



Arbitration CAS ad hoc Division (OG Athens) 04/006 Australian Olympic Committee (AOC) v. International Olympic Committee (IOC) & International Canoe Federation (ICF), award of 21 August 2004

Panel: The Hon. Michael Beloff QC (United Kingdom), President; Mr Sharad Rao (Kenya); Mr David Rivkin (USA)

Canoe

Entry into the Olympic Games (OG)

Entry time limit

Estoppel

- 1. Time limits play a very important role in international sport and clear and well publicized entry time limits must be respected.**
- 2. An International Federation which has erroneously refused unused quota places to a National Olympic Committee is estopped by its own original error from relying on the late entry of an athlete for an event as a ground for rejecting it, if the lateness of the entry is the necessary consequence of that original error.**

This appeal arises out of the refusal of the IOC and ICF to accept the entry of the AOC in respect of Amanda Rankin to participate in the women's K1 500m event in the Games of the XXVIII Olympiad.

The following persons attended the hearing:

For the Applicant

- Mr. Simon Arthur Rofe, Counsel
- Mr. Noah David Grace, Team Advocate
- Mr. Jon James Bisset*, Chief Executive Officer of the Australian Canoeing Association
- Mr. Craig Phillips*, Deputy Chef de Mission of the Australian Team

For the Respondents

International Canoe Federation (ICF):

- Mr. Jose Perurena, Secretary General of ICF*
- Mr. John Leukemans, Technical Delegate and Chairman of the Flatwater Racing Committee of ICF*
- Mr. Volker Bernardi, Administrative Director of ICF*

International Olympic Committee (IOC):

- Mr. François Carrard, Legal Counsel of IOC
- Mr. Kelly Fairweather, Sports Director of IOC

The persons with asterisks against their name gave oral evidence before us. We record that there were no material disputes of primary facts.

On 8 July 2004 the AOC lodged entry forms with the Organising Committee for the Olympic Games Athens 2004 (“ATHOC”) for Chantal Meek, Amanda Rankin, Kate Barclay and Lisa Odenhof into the Women’s K4 500m.

On 20 July 2004 the ICF confirmed the final version of the reallocation of unused quota places in respect of the Women’s Kayak Flatwater racing event for the Games of the XXVIIIth Olympiad.

On 21 July 2004 Australian Canoeing appealed to CAS against the decision of the ICF concerning the allocation of unused quota places.

21 July 2004 was the deadline for ATHOC to receive NOCs’ Entry Forms.

On 21 July 2004 the AOC submitted entry forms to ATHOC for Chantal Meek and Amanda Rankin in the Women’s K2 500m and also conditionally entered Lyndsay Fogarty and Paula Harvey in that same event. The accompanying letter stated:

“Entry submitted for Amanda Rankin (Accreditation Number 1723855) and Chantal Meek (1723731) in Women’s K2 500. This entry is subject to an appeal by Australian Canoeing Inc to the Court of Arbitration for Sport (CAS) against the allocation of quota places by the International Canoe Federation. Should this appeal be successful and two additional quota places be allocated to Australia the Australian Canoeing Inc will nominate two additional athletes Paula Harvey (1723553) and Lyndal Fogarty (1723476) for entry. NB an additional entry form has been submitted should it be required”.

This form did not show any entry for the Women’s K1 500m event.

On 23 July 2004 ATHOC on behalf of the IOC confirmed that Chantal Meek, Amanda Rankin, Kate Barclay and Lisa Odenhof had been granted entry into and accreditation for the Games of the XXVIIIth Olympiad.

On 25 July 2004 Mr Bisset, the Chief Executive Officer of Australian Canoeing, was verbally advised by Mr Ulrich Feldhof, the President of the ICF, that if Australian Canoeing was offered two extra quota positions for the Games of the XXVIIIth Olympiad, then Australian Canoeing had to fill them – ie Australian Canoeing had to nominate two female competitors additional to those already entered for the Women’s K4 500m.

