

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA**

No: SDRCC/CRDSC 04-0021  
Ordinary Division

COLIN MATHIESON

Claimant

AND

ATHLETICS CANADA

Respondent

AND

CANADIAN CENTRE FOR ETHICS IN  
SPORT

Intervenor

AND

CANADIAN PARALYMPIC GAMES  
COMMITTEE

Intervenor

AND

THERESA THORSON

Affected Athlete

**A W A R D**

**Graeme Mew, Arbitrator**

*Appearances:*

Ryan Savage, Counsel for Applicant  
Rachel Corbett, Representative for Athletics Canada  
Joseph dePencier, Counsel for Canadian Centre for Ethics in Sport  
Greg Lagacé, Representative for Canadian Paralympic Games Committee  
Peter Lawless, Counsel for Theresa Thorson

*In Attendance:*

Colin Mathieson, Applicant  
Kevin Bean, Athletics Canada  
James Slater, Canadian Centre for Ethics in Sport  
Helen Evans, Observer

1. Colin Mathieson is an accomplished wheelchair athlete in the 100 metre, 200 metre and 400 metre events who was selected to represent Canada at the International Paralympic Games to be held in Athens in September 2004.

2. To qualify for nomination to the Canadian Team, Mr. Mathieson participated in the Paralympic Trials in Sherbrooke, Québec, from 4 to 6 June 2004. In these trials, Mr. Mathieson placed first in the 100 metre, 200 metre and 400 metre wheelchair events, and on that basis he handily qualified.

3. During the course of the Qualifying Trials Mr. Mathieson provided a urine sample as part of the testing process administered under the Canadian Anti-Doping Program. This sample subsequently yielded a positive result for the presence of Prednisone. Prednisone is a specified substance on the World Anti-Doping Agency (WADA) prohibited list. Specified substances are a category of substances on the Prohibited List of Substances that are dealt with in section 7.7 of the Canadian Anti-Doping Program, which provides:

“7.7 The *Prohibited List* identifies specified substances which are particularly susceptible to unintentional anti-doping rules violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents. When an *Athlete* can establish that the *Use* of such a specified substance was not intended

to enhance sport performance, the period of *Ineligibility* found in Rule 7.20 shall be replaced with the following:

First violation: At a minimum, a warning and reprimand and no period of *Ineligibility* from future *Events*, and at a maximum, one (1) year *Ineligibility*.

Second violation: Two (2) years *Ineligibility*.

Third violation: Lifetime *Ineligibility*.

However, the *Athlete* or other *Person* shall have the opportunity in each case, before a period of *Ineligibility* is imposed, to establish the basis for eliminating or reducing (in the case of a second or third violation) this sanction for exceptional circumstances as provided in Rules 7.38 and 7.39.”

4. Mr. Mathieson was notified of the adverse analytical finding arising from the sample of urine which he provided and was given the opportunity to attend a hearing to determine whether an anti-doping rule violation had occurred and if so, the consequences of such violation. Mr. Mathieson waived his right to a hearing pursuant to Rule 7.54 of the Canadian Anti-Doping Program Rules. The Canadian Centre for Ethics in Sport, which administers the Canadian Anti-Doping Program, accepted evidence and advice that Prednisone would not be performance enhancing in Mr. Mathieson’s case. As a result, it was determined that Mr. Mathieson’s anti-doping rule violation could appropriately be dealt with under Rule 7.7 of the Canadian Anti-Doping Program as a first violation, with a warning and reprimand and no period of ineligibility. It was further determined that there would be no consequences for Mr. Mathieson’s eligibility for direct financial support from the Government of Canada. However, because Mr. Mathieson’s sample was collected in-competition at the Qualifying Trials for the 2004 Paralympic Games, Mr. Mathieson was informed that, by virtue of Rule 7.4 of the Canadian Anti-Doping Program, all individual results obtained by him at that competition would be

nullified and he would be deemed to have been disqualified in each of the events in which he participated. It was also determined that as a result of the accepted expert advice that the use of Prednisone was not performance enhancing in Mr. Mathieson's case, any subsequent competitive results of Mr. Mathieson would not be disqualified.

5. Selection to represent Canada at the 2004 International Paralympic Games for athletic events is governed by the *Selection Criteria for the 2004 IPC Paralympic Games in Athletics* (the "Selection Criteria") published and administered by Athletics Canada. The Paralympic Committee of Athletics Canada is responsible for nominating the team to the Canadian Paralympic Committee in accordance with the criteria set out in the *Selection Criteria*.

6. Although Mr. Mathieson had initially been nominated by Athletics Canada in accordance with the *Selection Criteria*, following his doping violation he was, effectively, deselected because of his disqualification from the events which he participated in at the 2004 Canadian Paralympic Games Trials. This initial decision was appealed internally by Mr. Mathieson and was considered by the Paralympic Committee of Athletics Canada. The decision of that Committee is reflected in a letter dated 27 August 2004 to Mr. Mathieson from Kevin Bean, the National Team Coordinator of Athletics Canada. This letter stated, in part:

"As you are aware, as a result of your anti-doping rule violation your performances at the 2004 Canadian Paralympic Games Trials were disqualified (Rule 7.4 of the Canadian Anti-Doping program). This disqualification of results in essence means that you did not attend the Trials.

