



Arbitration CAS 2012/A/2758 Murray Stewart, Ken Wallace, David Smith, Jesse Phillips and Stephen Bird v. Joel Simpson and Australian Canoeing Inc, award of 3 May 2012

Panel: Judge Arthur Emmett (Australia), Sole Arbitrator

Canoeing

Selection of a 2012 national Olympic team

Scope of review of a national federation's appeal body concerned with selection process

Satisfaction of the Olympic selection criteria

1. **The regulatory framework applicable at national level indicates that there are two different systems of decision-making involved in selection for the national Olympic team. One system is concerned with the conduct of competition in selection races. The other system is concerned with the selection process itself. Each system has its own review and appeal procedures. A decision made by a competition committee following a protest made during the conduct of a competition is only subject to an appeal to a jury, the decision of which is final and binding. The appeal body appointed by the national federation, is concerned with the selection process, not with the competition. In this respect, decisions in relation to competition in the selection races are not to be subject of appeal to, or review by, the appeal body. Therefore, the appeal body that took a decision in this respect is in error on a question of law, in that it proceeded on an erroneous basis.**
2. **So long as (i) an athlete was given the opportunity to compete in accordance with the Olympic Selection Criteria and with the International Competition Rules, (ii) the rules are fair, and (iii) the athlete was afforded the opportunity to protest before a competition committee and to appeal from the decision of the competition committee to a jury, he was afforded a reasonable opportunity to satisfy the Olympic Nomination Criteria. There is no basis for concluding that an athlete was not afforded a reasonable opportunity, within the meaning of the Olympic Selection Bylaw, simply because he was not personally informed of his right to appeal to the jury from the decision of the competition committee.**

A dispute has arisen concerning the nomination by Australian Canoeing Inc of athletes for selection to the 2012 Australian Olympic team. The dispute concerns the result of selection for the men's 200 metre single kayak event (**K1 200m**). On 18 March 2012, Australian Canoeing Inc announced the names of the seven athletes who would be nominated to the Australian Olympic Committee for the men's kayak team. Those to be nominated included Murray Stewart, Ken Wallace, David Smith, Jesse Phillips and Stephen Bird (**the Appellants**). On 20 March 2012, Joel Simpson, who had been a

competitor in selection trials for the men's kayak team, and a candidate for nomination, notified Australian Canoeing Inc that he wanted to appeal from the decision of Australian Canoeing Inc not to nominate him to the Australian Olympic Committee for the 2012 Australian Olympic Team. Following receipt of that notification, Australian Canoeing Inc appointed an Appeals Tribunal consisting of Mr Mark Williams SC, Ms Zali Steggall and Mr Luke Young (**the Tribunal**). On 23 March 2012, the Tribunal made interim orders that the appeal be upheld and that the parties to the appeal have leave to make written submissions concerning the relief that should be ordered as a consequence of the appeal being upheld.

On 30 March 2012, the Appellants made an application to the Oceania Registry of the Court of Arbitration for Sport (**the Court**) for arbitral relief in the Appeals Division of the Court. Joel Simpson and Australian Canoeing Inc (**the Respondents**) were named as respondents. The application sought an order that the orders made by the Tribunal be set aside and that there be substituted an order that the appeal by Joel Simpson to the Tribunal be dismissed.

By Order of Procedure signed on behalf of the Appellants and the Respondents, as well as the Australian Olympic Committee, those parties agreed that the Court has jurisdiction to determine, by arbitration, the dispute that is the subject of the appeal brought by the Appellants against the Respondents, and agreed to refer the dispute to the Court for determination by arbitration. The parties agreed that, for the purposes of the arbitration, the Court would be constituted by me as sole arbitrator, with the object of arbitrating on the dispute and rendering an award in conformity with the agreement between the parties to submit their dispute for arbitration before the Court according to the Code of Sports-related Arbitration published by the Court (**the Code**). Because of the imminence of the 2012 Olympic Games in London, there is considerable urgency in having the dispute resolved.

On 17 April 2012, I received evidence in the form of documentary material and statutory declarations, and received brief oral evidence from Joel Simpson. I have also had the benefit of written submissions from the Appellants and the Respondents, and have heard extensive oral argument from counsel on behalf of those parties. I also heard brief oral submissions on behalf of the Australian Olympic Committee.

In their grounds of appeal dated 2 April 2012, the appellants asserted that:

- the decision of the Tribunal was in error on a point of law in some ten different respects; and that
- the Tribunal was in breach of the rules of natural justice in some four different respects.

I shall return later to the specific complaints made on behalf of the Appellants.

All parties agreed that, if the result of this arbitration is that the decision of the Tribunal should stand, it would be necessary for the Tribunal to give further consideration to the steps that should be taken in order to complete the selection process. The parties also agreed that, if the orders of the Tribunal were to be set aside, the question of the relief that should be granted by the Court could involve some complexity, depending upon the basis upon which I concluded that the Tribunal had erred. Accordingly, all parties agreed that the appropriate course was for me to inform them of my conclusions, and my reasons for those conclusions, with a view to hearing further argument as to the

orders that should then be made in the light of those conclusions. These are my conclusions and reasons for my conclusions. I have previously provided these reasons in draft form to the parties. None of the parties made any further submission as to the relief that should be granted in the light of the conclusions I have reached.

The regulatory framework

Several regulatory regimes govern the nomination of athletes to the Australian Olympic Committee for selection to the Australian Olympic Team. Those regimes contemplate selection following competition among the candidates for selection. Competition for selection in kayak racing is regulated by further separate sets of governing rules. The interaction among the various sets of bylaws, criteria and rules is somewhat complex.

The following regulate the manner in which athletes are nominated to the Australian Olympic Committee for selection to the Australian Olympic Team:

- Australian Olympic Committee Olympic Team Selection Bylaw (**the Olympic Selection Bylaw**),
- Nomination Criteria for Canoe Kayak Sprint (**the Olympic Nomination Criteria**),
- Australian Olympic Team Selection Criteria – Canoeing (**the Olympic Selection Criteria**),
- Policy for assisting and counselling athletes seeking nomination and selection to the Australian Olympic Team (**the Olympic Canoeing Policy**),
- Australian Canoeing Selection Procedures Bylaw (**the AC Selection Bylaw**).