By letter dated 26 July 2004 Jose Perurena Lopez, the ICF Secretary General, conceded that ICF “*erroneously did not allocate the K2 quota Women places to the NOC of Australia*” and notified “*that after negotiations with the IOC the NOC of Australia is allocated two more quota places in K2 Women Flatwater Racing*”

competition to the places which you are already informed about. We trust that this allocation is satisfying your needs and look forward to your acceptance of this allocation and your immediate withdrawal of the appeal to the Court of Arbitration for Sport (CAS) and the IOC”.

Consequent upon this notification, on 26 July 2004 Australian Canoeing with great promptness:

1. withdrew its appeal to CAS;
2. nominated to the AOC Susan Tegg¹ and Paula Harvey to compete in the Women’s K2 500m; and
3. nominated to the AOC Amanda Rankin to compete in the Women’s K1 500m.

On 26 July 2004 the AOC submitted to ATHOC an entry form providing for Amanda Rankin to compete in the Women’s K1 500m and Paula Harvey and Susan Tegg to compete Women’s K2 500m, and withdrew the entry for Amanda Rankin and Chantal Meek for the Women’s K2 500m.

On 27 July 2004 ATHOC on behalf of the IOC verbally confirmed that Paula Harvey and Susan Tegg had been granted entry into and accreditation for the Games of the XXVIIIth Olympiad.

On a date before 16 August 2004, the ICF purported to reject the entry form regarding Amanda Rankin’s right to compete in the Women’s K1 500m apparently on the ground that it was submitted after the entry deadline.

On 16 August 2004 the AOC was advised of the rejection by the ICF.

On 16 August 2004 the AOC requested the ICF to reconsider its position, stating inter alia,

“We have been advised by ATHOC that the entry submitted for Amanda Rankin for the Women’s K1 500m has been rejected by the International Canoe Federation (ICF) on the basis that it was submitted after the entry deadline.

The Australian Olympic Committee (AOC) submitted entries in accordance with the advice of Australian Canoeing (AC) and the ATHOC deadline of 21 July. The entries for the Women’s events in Canoe/Kayak Sprint were submitted subject to the outcome of the appeal by AC to the Court of Arbitration for Sport (CAS) with respect of the allocation of quota places for the Women’s K2 500m by the ICF.

I understand that this matter was resolved with the ICF kindly agreeing to allocate two additional quota places to Australia.

As a consequence of the ICF agreeing to allocate the two additional places, AC reviewed the composition of crews and events entered. On 26 July a supplementary entry form was submitted for the Women’s K1 500m (Amanda Rankin – already entered in K4 500m) and K2 500m (Paula Harvey/Susan Tegg) events. The decision to enter Amanda Rankin in the K1 500m was taken subsequent to and dependent on the ICF’s decision to allocate of (sic) two additional quota places”.

¹ Not Lyndsay Fogarty as provisionally notified in the AOC letter of 21 July 2004.

On 16 August 2004 the ICF advised in writing that *“the ICF Executive Committee has decided to refuse the request from Australian Olympic Committee”* on the basis of Mr Leukeman’s recommendation made in his capacity as Chairman of the Flatwater Racing Committee and Technical Delegate. He told us at the hearing that such recommendation was uniquely based on the fact that Amanda Rankin’s entry was out of time.

On 18 August 2004 the AOC wrote by letter to the IOC asking *“that the IOC consider whether there is anything that can be done to rectify this situation”*. The IOC subsequently orally advised that the ICF would not alter its position.

LAW

1. These proceedings are governed by the CAS Arbitration Rules for the Olympic Games (the “CAS ad hoc Rules”) enacted by the International Council of Arbitration for Sport (“ICAS”). They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (“PIL Act”). The PIL Act applies to this arbitration as a result of the express choice of law contained in Article 17 of the CAS ad hoc Rules and as the result of the choice of Lausanne, Switzerland as the seat of the ad hoc Division and of its panels of Arbitrators, pursuant to Article 7 of the CAS ad hoc Rules.
2. The ad hoc Division of the Court of Arbitration for Sport (Athens, Greece) has jurisdiction over NOCs by reason of Rules 4.1, 31 and 74 of the Olympic Charter and over IFs by reason of Rules 4.3, 29, 30 and 74 of the same instrument. In short, by reason of the benefits which accrue to each type of organisation by reason of their recognition by the IOC, each can be deemed to have subscribed to the arbitration clause in Rule 74. This conclusion is fortified by the undertaking of each to promote the Olympic Charter in the particular manner set out in it (see OG 00/002; OG 04/001). It has jurisdiction over the IOC by reason of Rule 74 of the Olympic Charter.
3. As appears from the chronology, the AOC has duly exhausted internal remedies so as to engage the jurisdiction of the ad hoc Division, again as required by Article 1 of the CAS ad hoc Rules.
4. According to Article 17 of the CAS ad hoc Rules, the Panel must decide the dispute *“pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate”*.
5. According to Article 16 of the CAS ad hoc Rules, the Panel has *“full power to establish the facts on which the application is based”*.