Section 4.1.2 of the selection criteria for the Paralympic Games clear [*sic*] states that "only athletes from the Eligibility Pool can be selected to an event" whereby the Eligibility Pool is defined in section 4.1.1 as "all athletes who have achieved the 2004 CPC Standard and who have finished among the Top 4 competitors at the Qualifying Trials". Since you do not

have a result at the Trials and therefore did not meet the criteria for selection the Committee is forced to deny your appeal for selection.”

7. By agreement of Athletics Canada and the athlete, I was appointed to hear a further appeal from Mr. Mathieson against the decision of the Paralympic Committee of Athletics Canada. I was advised that because of the very short deadline by which final arrangements were to be made for paralympic athletes travelling to Athens, it had been agreed that the usual final internal appeal under Athletics Canada’s rules had been waived. I was also advised that, for the purposes of this appeal, I had broad discretion to consider and apply the *Selection Criteria*, and that there was no question of a threshold of review in respect of the decision of the Paralympic Committee of Athletics Canada that I should be concerned about.

8. I granted intervenor status to the Canadian Centre for Ethics in Sport and the Canadian Paralympic Committee. Both of these entities have a direct and profound interest in the administration of the Canadian Anti-Doping Program and the consequences of doping issues for the purposes of the selection of athletes to represent Canada at the 2004 Paralympic Games in Athens.

9. Theresa Thorson was also represented at the hearing. I was informed that if I upheld Mr. Mathieson’s appeal, the Canadian Paralympic Committee would select him to the Canadian Paralympic Team. On the other hand, if Mr. Mathieson’s appeal was unsuccessful, Ms. Thorson would be selected as a member of the Canadian Team as the next most highly ranked athlete who had not already been selected for the Team.

10. The hearing was conducted by way of telephone conference on 2 September 2004. Having considered the evidentiary record placed before me and the oral and written submissions of the representatives of the parties, I have decided that Mr. Mathieson’s appeal should not succeed. The following are my reasons.

11. The *Selection Criteria* have the following stated objectives (Section 2.0):

“The criteria are designed to select athletes who are capable of competing at their seasonal or personal best levels. It is also designed to select

athletes who have demonstrated high levels of international performance in 2003-2004 during the main competition period and at major games. These criteria set out to select athletes to the team who meet the following specific objectives:

1. To select the most competitive athletes available who are prepared to compete at their peak level in late September 2004, at these Games, based on the trials.
2. To select athletes who have demonstrated ability in 2003 or 2004 to perform at a level that is equivalent to or greater than placing among the top 16 competitors and top half of the field at these Games.”

12. The *Selection Criteria* contain sections governing selection principles (Section 3.0) and an event selection process (Section 4.0). It was agreed by all of the participants in the hearing that Mr. Mathieson is clearly one of Canada’s leading Paralympic athletes and that, but for the eradication of the results which he achieved at the Canadian Paralympic Trials, he would easily meet the eligibility criteria for the Canadian Team. However, as a result of the eradication of his results at the Trials, Mr. Mathieson was no longer a member of the “Eligibility Pool”. Section 4.1.2 of the *Selection Criteria* provides as follows:

“Only athletes from the Eligibility Pool can be selected to an event, except under circumstances covered in Sections 5.0 (Appeals) & 7.0 (Exceptions). Being in the Eligibility Pool does not guarantee selection to the team.”

13. Section 7.0 (Exceptions) has no application to this case. Accordingly, subject to one other argument which I will address later, it would appear that in order to overcome his removal from the Eligibility Pool, Mr. Mathieson would have to satisfy the criteria in Section 5.0 (Appeals for Selection). Section 5.1.1 provides as follows:

“Appeals may be submitted for circumstances related to athlete illness or injury or any other reasonable technical circumstance deemed appropriate

by the Paralympic Committee. Bearing responsibility for overall selection, the Paralympic Committee members will use all selection criteria contained in this document to weigh all factors in an appeal to arrive at a decision. All successful appeals that result in an athlete being selected to the team must satisfy the general team objectives and criteria outlined in this document.” (emphasis added)

14. Although there were other issues discussed, the submissions made by the parties and the intervenors boiled down to this: could the anti-doping violation which resulted in the eradication of Mr. Mathieson’s results at the Canadian Paralympic Trials (and hence his automatic membership of the Eligibility Pool) amount to a “reasonable technical circumstance” so as to invoke the discretion available to the Paralympic Committee under Section 5.1.1?