The following regulate to the conduct of kayak racing competitions:

- Canoeing Competitions Bylaw of Australian Canoeing Inc (**the Australian Competition Bylaw**),
- Canoe Sprint Competition Rules of the International Canoe Federation (**the International Competition Rules**),
- Competition Rules for Flatwater Racing of Australian Canoeing Inc (**the Flatwater Racing Rules**).

It will be apparent that there are two separate regulatory regimes relating to selection of athletes for the Australian Olympic team. The first is concerned with the selection criteria. Those criteria require the conduct of selection trials. The second regime relates to the conduct of competition for the purposes of the selection trials. That distinction has some significance, as will become apparent. In relation to each regime, provision is made for review processes by way of protests and appeals. It is necessary to describe the separate processes in relation to each regime.

Olympic Selection Bylaws and Rules

The Olympic Selection Bylaw applies to all sports of the 2012 Olympic Games. It applies to athletes, officials and National Federations, as well as to the Australian Olympic Committee. While it does not in terms refer to canoeing or kayaking, it regulates the conduct of Australian Canoeing Inc as a National Federation.

Clause 5.1 of the Olympic Selection Bylaw requires that, in respect of each Australian Olympic team, each National Federation is to adopt Nomination Criteria. The Nomination Criteria in respect of a particular team are to be subject to the criteria in respect of a particular sport adopted by the Australian Olympic Committee for selection for athletes as members of a particular team. The Nomination Criteria must also be subject to participation and qualification criteria for a particular sport as determined from time to time by the International Olympic Committee and the International Federation controlling that sport. Under clause 5.4, each National Federation, such as Australian Canoeing Inc, must apply its Nomination Criteria fairly so as to ensure that no athlete is nominated to the Australian Olympic Committee where another athlete is, or other athletes are, entitled to be nominated in priority.

Under clause 6.2 of the Olympic Selection Bylaw, a National Federation will only nominate those athletes who have, amongst other things, met the applicable Nomination Criteria. Under clause 7.1, selection of athletes to a team must be conducted solely by the Australian Olympic Committee according to the applicable Selection Criteria. Selection of each athlete to a particular team is to be conditional upon the Australian Olympic Committee confirming, to its own satisfaction, that the athlete has met the Nomination Criteria and the Selection Criteria.

The Olympic Nomination Criteria did not restrict athletes to a single event. Thus, athletes were permitted to compete in more than one event during the nomination trials. The schedule of the nomination trials allowed athletes sufficient recovery time to compete in two events over the same distance, thereby increasing the opportunity for nomination. The formula for determining the athletes to be nominated under the Olympic Nomination Criteria is based on the principle of first past the post in two out of a possible three nomination trials. The formula gives an athlete a second chance to meet the Olympic Nomination Criteria in a particular event by allowing the athlete the opportunity to recover from a poor performance by winning a subsequent trial.

Under clause 1(1) of the Olympic Nomination Criteria, Australian Canoeing Inc must choose athletes from within its sport to be members of the Australian Olympic Committee's Shadow Team. In order to be chosen as a member of the Shadow Team, each athlete must meet the requirements of clause 5.2 of the AC Selection Bylaw and must have qualified for a final at trials in one or more of the events outlined in clause 2 of the Olympic Nomination Criteria. The requirements of clause 5.2 of the AC Selection Bylaw include that the athlete is a financial member of Australian Canoeing Inc and that the athlete completes and signs the applicable application form.

Under clause 2 of the Olympic Nomination Criteria, Australian Canoeing Inc must, for the purposes of nomination of athletes to the Australian Olympic Committee, organise nomination trials open to all athletes, including, but not limited to, all members of the Shadow Team. Under clause 2(1),

Australian Canoeing Inc must nominate only those Shadow Team athletes that, to its satisfaction, have competed in one or more events in at least two of the nomination trials. Relevantly for present purposes, the nomination trials for K1 200m were as follows:

- Nomination Trial 1 to be held at Penrith, NSW on 1 March 2012 (**Trial 1**); and
- Nomination Trial 2 to be the Oceania Championships to be held at Penrith, NSW on 2-4 March 2012 (**Trial 2**).

In the case that there were different winners in Trial 1 and Trial 2, the National Championships to be held on 14-18 March 2012 were to be used as a further trial (**Trial 3**). The highest ranked in Trial 3 of the winners of Trial 1 and Trial 2 was to be nominated.

Under clause 2(2) of the Olympic Nomination Criteria, Australian Canoeing Inc must only nominate athletes who, according to the total number of athlete quota places awarded to Australia by the International Canoeing Federation (**the ICF**), have met additional criteria at the nomination trials as specified in the clause. The quota awarded to Australia by the ICF for men's kayaking is seven. The details of the additional criteria are not presently relevant.

Clause 4 of the Olympic Nomination Criteria provides that, for the purpose of determining whether an athlete has met the requirements of the Olympic Nomination Criteria, Australian Canoeing Inc will not have regard to any extenuating circumstances.

Under clause 5 of the Olympic Nomination Criteria, subject to the receipt by Australian Canoeing Inc of the confirmation of athlete quotas from the ICF, and subject to any pending appeal received by Australian Canoeing Inc under the Olympic Selection Bylaw, nominations by Australian Canoeing Inc must be made within five working days of the completion of the nomination trials and, in any event, must be received by the Australian Olympic Committee no later than 22 June 2012.