6. Rule 49 of the Olympic Charter provides:

Entries:

“Only NOCs recognized by the IOC may enter competitors in the Olympic Games. The right of final acceptance of entries rests with the IOC Executive Board”.

7. Rule 57 of the Olympic Charter provides:

Technical Arrangements:

“For all technical arrangements of the Olympic Games, including the schedule, the OCOG must consult the relevant IFs”.

(This, in our view, includes identifying who can enter what events as being one of the technical rules of the sport within the meaning of by-law 1.2 to Rule 57.)

8. The Participation Criteria of the ICF as approved by the IOC (“Participation Criteria”) provide, so far as material:

***International Canoe Federation
(ICF)
Canoe/Kayak Flatwater Racing***

EVENTS

Women

K-1 500m

K-2 500m

K-4 500m

ATHLETE / NOC QUOTA

*Athlete quota: 174 men
72 women
Total of 246 athletes*

Maximum per NOC: NOCs may qualify boats in all events, with a maximum number of 1 boat per event

QUALIFICATION SYSTEM

Total number of qualified boats and athletes

The total number of qualified boats by events in the qualification competitions will be as follows:

Events	Number of qualified boats	Number of qualified athletes
<i>Women</i>		
<i>K1 500M WOMEN</i>	<i>12</i>	<i>12</i>
<i>K2 500M WOMEN</i>	<i>10</i>	<i>20</i>
<i>K4 500M WOMEN</i>	<i>10</i>	<i>40</i>
Total Women	32	72
Total	134	246

GENERAL PRINCIPLES

Attribution of qualification places

Qualification places are allocated to NOCs and boats and not to athletes.

Athlete eligibility/participation

In order for a NOC to qualify a boat for the Olympic Games, each individual competitor must be eligible to compete for the respective National Federation (NF) and NOC at the time of the particular qualification competition.

Every accredited athlete must compete in an event at the Olympic Games, unless in exceptional circumstances approved by the ICF.

... one athlete may start in more than one event.

The NOC has the right to enter the athlete(s) of the qualified boat(s) in other non-qualified event(s) of the same category within the total number of qualified athlete(s) in each category.

DEFINITIONS

Competitions: *All World Championships
 All World Cups
 All International Competitions*

Categories: *Kayak Men
 Kayak Women
 Canoe Men*

Classes: *K1 M - K2 M - K4 M
 K1 W - K2 W - K4 W
 C1 M - C2 M*

Events: *Each Class in each distance (e.g. K1 500m M, K2 500m W, C1 1000m M)*

SYSTEM IN DETAIL

Qualification may be achieved either at the 2003 World Championships or at nominated continental

qualification events, in accordance with the following table:

Events	Total	2003 World Championships	Continental Qualification	Europe, Africa and Oceania	Asia	America
<i>K1 500m Women</i>	12	7	5	3	1	1
<i>K2 500m Women</i>	10	6	4	2	1	1
<i>K4 500m Women</i>	10	6	4	2	1	1
<i>Total Women</i>	32	19	13	7	3	3
<i>Boats</i>	134		57			
<i>Athletes</i>	246		103			

Continental Qualification Events

For NOCs in Europe, Africa and Oceania, the continental qualification event will be held within an existing event in Europe.

...

QUALIFICATION TIMELINE

...

