

## SPORTS TRIBUNAL

Charlotte Webby v Swimming New Zealand (SNZ)

Neutral Evaluation of the Chairman 27 June 2016

Charlotte Webby on the 24 June appealed to the Sports Tribunal against the decision of SNZ not to nominate her to the 10km Open Water Oceania spot at the Rio Olympics. It was common ground that the absolute deadline for NZOC to take up the spot was 10.00am NZ time on 28 June. The case was advanced on the basis that nomination criteria had not been followed or implemented and the decision making was affected by apparent bias.

It was clear to all that within the available timeframes no hearing could be organised, prepared for and facilitated. The parties mutually requested that I should conduct a neutral evaluation of the available documentation. I agreed to do so at 5pm on Monday 27 June but when we convened there was a request for a delay of half an hour as the parties wished to consider and assess a decision of the Tribunal regarding Kane Radford which had literally just become available

At the resumed hearing I had available and considered the submissions of the Appellant in support of the Appeal, Affidavits of Charlotte Webby and Susan Southgate in support of the appeal and SNZ's Synopsis. In the telephone hearing there was participation from Charlotte Webby, her legal counsel Josie Mooney, Christian Renford from SNZ and SNZ's legal counsel John Rooney and Ashton Welsh, all of whom were given the opportunity to directly contribute.

I immediately indicated that I was not satisfied that there was a sufficient evidential basis for the allegation of bias when compared with the approach of SNZ to the nomination of pool swimmers.

On the other and more compelling ground the issue was whether the overriding nomination criteria of capable of achieving a top 16 placing at the Games with a potential to achieve a top 8, coupled with a track record which indicates that the swimmer would be competitive and perform credibly had some question marks over it.

The two critical events for the Selectors were the FINA World Championships in Kazan in 2015 and the FINA Olympic Marathon Swim Qualifier in Setubal earlier this month. Charlotte had disappointing results at both. She contended that in the later she was adversely affected by the water temperature and that the selectors failed to assess the clear impact of that especially after she had done well in the earlier part of the event.

The impossible timeframes and the tightness of the period within which assessment and adjudication had to occur persuaded me that the interests of justice meant that the selection panel should immediately have before them all the material I had been provided with on this point.

Similarly I saw the need for reassurance that all 16 events in 2014, 2015 and 2016 which were identified had been evaluated by the selectors as part of Charlotte's record of performance and as the basis for determining potential.

In making those decisions I was aware that the selectors would be meeting within an hour or two in connection with the other case heard by the Tribunal so that there was an opportunity to check and ensure that the particular factual circumstances in Portugal as asserted by Charlotte and her coach

had been known and understood and that her full swimming record was on the table for evaluation by the selectors as a critical part of their task