Section 10 of the Olympic Selection Bylaw deals with Appeals Tribunals of a National Federation. Under clause 10.1, each National Federation (being Australian Canoeing Inc in the present circumstances) must establish an Appeals Tribunal that will consist of three persons appointed by the Board of the National Federation, as follows:

- a barrister or solicitor or other legally qualified person who will act as chairman;
- a person with a thorough knowledge of the relevant sport and who has preferably had recent international competition experience in the sport; and
- one other person of experience and skills suitable to the function of the Appeals Tribunal and familiar with the Olympic selection process and documentation.

Those three persons are to constitute a quorum for the purpose of hearing and determining any appeal pursuant to clause 11.1(1) of the Olympic Selection Bylaw, to which I shall refer later.

Under clause 10.4 of the Olympic Selection Bylaw, each Appeals Tribunal is to be bound by a number of requirements, including the following:

- It must observe the principles of natural justice.

- It is not bound by the rules of evidence and may inform itself as to any matter in such manner as it thinks fit.
- It will conduct its hearings with as little formality and technicality and with as much expedition as the proper consideration of the matter permits.
- Hearings may occur in such manner as the chairman decides, including by telephone or video conferencing.
- Each appellant must establish one or more grounds of appeal to the reasonable satisfaction of the Appeals Tribunal with full regard to the importance and gravity of the issue.
- The parties to an appeal will not be entitled to be represented by a barrister or solicitor, save with the leave of the Appeals Tribunal, which leave is to be given only in exceptional circumstances.
- If a question of law arises during the course of the hearing, the parties may seek an adjournment in order to obtain legal advice.
- The Appeals Tribunal will give its decision on any appeal as soon as practicable at the conclusion of, or after, the hearing, and will provide the chief executive officer of the National Federation, the appellant and other parties to the appeal with a statement of the reasons for its decision as soon as practicable after the hearing.

Section 11 of the Olympic Selection Bylaw is headed **APPEALS PROCESS FOR ATHLETES**. Under clause 11.1(1), an appeal or dispute regarding an athlete's nomination or non-nomination to the Australian Olympic Committee by a National Federation will be first determined by the Appeals Tribunal established pursuant to clause 10. Under clause 11.1(2), any appeal from the determination of the Appeals Tribunal under clause 11.1(1) is to be heard by the Appeals Arbitration Division of the Court.

Under clause 11.5 of the Olympic Selection Bylaw, the sole grounds for any appeal to an Appeals Tribunal are that:

- the applicable nomination criteria have not been properly followed and/or implemented;
 - **the appellant was not afforded a reasonable opportunity by the National Federation to satisfy the applicable Nomination Criteria;**
 - the nomination decision was affected by actual bias; or
 - there was no material on which the nomination decision could reasonably be based
- [emphasis added].

Under clause 11.8 of the Olympic Selection Bylaw, the decision of the Appeals Tribunal is to be binding on the parties and, subject only to any appeal to the Court pursuant to clause 11.11, it is agreed that neither party will institute or maintain proceedings in any court or tribunal other than the Appeals Tribunal. In particular, there is to be no right of appeal under sections 34 and 34A of the *Commercial Arbitration Act 2010* (NSW) and no right to apply for the determination of a question of law under s 27I of that Act.

Under clause 11.10 of the Olympic Selection Bylaw, the sole grounds for any appeal against a decision of the Appeals Tribunal are that:

- there was a breach of the rules of natural justice by the Appeals Tribunal; or
- the decision of the Appeals Tribunal was in error on a question of law.

Under clause 11.11, any appeal from a decision of the Appeals Tribunal must be solely and exclusively resolved by the Appeals Arbitration Division of the Court, according to the Code and applying the law of New South Wales. Under clause 11.18, the power of the Court to review the facts and the law pursuant to rule 57 of the Code is to be limited initially to determining whether the appellant has made out one or more of the grounds of appeal pursuant to clause 11.10. Rule 57 of the Code provides that the Court is to have full power to review the facts and the law. It also provides that the Court may issue a new decision that replaces the decision challenged, or annul the decision and refer the case back to the previous instance.

Under clause 11.19 of the Olympic Selection Bylaw, if the Court determines to uphold any appeal against non-nomination of an athlete, it will, as a matter of usual practice, refer the question of re-nomination back to the relevant National Federation selection panel for determination in accordance with the Olympic Nomination Criteria. However, the Court may itself conclusively determine the issue of re-nomination where, relevantly, the Court determines that it would be impractical to refer the issue of re-nomination back to the National Federation in the time available in which entries to the Olympic Games must be submitted by the Australian Olympic Committee.

Competition Bylaws and Rules

The Australian Competition Bylaw was adopted by Australian Canoeing Inc to set out the rules that apply to the conduct of all canoeing events under the auspices of Australian Canoeing Inc, and provides direction for the administration of competition within the sport. Clause 3.1 of the Australian Competition Bylaw relevantly provides that, in the discipline of Flatwater (Sprint) Racing, Australian Canoeing Inc competitions are to be conducted in accordance with the applicable competition rules of the ICF. However, under clause 3.1(c), Australian Canoeing Inc may from time to time issue competition rules that amend or vary the applicable competition rules of the ICF. Such rules must be read in conjunction with each other. Competition rules issued by Australian Canoeing Inc may also cover situations not covered by the competition rules of the ICF.

Rule 1.1 of the International Competition Rules provides, relevantly, that the aim of competition is for people to race each other in kayaks over clearly defined **unobstructed** course in the shortest possible time according to the rules. Rule 18 deals with **COURSES**. Under rule 18.1, the standard course shall provide **fair and equal racing conditions for all crews** racing in separate, parallel lanes over the relevant distances. Under rule 18.5, the course may consist of up to nine lanes. Each lane must be at least nine metres wide, straight and **without any obstacle**. I have emphasised phrases that were given particular significance by the Tribunal.

Rule 10 of the International Competition Rules deals with **OFFICIALS**. Rule 10.2 deals with the **Competition Committee**, and provides that the competition is to be managed by a Competition Committee consisting of:

- Chief Official;
- Chief Judge; and
- Deputy Chief Judge.