- 5 June 2004* *ICF to confirm qualification places to NOCs; Tripartite Commission to confirm allocation of Invitation places*
- 18 June 2004* *NOCs to confirm the entry of boats and numbers of athletes*
- 20 June – 20 July 2004* *ICF to confirm reallocation of unused quota places*
- 21 July 2004* *Deadline for Athens 2004 Organising Committee to receive entry forms submitted by NOCs*

DATES / PROCESS OF CONFIRMATION OF PLACES

The ICF will inform each respective NOC and NF of the number and category of the boat(s) that they have qualified for entry by 5 June 2004. The NOCs which have qualified boats must confirm the use of these quota places and confirm the number of athletes they will enter to the ICF in writing by 18 June 2004.

From 20 June to 20 July 2004, the ICF will confirm the reallocation of any unused quota places.

REALLOCATION OF UNUSED QUOTA POSITIONS

In the event that an NOC does not enter one of its qualified boats in the Olympic Games, or if the number of

athlete positions allocated does not reach 246, the allocation of the remaining quota places will be placed under the supervision of the Secretary General and the two Olympics Discipline Chairmen, and allocated in the following order: ...

9. The Olympic Entries and Qualification Guide provides so far as material, as follows:

Introduction

The process known as “Entries” provides for the official entry of eligible athletes into the Olympic Games. According to Rule 49 of the current Olympic Charter, entry forms must be completed for all competitors in the Olympic Games. There are two types of forms: The Sport Entry Forms and the Entry Form – Eligibility Conditions. Sport Entry Forms must be completed for each eligible athlete or team qualified and entered in an Olympic Competition. An Entry Form – Eligibility Conditions must be completed for every member of the NOCs Delegation and signed by each one individually. Also an Application for Accreditation must be received for each potential athlete by the Accreditation deadline, which is 28 April 2004.

Final Entries

The Olympic Entries and Qualification System has been developed into a two-part process, so as to manage the official registration of athletes for the ATHENS 2004 Olympic Games.

The first phase is Qualification Verification. This began in January 2003 and will run through the end of the qualification period.

The second phase is Final Entries, where NOCs must submit the names of all qualified athletes who will be competing in the ATHENS 2004 Olympic Games. ATHOC must receive Sport Entry Forms and Eligibility Conditions Forms from participating NOCs by midnight (Greek time), on 21 July 2004, with a copy forwarded to the relevant International Federation.

...

Entries Checklist

Sport Entry Forms (CD ROM with acrobat file – or hard copies)

Entry Form – Eligibility Conditions

...

Returned

Applications for Accreditation 28 April 2004 (For all potential athletes and team officials)

Sport Entry Forms 21 July 2004

Entry Form – Eligibility Conditions 21 July 2004 (For all athletes and team officials)

Entry Forms

In addition to this manual, NOCs will receive the following Entry Forms:

Sport Entry Forms

For all Athletes

*A Sport Entry Form (individual or team) is required for each athlete eligible to participate in the ATHENS 2004 Olympic Games. This form officially registers the athlete for Olympic competition and is to be completed by the NOC in conjunction with the respective National Federation (NF). Sport Entry Form should only be submitted for those athletes who have qualified **and** have been selected to compete by the NOC.*

*The Sport Entry Form for all athletes must be submitted to ATHOC, along with the Entry Form – Eligibility Conditions by **21 July 2004**.*

...

Deadlines

28 April 2004 *Applications for Accreditation (For all potential athletes and team officials)*

21 July 2004 *Sport Entry Forms and Returned Forms Summary (For qualified and eligible athletes only)
Entry Form – Eligibility Conditions (For all athletes and team officials)*

*The completed Sport Entry Form for athletes and Entry Form – Eligibility Conditions for athletes, coaches, trainers and officials **must reach ATHOC no later than midnight (Athens time) on 21 July 2004**.*

10. The Flatwater Racing competition rules of the ICF (“ICF Rules”) produced at the hearing, under the rubric “Invitations, Entries and Programme” stipulates:
 - at 36.3 *“nominal entries containing the names of the competitors in each individual event must be received by the organising committee not later than 14 days before the first day of the races ...”;*
 - at 36.5 *“no entry received after the closing date shall be accepted”.*
11. AOC submits as follows:
 - 1) The IOC alone has the decision on entries. Amanda Rankin is entered as an athlete participant in the Games of the XXVIIIth Olympiad in the Women’s K4 500. She was so entered prior to 21 July 2004.
 - 2) Under the Participation Criteria the AOC has the right to enter Amanda Rankin in the Women’s K1 500m as:
 - a. the K1 500m is in the same category as the K4 500m (ie: Women’s kayak Flatwater racing);
 - b. Amanda Rankin’s participation in the K1 500m is within the total number of qualified women’s athletes (ie: 72); and

