. This is the sole matter left for determination by the FeNZ selectors.

## Direction

19. The Tribunal **directs** that the matter is referred back to FeNZ for reconsideration and selection of the “top four nominated fencers”, in line with the Selection Policy and the guidance provided by the Tribunal.

Dated: 19 June 2026

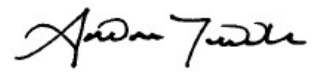


**John Macdonald**  
Chair

---

<sup>6</sup> Refer page 24 of the Selection Policy.

<sup>7</sup> Refer page 25 of the Selection Policy.



**Andrea Twaddle  
Deputy Chair**



**Ruth Aitken DMNZ  
Tribunal Member**