The duties of the Competition Committee are to include:

- organising and supervising the competition;
- hearing any protests that may be made and settling any disputes that may arise; and
- deciding matters concerning disqualification in cases where the regulations are broken during a race.

The decision of the Competition Committee is to be based on the International Competition Rules.

Rule 15 of the International Competition Rules deals with **ACCEPTANCE OF ENTRIES AND PROGRAMME**. Rule 15.4 provides that a **Team Leader** is to represent his or her team and keep contact with the Chief Official and the organisers throughout the competition. As necessary, the Team Leader is to arrange to submit any protest or appeal. Rule 15.4.1 provides that, at least 12 hours before the first race of the competition, a Team Leaders' meeting is to be held, at which the regatta course and other arrangements are to be described.

Rule 29 of the International Competition Rules deals with **PROTESTS**. Under rule 29.2, a protest made during the competition must be handed to the Competition Committee not later than 20 minutes after publication of the results. Rule 29.4 provides that all protests must be in writing and be accompanied by the prescribed fee, which is to be refunded if the protest is upheld. Under rule 29.5, when a protest or a report is made against an athlete or a team, the Team Leader of the athlete or team in question must be presented with the protest or report to read.

Rule 30 of the International Competition Rules deals with **APPEALS**. However, that section is overridden by clause 7 of the Australian Competition Bylaw.

Section 6 of the Australian Competition Bylaw deals with **APPOINTMENT OF JURIES FOR AUSTRALIAN CHAMPIONSHIPS AND SELECTION EVENTS**. Clause 6.1 relevantly provides that there must be a jury (**the Jury**) for each event conducted for the purpose of assisting in the selection process for an Australian team and designated as such in accordance with the AC Selection Bylaw (**Selection Event**). Under clause 6.2, each Jury is to be appointed by the Board of Australian Canoeing Inc and is to comprise three persons.

Section 7 of the Australian Competition Bylaw deals with **APPEALS AGAINST DECISIONS OF THE COMPETITION COMMITTEE**. Under clause 7.1, an athlete may appeal against a decision of the Competition Committee of any Selection Event on the grounds that the decision of the Competition Committee was not made in accordance with the applicable competition rules. Such

appeals must be made to, and determined by, the Jury. Clause 7.3 provides that any appeal against a decision of the Competition Committee must be made within 60 minutes of the receipt of notification by the Competition Committee of the decision to dismiss a protest, and must be accompanied by an appeal fee, which is to be refunded where the Jury refers the matter back to the Competition Committee.

Clause 7.8 of the Australian Competition Bylaw provides that the Jury must, as soon as practical after receiving a notice of appeal, investigate and consider the appeal, and must, within 10 minutes of receiving such notice, determine whether the appeal should be dismissed because it is trifling in nature or has no merit, or whether the appeal warrants further review and determination in accordance with the rules. If the Jury determines that the matter warrants further review in accordance with the rules, it must meet for that purpose **as soon as practicable, having regard to the proximity of relevant events.**

Under clause 7.10 of the Australian Competition Bylaw, the Jury may conduct a meeting in such manner as it sees fit, but must give the appealing athlete and the Competition Committee the opportunity to be heard. Under clause 7.11, following consideration of all relevant and available information, the Jury must arrive at a finding by majority. The Jury must notify the Chief Official of its finding **as soon as practicable**. The Chief Official must then **immediately** notify the appealing athlete and all other relevant people of the Jury's decision in writing. Clause 7.13 provides that the Jury has no power to substitute its decision for that of the Competition Committee. The Jury must either refer the matter back to the Competition Committee for reconsideration or dismiss the appeal.

Under clause 7.15 of the Australian Competition Bylaw, decisions of the Jury are final and binding on the parties, and neither party is permitted to institute or maintain proceedings in any court or tribunal, including the Court. In particular, there is to be no right of appeal under s 38 of the *Commercial Arbitration Act 1984* (NSW) or right to apply for determination of a question of law under s 39(1)(a) of that Act.

The conduct of the selection trials

Joel Simpson is a member of Australian Canoeing Inc. On 26 July 2011, he completed a membership application and a declaration. By that document, he accepted, acknowledged and agreed that the constitution of Australian Canoeing Inc is a contract between him and Australian Canoeing Inc and that he would be bound by the constitution and any bylaws made under it. He agreed to comply with the constitution and bylaws of Australian Canoeing Inc.

On 29 February 2012, an email was sent by Mr Richard Fox, the National Performance Director of Australian Canoeing Inc, to provide information and guidelines for the athletes and coaches who had nominated to participate in Trial 1 to be held on 1 March 2012. The email specified that the Competition Committee would consist of Messrs Greg Kaeding, Jim Murphy and Richard Fox, and referred athletes to the Olympic Nomination Criteria. The email said that Australian Canoeing Inc would organise the competition for three events, including K1 200m. The K1 200m heat was to commence at 11.30am, the semi-final at 1pm and the final at 3.15pm. The email stated that the event was being conducted under the Australian Competition Bylaw and that the International Competition

Rules therefore applied, as modified by the Australian Competition Bylaw and by the email itself. The email stated that the event would be conducted under the bylaws of Australian Canoeing Inc.

On 29 February 2012, a Team Leader meeting for Trial 1 and for the Oceania Championships was conducted at the Sydney International Regatta Centre, as contemplated by rule 15.4.1 of the International Competition Rules. The meeting was attended by appointed Team Leaders, including Ms Tahnee Norris of the Australian Institute of Sport and Mr Vince Fehervari of the Queensland Academy of Sport, who were designated Team Leaders for Joel Simpson, amongst others.

In the Trial 1 final for K1 200m held on 1 March 2012, Murray Stewart was placed first and Joel Simpson was placed third. Joel Simpson lodged a protest at 3.38pm. The protest was presented on his behalf by his Team Leader, Tahnee Norris. The reason given for the protest was that Mr Simpson had been unfairly impeded in the race by an obstruction, being weed. The Competition Committee, consisting of Messrs Kaeding, Murphy and Fox, was then convened to consider the protest.