- c. (to the extent that it is relevant) there are unused starting positions available for Amanda Rankin in the heats for the Women's K1 500m.
 - 3) The IOC (and the ICF to the extent that it is applicable) are precluded from denying one part of an entry form submitted by the AOC dated 26 July 2004 (in respect of Amanda Rankin) on the basis that it is out of time whilst at the same time accepting and acting on that same entry form in respect of Paula Harvey and Susan Tegg.
12. AOC accordingly seeks the following relief:
 - 1) A direction that the IOC accept the entry of the Australian Olympic Committee in respect of Amanda Rankin to participate in the Women's K1 500m event in the Games of the XXVIIIth Olympiad.
 - 2) A direction that the IOC and the ICF each do all things necessary to ensure the right of Amanda Rankin to participate in the Women's K1 500m event in the Games of the XXVIIIth Olympiad.
13. The IOC submits
 - 1) It is for an IF to decide for what events an athlete could be admitted;
 - 2) The date of entry requirements are well known and promote fair and orderly competition;
 - 3) AOC could have entered Amanda Rankin contingently in the women's K1 500m event on 9 July 2004 and in any event before 21 July 2004;
 - 4) The appeal to CAS over the unallocated places is immaterial to the stipulation to submit a timely entry;
 - 5) To allow a late entry would create discrimination in favour of a non-compliant NOC;
 - 6) The IOC was acting properly in supporting the relevant IF.²
14. The ICF submits:
 - 1) It is important that athletes and national federations know the entries in each racing competition so that they may plan accordingly;
 - 2) After each national federation submitted its entries on or before 21 July 2004, the number of entrants for each race was known by all competitors;
 - 3) In neither the main sport entry form nor the conditional sport entry form submitted by the AOC did it indicate an intention to have a competitor in the Women's K1 500m event;
 - 4) The AOC was aware on 21 July 2004 that it might receive additional quota places and submitted a conditional entry form on that date in the event its CAS appeal was granted or if, as occurred, the ICF granted the AOC two additional quota places. AOC did not indicate on that conditional form that, if the two additional athletes were accepted for the

² The AOC in oral argument made it clear that it did not allege improper conduct against the IOC.

- Women's K2 500m event, Amanda Rankin would instead compete in the Women's K1 500m event;
- 5) The French NOC submitted a complete conditional entry form in the event that it was granted additional quota places, as in fact occurred, after 21 July 2004. The AOC could have done the same;
 - 6) It would cause severe prejudice to other countries and competitors if the AOC were allowed to add a competitor who had not been timeously entered;
15. Amanda Rankin is a qualified athlete in K4 500m by reason of continental qualification. The AOC is therefore *prima facie* entitled to enter her in another non-qualified event of the same category (eg: K1 500m) as long as the total number of qualified athletes (ie: 72) is not exceeded, which it is common ground that it would not be even if she entered the K1 500m.
 16. Amanda Rankin was entered for the K4 500m on 8 July and for K2 500m on 21 July 2004, by the stipulated entry date in both cases. However she was not entered for the K1 500m until 26 July 2004, after the entry date.
 17. The Panel notes that the ICF Participation Criteria do not state whether the concept of entry refers only to the identification of an athlete and his (or her) sport or if it extends to the specific event. The ICF Rules (Rule 35) however make clear that it extends to the latter (cf. OG 96/001 para 8).
 18. The ICF Participation Criteria do, moreover, refer to an obligation to submit entry forms to ATHOC, and the prescribed entry form itself identifies the events in which the athlete is to participate. As was stated by a previous Panel, "*there may be considerable advantage to stricter arrangements, particularly in terms of predictability*" (OG 96/001 para 13).
 19. The provision relied on by AOC permitting entry of an athlete in a qualified boat in other non-qualified categories under the conditions therein set out is silent on this issue as is when the right therein identified has to be exercised. It does not trump the provisions which deal with the timing of the entry; it is, in our view, subordinate to it.
 20. Had the matter stood there, we would have been inclined to dismiss the appeal in the light of the considerations emphasised by both IOC and ICF as to the importance of respecting clear and well publicized entry time limits. Nothing we say should be interpreted as undervaluing the role that such limits play in international sport. However there is an additional complicating factor to which we now turn.
 21. It is a legitimate inference from the sequence of events that had the ICF, as it admitted, not erroneously refused two additional K2 quota places to the AOC prior to their volte face of 26 July 2004, Amanda Rankin would have been entered for the K4 and K1 events. She was only contingently entered for the K2 event on the basis that two additional K2 quota places continued not to be allocated to AOC. Once the two K2 quota places were allocated, she was withdrawn from the K2, and entered in the K1. Moreover, Mr Bisset confirmed that this was the AOC's position, and he was not challenged as to his accuracy in so stating by ICF or IOC.

