



Introduction

**Claimant:** Kurtis MacGillivray

**Respondent:** Swimming/Natation Canada (SNC)

**Type of Dispute:** Selection to Olympic Games

**Arbitrator:** Ed Ratushny, Q.C.

**Date of Decision:** July 18<sup>th</sup>, 2004



## Dispute Summary

Kurtis MacGillivray, a 1,500 meter freestyle specialist, appealed a decision by Swimming/Natation Canada (SNC) not to nominate him for the 2004 Summer Olympic Games in Athens.





## Background Facts



In June 2003, SNC and the Canadian Olympic Committee (COC) signed a Team Selection Agreement that spelled out the criteria that swimmers would have to meet in order to qualify for the Athens Olympics.

Competitors could qualify at one of two competitions:

1. The World Aquatic Championships in Barcelona in June 2003, or
2. The Canadian Olympic Trials in July 2004 in Etobicoke, Ontario.

Mr. MacGillivray competed in both events, but did not achieve the required time for the 1500 meter freestyle.



## Background Facts (cont'd)

He did meet the standard, however, at the Australian Olympic Trials in March 2004. This competition had been approved by the international sport federation, FINA, but was not one of the two qualification events listed in the selection agreement.

The SNC acknowledged that, despite meeting the FINA participation criteria, being the top Canadian male 1500 meter swimmer, and being ranked 13th in the world in the event, the bottom line was that he had failed to meet the 2004 selection criteria.

Mr. MacGillivray appealed the decision to the Sport Dispute Resolution Centre of Canada (SDRCC).





## Claimant's Position

Mr. MacGillivray's case was based on the following arguments:

- He did not receive adequate notice of the final selection criteria, which were not even finalized until after the World Aquatic Championships in Barcelona;
- Limiting the selection criteria to only two qualification events was unjustifiable, arbitrary and grossly unreasonable, particularly since FINA had recognized additional events for qualification purposes;
- SNC's decision was contrary to the goal of sending the strongest contingent of swimmers to Athens since:
  1. Mr. MacGillivray did meet the SNC qualifying time standard;
  2. He did so in March 2004 at a competition recognized by FINA; and,
  3. His selection would not have displaced any other team member.



## Respondent's Position



SNC's case was based on the following arguments:

- From June 23<sup>rd</sup>, 2003 onward, the selection criteria were never substantively revised for male individual events such as the 1500 meter freestyle; therefore, the criteria, as they applied to Mr. MacGillivray, had been final and fixed; and,
- His time at the Australian Olympic Trials did not qualify him for the Canadian Olympic Team since that competition had not been designated as a qualification event in the Team Selection Agreement.



## Arbitrator's Analysis

Arbitrator, Ed Ratushny, Q.C., concurred with the SNC that the selection criteria, as they applied to Mr. MacGillivray, were established on June 23<sup>rd</sup>, 2003, and did not change. He further concluded that the criteria were neither arbitrary nor unfair.

Mr. Ratushny also took issue with the athlete's claim that he had not received adequate notice of the final criteria:

*"It is difficult to appreciate how an elite athlete, seeking to compete in the Olympics, would not also make a point of determining how often he would have to meet that requirement and at which events. In the circumstances of this case, the athlete must at least bear some responsibility for decisions affecting his career."*

Ultimately, Mr. Ratushny concluded that, *"in failing to nominate (Mr. MacGillivray), SNC only applied the pre-established criteria applicable to all swimmers, in a fair and objective manner."*



Ruling

The appeal was denied.



[Click here](#) for the full text of this  
**ADRsportRED** judgment.





Lessons Learned

1. To succeed in certain appeals, the claimant must establish that the selection criteria were unreasonable.
2. An athlete seeking to compete at a major international competition like the Olympics or Paralympics must bear the responsibility for understanding how the selection criteria are to be applied.