In determining the protest, the members of the Competition Committee focussed attention on determining whether it could be demonstrated that Joel Simpson had been unfairly impeded in his race by weed. They considered the written protest submitted by Tahnee Norris and heard submissions and evidence from Vince Fehervari. They then consulted with the official who conducted the inspection of the course prior to the commencement of Trial 1 and were informed that there was no evidence of weed in the competition lanes at that time. Mr Murphy, a member of the Competition Committee, was requested to conduct a course inspection to ascertain whether there was any obstruction in the lane used by Joel Simpson or in adjacent lanes. Mr Murphy reported that, in his inspection, he found no obstruction. The Competition Committee considered video evidence and GPS data provided in support of the protest. While the video evidence showed that Joel Simpson experienced an irregular stroke during the race, the members of the Competition Committee considered that the video evidence was inconclusive in the absence of other evidence of weed at the time of the irregular stroke. The Competition Committee decided that, since the GPS data technology was not available to all athletes, the GPS data should not form part of their consideration of the protest. In any event, the Competition Committee considered that, since there was already evidence of an irregular stroke in the video evidence, any further evidence from the GPS data was unlikely to provide further clarity as to the cause of the irregular stroke.

The Competition Committee determined that there was no evidence sufficient to support a decision to overturn the result of Trial 1 and, accordingly, at 5pm, declared that the protest was dismissed and that Murray Stewart was confirmed as the winner of Trial 1. The Competition Committee spent approximately 1 hour 20 minutes in considering the protest. That was regarded as a reasonable time in dealing with a protest during an event. The Competition Committee subsequently prepared a report concerning the protest.

In the course of the deliberations concerning the protest, Mr Fox suggested to Mr Greg Doyle, the Chief Executive Officer of Australian Canoeing Inc, that steps should be taken to ensure that a Jury be appointed to deal with any appeal from the decision of the Competition Committee on the protest. A Jury was then appointed by Australian Canoeing Inc, consisting of Ms Helen Brownlee, Ms Danielle Woodward and Mr Ian Hume.

Mr Fox ensured that the written report of the Competition Committee was delivered to the Team Leaders who had presented the protest. Mr Kaeding, the chairman of the Competition Committee and the Chief Official, informed Tahnee Norris and Vince Fehervari of the decision of the Competition Committee and the right of appeal from that decision to the Jury. However, no appeal to the Jury was lodged on behalf of Joel Simpson.

The official results of Trial 1 were published on the Internet on 1 March 2012, showing Murray Stewart as the winner and Joel Simpson as having been placed third. On the evening of 1 March 2012 or on the morning of 2 March 2012, Richard Fox asked Tahnee Norris whether she had received notice of the dismissal of the protest and whether she and Vince Fehervari had decided not to appeal. Tahnee Norris responded that Vince Fehervari had decided not to appeal further.

Trial 2 was conducted on Friday, 2 March 2012 at the Oceania Championships. The winner was Joel Simpson, and Murray Stewart was placed second. Accordingly, it was necessary for there to be a third trial. Trial 3 was conducted on 17 and 18 March 2012 at the National Championships. Trial 3 was won by Murray Stewart, and Joel Simpson was placed third.

Following the completion of the Nomination Trials, the Australian Canoe Inc selection panel considered the final results. The selection panel determined that, since Murray Stewart had won Trial 1 and Trial 3, as well as fulfilling the Olympic Nomination Criteria in relation to other events, he would, in accordance with clause 2(1) of the Olympic Nomination Criteria, be nominated to the Australian Olympic Committee. The selection panel determined that Joel Simpson did not meet the nomination criteria, since, although he won Trial 2, he did not either win Trial 1 or finish ahead of Murray Stewart in Trial 3.

On 18 March 2012, Australian Canoeing Inc announced its proposed nominations to the Australian Olympic Committee for canoe sprint, subject to any appeals lodged within 48 hours and subject to confirmation of the ICF quotas. The athletes selected for the men's kayak team were:

- Stephen Bird, who satisfied the nomination criteria for K2 200m;
- Jacob Clear, who satisfied the nomination criteria for K4 1000m;
- Jesse Phillips, who satisfied the nomination criteria for K2 200m;
- David Smith, who satisfied the nomination criteria for K4 1000m;
- Tate Smith, who satisfied the nomination criteria for K4 1000m;
- Murray Stewart, who satisfied the nomination criteria for K1 200m, K1 1000m, K2 1000m and K4 1000m; and
- Ken Wallace, who satisfied the nomination criteria for K2 1000m.

The decision of the appeals tribunal

On 20 March 2012, Joel Simpson notified Australian Canoeing Inc by email at 10.21am that he wished to appeal from the decision of Australian Canoeing Inc not to nominate him to the Australian

Olympic Committee for the 2012 Olympic Team. The letter attached to the email stated that the ground of appeal was that Joel Simpson had not been afforded a reasonable opportunity to satisfy the Olympic Selection Criteria. No other information as to the basis of the appeal was provided at that time. Following receipt of the email, the Tribunal was appointed by Australian Canoeing Inc.

A hearing was held by the Tribunal on 23 March 2012. Following the completion of the hearing, the chairman of the Tribunal advised Australian Canoeing Inc of the Tribunal's interim orders, being orders that:

- the appeal be upheld;
- leave be granted to Australian Canoeing Inc and interested parties to provide written submissions on the proposed relief no later than 30 March 2012; and
- leave be granted to Joel Simpson to provide submissions in reply by 5pm on 3 April 2012, or within three days of receipt of submissions from Australian Canoeing Inc and interested parties, whichever was the earlier.

On 29 March 2012, the Tribunal provided to all of the interested parties its written determination and reasons pursuant to clause 10.4 of the Olympic Selection Bylaw.