22. In our view, the ICF is estopped by its own original admitted error from relying on her late entry for K1 as a ground for rejecting it, since the entry which the ICF has rejected was, in the phrase of Mr Phillips, the necessary consequence of that error for the following reasons.
23. As of 21 July 2004, the AOC believed it would only have four women athletes in the Kayak Flatwater competition. It therefore determined that all four athletes should participate in the K4 500m event, which the AOC described as the premier event. The AOC also determined that, with four athletes, it could race one other boat and that the K2 event was more important than the K1 event. As indicated by a contemporary memorandum of 27 July of Australian Canoeing provided at the hearing, Amanda Rankin is Australia's best female kayak racer. Because she could not physically compete in both the K1 and K2 events, because they occur on the same day, the AOC determined that she should compete in the K2 event.
24. In agreeing with the AOC to add two quota slots for it, the ICF specifically stated that the two new slots should be used for athletes not already engaged in the competition. AOC therefore put those two new athletes – Ms Fogarty and Ms Harvey – into the K2 event. The entry of Amanda Rankin and Ms Meek in that event had to be cancelled, as that substitution now enabled Amanda Rankin to compete in the K1 event on the same day as the K2 event.
25. The testimony at the hearing and the documents presented provide credible evidence that if the AOC had known in early July, well before the 21 July 2004 deadline, that it would be allocated six female kayak competitors, it would have made this same decision. It could not finally do so, however, until the ICF granted the two additional positions on 26 July 2004, and it did so promptly after receiving such notice. We do not consider that it was unreasonable of the AOC not to have anticipated every conceivable contingency.
26. The French NOC who also had the benefit of a belated reallocation had entered all names contingently for all relevant events by the deadline but at a time they had no places allocated to it at all. Therefore the French NOC was not faced with the issue of itself reallocating its available athletes in the light of the ICF's general reallocation. The position of the French NOC cannot be equated to that of the Australian NOC:
27. AOC have noted that the entries of Susan Tegg and Paula Harvey were accepted out of time – obviously on the basis that until the ICF volte face the AOC could not enter them. In our view, the principle of consistency demands that a similar treatment be accorded to Amanda Rankin. Indeed on one view her case is *a fortiori* since she was at any rate a nominated athlete in two events in the same category prior to the deadline.
28. We note that there is no significant disadvantage to anyone in implementing our decision. There will have to be a redraw for the heats of K1, but this is admittedly feasible. Other competitors in the K1 500m will have an additional challenger, but competition between the best athletes is the essence of the Olympics. In particular no-one will lose her place if Amanda Rankin is added. (cf: the possible, but, in the event, not the actual consequence of the decision in CAS Arbitration OG 04/001). If the exceptional nature of the circumstances on which we rely is appreciated by

the Kayaking community (and indeed NOCs generally) it will be realised that we do not open the door to recurrent bypassing of entry deadlines; only a key of a special kind will unlock the door.

The ad hoc Division of the Court of Arbitration for Sport rules:

1. The appeal is allowed.
2. The IOC and ICF are directed to accept the entry of the AOC and to enable Amanda Rankin to participate in the women's K1 500m event in the Games of the XXVIIIth Olympiad.