15. On behalf of Mr. Mathieson, it was submitted that the language of Section 5.1.1 should be broadly construed having regard to the objectives set out in Section 2.0 of the *Selection Criteria*. It was said that Mr. Mathieson was clearly an athlete who had demonstrated an ability in 2003 and 2004 to perform at a level that was equivalent to or greater than placing among the top sixteen competitors and the top half of the field at the forthcoming Paralympic Games. Indeed, Mr. Mathieson was described as one of Canada’s best medal prospects at the Games. While Mr. Mathieson accepted the consequences of the anti-doping violation, there was no question that he had used Prednisone to enhance his performance and, indeed, Mr. Mathieson had consistently denied the intentional use of Prednisone and had been unable to explain the relatively small amount of Prednisone that had been found in his system. Although he was not a member of the Eligibility Pool, it was agreed that, giving the language of Section 5.1.1 a remedial and broad interpretation, the Paralympic Committee and I should be regarded as being invested with a broad discretion to select an athlete and that the criteria for such selection were not restricted to athlete illness or injury, nor should the term “reasonable technical circumstance” be restricted to problems, for example, of a mechanical or unforeseen nature.

16. For Athletics Canada, supported by the Canadian Centre for Ethics in Sport, it was argued that an anti-doping rule violation could not be a “reasonable technical circumstance”. Athletics Canada acknowledged that there was no disagreement about the calibre or abilities of Mr. Mathieson. However, the nature of the substance, the amount of the substance or the penalty received by Mr. Mathieson for the doping violation were irrelevant. What was relevant was the fact that his results at the Qualifying Trials had been nullified and, as a result, that Mr. Mathieson could only now be nominated for the Canadian Paralympic Team if he fitted within criteria in Section 5.1.1. Characterizing an anti-doping rule violation as a “reasonable technical circumstance” would undermine the overriding policy of promoting drug-free sport in Canada. Athletics Canada submitted that Mr. Mathieson, having admitted the presence of a banned substance, and having regard to the principles of strict liability contained in the Canadian Anti-Doping Program, could not absolve himself from the consequences of the anti-doping rule violation, however compelling his personal circumstances might be. I agree with these submissions.

17. It was also submitted on behalf of Mr. Mathieson that if the criteria in Rule 5.1.1 did not apply, I could nevertheless have regard to Section 10.0 (Unforeseen Circumstances), which provides:

“In situations where unforeseen circumstances does *[sic]* not allow the 2004 Paralympic Games Team selection criteria to be fairly and objectively applied, Athletics Canada Paralympic Committee reserves the right to rule on an appropriate course of action.”

18. On behalf of Mr. Mathieson it was submitted that because Mr. Mathieson had denied knowingly using Prednisone and that it was unforeseen on Mr. Mathieson’s part that Prednisone would be detected in his sample at the only tournament that would prevent him from being named to the Eligibility Pool, it was appropriate to have resort to the discretion provided by Section 10.0 to avoid the injustice of Mr. Mathieson not being selected for the Canadian Paralympic Team, despite being, in all other regards, exceptionally well qualified.

19. It was acknowledged, on behalf of Athletics Canada, that Section 10.0 has been rarely if ever invoked. However, the Section appears to exist to deal with unforeseen circumstances where the Team *Selection Criteria* could not be fairly and objectively applied. It was suggested that the section dealt with circumstances that would affect the entire pool of hopeful athletes rather than an individual athlete. In the present case, Athletics Canada submitted that it had been possible to fairly and objectively apply the Team *Selection Criteria*, albeit that the result was a disappointing outcome from Mr. Mathieson's perspective.

20. While I am not convinced that Section 10.0 is confined to situations where the totality of the selection scheme being fairly applied to the entire pool of hopeful athletes has been prevented by unforeseen circumstances, I am satisfied that, in the case of Mr. Mathieson, the Team *Selection Criteria* can be, and have been, applied in a fair and objective manner and that, doing so, the appropriate result is that Mr. Mathieson should not be nominated to the Canadian Paralympic Team.

21. I have come to this decision with a great deal of regret. I am aware that Mr. Mathieson cooperated with the Canadian Centre for Ethics in Sport. Despite denying that he had knowingly used Prednisone, he waived his entitlement to an anti-doping violation hearing. It was fairly and candidly acknowledged on his behalf during the course of the hearing which I conducted, that Mr. Mathieson accepted the consequences of accepting that he had committed an anti-doping violation, including the eradication of his results at the Qualifying Trials. However, having done so, the discretion available to Athletics Canada and, on this appeal, to me, is proscribed by the *Selection Criteria* document. Applying the provisions of the *Selection Criteria* and giving the words used their natural and ordinary meaning, I cannot, in good conscience, provide Mr. Mathieson with the relief that he seeks. To hold that his disqualification at the Canadian Paralympic Trials was a "reasonable technical circumstance" would do violence to both the letter and the spirit of the *Selection Criteria* and the Canadian Anti-Doping Program.

22. I am extremely grateful to all of the participants in the hearing for their candour, economy and skill in enabling this matter to be dealt with in a very short period of time.

23. Should any of the parties wish to make submissions to me pursuant to Rule RA-18 of the ADR-Sport-RED Code regarding costs, the Dispute Secretariat should be notified in writing within five business days of this decision, in the absence of which, there shall be no order as to Costs.

A handwritten signature in black ink that reads "Graeme Mew". The signature is written in a cursive style with a large initial "G" and a horizontal line under the name.

---

Graeme Mew, Arbitrator  
Toronto, 2 September 2004