The Tribunal's reasons summarised the submissions made on behalf of Joel Simpson as follows:

- There was a significant amount of weed floating in the course on 1 March 2012, which was observed by a number of athletes, coaches and Australian Canoeing Inc staff.
- On 1 March 2012, the course was unsuitable for competition and did not provide fair, equal and unobstructed racing conditions to all crews.
- At the start of the final of Trial 1, approximately 5 to 10 seconds into the race, having paddled approximately 50 metres, Mr Simpson hit a clump of weed with his paddle, causing a significant deceleration in both his stroke rate and velocity.
- Mr Simpson lodged a protest in relation to the course as required by the competition rules but did not attend the hearing of the protest.
- Mr Simpson provided GPS data evidence and video evidence to support his protest.
- Mr Simpson was not informed of the dismissal of his protest directly by the Competition Committee, and was not informed of his right of appeal.

The Tribunal summarised the submissions advanced on behalf of Australian Canoeing Inc as follows:

- Mr Simpson was provided with the opportunity to gain nomination pursuant to the Olympic Nomination Criteria by competing in Trial 1, Trial 2 and Trial 3.
- The Competition Committee dismissed Mr Simpson's protest in relation to the result of Trial 1.
- Mr Simpson was given the opportunity to appeal further under the Australian Competition Bylaw, but declined to do so.
- Mr Simpson did not meet the Olympic Nomination Criteria.

The Tribunal then summarised the relevant bylaws and rules. The Tribunal referred specifically to rules 1.1, 18.1 and 18.5 of the International Competition Rules, which I have summarised above.

The Tribunal considered that the material before it provided a sufficient basis for determining that Joel Simpson's appeal should be upheld, finding that his performance in Trial 1 was adversely affected by contact with weed. It found that all the objective evidence was consistent with, and supported, such a finding. The Tribunal therefore accepted Joel Simpson's evidence and found that he hit an obstacle in the form of a clump of weed during the Trial 1 final and that, in breach of rules 1.1, 18.1 and 18.5, Joel Simpson had not been provided an unobstructed course, without obstacle and providing for fair and equal racing conditions for all crews. The Tribunal therefore found that the K1 200m event held on 1 March 2012 did not constitute a selection race for the purpose of meeting the Olympic Nomination Criteria. Accordingly, the Tribunal found that Joel Simpson had not been afforded a reasonable opportunity to satisfy the Olympic Selection Criteria.

The Tribunal considered that procedural fairness requirements suggested that the Competition Committee should have considered the GPS data or, upon deciding not to consider it, provided Mr Simpson with an opportunity to address on that topic. The Tribunal considered that the GPS data was significant objective evidence that could and should have affected the decision-making process.

Under the Australian Competition Bylaw, the time limit for an appeal to the Jury is 60 minutes, shortened from the 30 days specified in the International Competition Rules. The Tribunal observed that natural justice could be seen to require the Competition Committee to ensure that a protesting athlete is appropriately put on notice of any right of appeal, particularly where there may be such limited time for the athlete to consider the available options and what evidence might be available for an appeal.

The Tribunal made clear in its reasons that the appeal was upheld on the basis that Joel Simpson was not given a fair, unobstructed course and that its subsequent remarks as to the conduct of the protest and any potential appeal were directed towards an improvement of the system for future events.

The Tribunal allowed Joel Simpson's appeal, and referred the nomination for the K1 200m back to Australian Canoeing Inc pursuant to clause 10.4 of the Olympic Selection Bylaw, with a recommendation that a further selection trial be held at the Duisburg World Cup event.

The grounds of appeal to the court

The Appellants' grounds of appeal asserted error on a point of law on the part of the Tribunal.

The grounds of appeal also asserted that the Appeals Tribunal was in breach of the rules of natural justice.

LAW

1. The principal ground relied upon by the Appellants in this arbitration is that the Tribunal erred in its interpretation of clause 11.5 of the Olympic Selection Bylaw. The Tribunal found that Joel Simpson's performance in Trial 1 was adversely affected by contact with weed, and that that involved a breach of the International Competition Rules, which required an **unobstructed course, without obstacle** and **providing for fair and equal racing conditions for all crews**. On that basis, the Tribunal found that Joel Simpson was not afforded a reasonable opportunity to meet the Olympic Nomination Criteria. The Tribunal therefore concluded that Trial 1 did not constitute a selection race for the purposes of meeting the Olympic Nomination Criteria.
2. The Appellants contend that, in substance, the Tribunal conducted a merits review of, or an appeal from, the Competition Committee's decision on Joel Simpson's protest, and that that involved an error of law in so far as the Tribunal concluded that it could look behind the results of the nomination races in order to determine whether Australian Canoeing Inc had afforded Mr Simpson a reasonable opportunity to meet the Olympic Nomination Criteria.
3. The regulatory framework summarised above indicates that there are two different systems of decision-making involved in selection for the Australian Olympic team. One system is concerned with the conduct of competition in selection races. The other system is concerned with the selection process itself. Each system has its own review and appeal procedures. The Tribunal is concerned with the selection process, not with the competition.
4. Thus, an athlete may compete in the selection races, conducted in accordance with the bylaws and rules described above. The athlete may protest to the Competition Committee about the result of a selection race, and may then appeal to the Jury, if dissatisfied with the decision of the Competition Committee. The decision of the Jury is final and binding so far as the conduct of the selection races is concerned. Secondly, there is a system of nomination and selection. The Australian Canoeing Inc selection panel nominates athletes. An athlete has a right of appeal to the Tribunal from a decision not to nominate that athlete, but on the limited grounds indicated above. There is a further right of appeal to the Court from the decision of the Tribunal, on the even more limited grounds indicated above.
5. That bifurcated structure mandates that decisions in relation to competition in the selection races are not to be the subject of appeal to, or review by, the Tribunal. There are several considerations that lead to that conclusion.
6. **First**, the selection process specifies objective criteria for selection. That is to say, the criterion for selection is winning two Trials conducted in accordance with the relevant competition rules. In that regard, it is significant that the Olympic Nomination Criteria provide that, for the purposes of determining whether an athlete has met the requirements of the Olympic Nomination Criteria, Australian Canoeing Inc must not have regard to any extenuating circumstances. There may be a requirement for the exercise of judgment where the number of qualifying athletes exceeds the quota of seven. In that case, Australian Canoeing Inc must make

a choice among certain kayaking events. However, the criterion for selection in the first instance is intentionally objective. It is inherent in such a system that the selectors are required to treat the results of the nomination selection competition as certain. It is not open to the selectors to revisit the results of a competition conducted in accordance with the rules. *A fortiori*, it is not open to the Tribunal to do so on appeal from a nomination decision.

7. **Secondly**, a decision made by the Competition Committee made during the conduct of a competition is only subject to an appeal to the Jury, the decision of which is final and binding. The International Competition Rules require an unobstructed course, without obstacle and providing for fair and equal racing conditions for all crews. Those matters are within the purview of the Competition Committee and the Jury. If the Competition Committee, in dealing with a protest, or the Jury, in dealing with an appeal from the decision of the Competition Committee, were to conclude that those requirements had not been satisfied, appropriate steps could be taken in the course of the competition itself. To allow such a matter to be revisited, on the merits, by the Australian Canoeing Inc selection panel, or by the Tribunal, would be a direct contradiction of the provision that the decision of the Jury, on hearing an appeal from a decision of the Competition Committee on a protest, is to be final and binding.
8. **Thirdly**, the competition regime applies to events other than Olympic selection trials. Specifically, Trial 2 in the present case was an event in the Oceania Championships. The participants in those events would not necessarily be under the jurisdiction of Australian Canoeing Inc. Accordingly, the rules under which such competitions were conducted should not be construed as giving rise to a review by the Tribunal, which is established by Australian Canoeing Inc and would have no jurisdiction in relation to participants who are not members of Australian Canoeing Inc.
9. **Fourthly**, the appeal to the Tribunal is regulated by the Olympic Selection Bylaw, which is applicable to all Olympic sports, and it must be construed in the light of that circumstance. In particular, the ground that an athlete was not afforded a reasonable opportunity by the relevant National Federation to satisfy the Olympic Nomination Criteria may well have much more extensive operation in some sports than in others. Where the nomination criteria are objective, as in the present case, the operation may be much more limited than in a sport, such as netball, soccer or hockey, where much more subjective selection criteria are employed. In such a case, a National Federation may fail to afford an athlete a reasonable opportunity to meet the relevant criteria if the athlete was not fielded for sufficient time in trials to be able to be assessed by the selectors. Under the criteria specified in the Olympic Nomination Criteria, however, there is no scope for such a complaint.
10. **Fifthly**, the certainty of a decision in a sporting contest can often be more important than its correctness. Thus, the review by external tribunals removed in time and place from the decision of judges, referees, umpires and other officials, who are responsible for applying the laws of the particular competition, will be permitted only in the case of bad faith, fraud or corruption. Judges, referees, umpires and other officials, who officiate in the conduct of a match or competition, are selected for their expertise. If a protest were to be upheld, it would be highly

desirable for a re-race to be conducted forthwith in the same conditions as the race that gave rise to the protest.

11. Joel Simpson contended that it had been common ground that the Tribunal could enquire into whether he had been impeded by weed in Trial 1 and could decide whether he had been afforded a reasonable opportunity to meet the Olympic Nomination Criteria on that basis. However, there is no basis for concluding that the parties agreed that the appeal to the Tribunal could have been conducted otherwise than under the applicable rules and bylaws. I accept, as Joel Simpson contended, that determining the scope of the review function of the Tribunal is an exercise in contractual construction. That is to say, it is a matter of determining the intentions of the parties by reference to the words used by them in their contract, being the various rules and bylaws that have been summarised above. That is a question of law.
12. The starting point is clause 11.5 of the Olympic Selection Bylaw, which sets out the grounds of appeal. That is the source of the review function of the Tribunal. Clause 11.5 does not, in its terms, limit the review function of the Tribunal to the review of race results by reason of bad faith, fraud or corruption. Clearly enough, the Tribunal was intended to be able to intervene in cases that did not involve bad faith, actual bias or fraud. It may be that the Tribunal may also enquire into the fairness of Nomination Criteria. However, there has been no suggestion that the Olympic Nomination Criteria were unfair. Rather, the contention is that there was unfairness in the conduct of Trial 1. Joel Simpson contended that, in the context of an appeal against non-nomination, issues relating to the fairness of races and racing conditions would lie at the heart of the Tribunal's role.
13. Thus, Joel Simpson pointed to the requirement that Tribunal must include a person with a thorough knowledge of the sport, who preferably has had recent international competition experience in the sport. Joel Simpson contends that that requirement would serve little purpose if the standard of review was to be at the level contended for by the Appellants. However, that requirement is not inconsistent with the notion that there are two independent regimes dealing with, on the one hand, the conduct of selection competitions, and on the other hand, the process of selection that is made on the basis of the results of the selection competitions. The requirement for members of the Tribunal to have a thorough knowledge of the sport with recent international competition experience will have particular relevance in relation to sports where the selection criteria are subjective, as opposed to the objective criteria applicable in the present circumstances.
14. Joel Simpson also contended that there are other indications in the Olympic Selection Bylaw suggesting that the Tribunal was intended to have jurisdiction to review the results of races and race conditions. Thus, an appeal must be brought within 48 hours of the athlete receiving written notification of non-nomination. That is significant to the extent that nomination to the Australian Olympic Committee must be made within five working days of the completion of the nomination trials. However, more significant is the shortness of the time for lodging a protest to the Competition Committee (20 minutes after publication of the results) and lodging an appeal to the Jury (60 minutes after notice of dismissal of the protest), indicating that a

protest and an appeal to the Jury must be dealt with in time to enable a re-run of a race to be conducted on the same day, in the same conditions.

15. Joel Simpson also drew attention to the fact that the Tribunal is not bound by the rules of evidence and is to conduct hearings with as little formality and technicality as possible, that hearings may occur by telephone or video conferencing, that parties are not entitled to be legally represented save with leave, which is to be given only in exceptional circumstances, and that an adjournment may be sought where a question of law arises. Finally, he pointed out that the Tribunal is to give its decision on any appeal as soon as practicable at the conclusion of, or after, the hearing. However, none of those requirements dictates that the function of the Tribunal extends to review of the results of selection races, in circumstances where a separate review procedure is laid down by the rules under which the selection races are conducted.
16. Next, Joel Simpson drew attention to the distinction between **field of play** decisions that are made in the actual flow of a game or match, where review of the decision would impede the conduct of the game or match, on the one hand, and decisions on a protest such as was involved in the present circumstances, on the other hand. Certainly, the field of play qualification will operate differently in different sports. It is not of as great significance in contests such as athletics, swimming and kayaking, for example, as it would be in relation to football, hockey, netball and the like. In sports such as athletics, swimming and kayaking, there is normally no call for a decision to be made by a referee, umpire or other official during the course of a race. Nevertheless, where a protest is available, the re-running of a race, whether it be athletics, swimming or kayaking, would ideally occur in the same conditions as the race that is being re-run.
17. The Tribunal held that Joel Simpson was not afforded a reasonable opportunity by Australian Canoeing Inc, as the National Federation, to satisfy the Olympic Nomination Criteria. However, so long as Joel Simpson was given the opportunity to compete in accordance with the Olympic Selection Criteria and in accordance with the International Competition Rules, he was afforded a reasonable opportunity to satisfy the Olympic Nomination Criteria. He had a right of protest, which he exercised. He also had a right of appeal to the Jury, which, for whatever reason, he did not exercise. There has been no suggestion that that process does not afford a reasonable opportunity to satisfy the Olympic Nomination Criteria.
18. The Tribunal was in error on a question of law in concluding that it was open to it to investigate the conduct of Trial 1 over and above the available processes of protest and appeal to the Jury. So long as the competition rules are fair, and there has been no suggestion that they are not, Joel Simpson has been afforded a reasonable opportunity to satisfy the Olympic Nomination Criteria. The Olympic Nomination Criteria involve trials in accordance with the Australian Competition Bylaw and the International Competition Rules. Notwithstanding that there may have been weed in Joel Simpson's lane, as found by the Tribunal, Joel Simpson was afforded the opportunity to protest. There is no suggestion that his protest was dealt with otherwise than in accordance with the applicable regulatory regime. He had the opportunity to appeal to the Jury, but he did not exercise that right. It is impossible to conjecture as to what might have

happened had he exercised that right. However, it was not open to the Tribunal to re-examine that matter.

19. So far as it is contended on behalf of Joel Simpson that he was not afforded a reasonable opportunity to satisfy the Olympic Nomination Criteria, because he was not personally informed of his rights to appeal to the Jury from the decision of the Competition Committee on his protest, there is no substance in the contention. It is not incumbent upon Australian Canoeing Inc to inform each competitor of the terms of the rules by which that competitor agreed to be bound. Further, Joel Simpson was represented by his Team Leader, Tahnee Norris, who was expressly informed of the right of appeal to the Jury. A decision was apparently made on his behalf, whether or not to his knowledge, not to take the matter to the Jury. Whether or not Joel Simpson has a cause for complaint against Tahnee Norris and Vince Fehervari is not to the point. Under the terms of rules by which Joel Simpson agreed to be bound, communications to his Team Leader must be taken to be communications with him.
20. In any event, it is clear from the terms of the reasons of the Tribunal that the basis of the Tribunal's decision was that Joel Simpson was not afforded a reasonable opportunity to satisfy the Olympic Nomination Criteria by reason of weed in his lane. There is no basis for concluding that Joel Simpson was not afforded a reasonable opportunity, within the meaning of the Olympic Selection Bylaw, simply because he was not personally informed of his right to appeal to the Jury from the decision of the Competition Committee.
21. Under the regime that applied to the selection trials, the Competition Committee and the Jury were ready to deal with Joel Simpson's protest and any appeal that might have been brought from the decision on the protest. Even if it be the case, as the Tribunal found, that the decision of the Competition Committee was wrong, there was no suggestion that the decision was unreasonable or unfair. In any event, the Jury was in place to correct any wrong decision if an appeal to the Jury had been brought.
22. The ground upon which the Tribunal was invited to intervene in the selection process was that the Competition Committee erred in failing to find that the course was unsuitable for competition and did not provide fair, equal and unobstructed racing conditions for all crews, because of the presence of weed in Joel Simpson's lane. That contention was accepted by the Tribunal. That constituted, in effect, a merits review of the decision of the Competition Committee. It was not open to the Tribunal to engage in a review of a decision of the Competition Committee, or of the Jury, if there had been an appeal to the Jury. The function of the Tribunal was to consider the decision of the selection panel. The selection panel was bound by the Olympic Nomination Criteria, such that the selection depended upon the result of the Trials. There has been no suggestion of bad faith, fraud, bias or corruption on the part of the Competition Committee.
23. It follows that the Tribunal exceeded its powers and acted *ultra vires* in upholding the appeal from the decision of the selection panel on the basis that Joel Simpson had not been afforded a reasonable opportunity to satisfy the Olympic Nomination Criteria, which was the only basis upon which it was invited to intervene. The decision of the Tribunal should therefore be set

aside. In the light of that conclusion, it is unnecessary to consider the alternative grounds of appeal based on error of law.

24. The grounds of appeal also asserted that there was a breach of the rules of natural justice in the conduct of the appeal by the Tribunal. It is unnecessary to decide that matter. However, it is appropriate to make some brief observations on that question.
25. Joel Simpson did not dispute that the Tribunal was required to comply with the rules of procedural fairness. However, it is necessary to consider the content of the obligation to afford natural justice and procedural fairness in the circumstances of the proceeding before the Tribunal. The content of the obligation depends on all of the circumstances of the particular proceeding. In particular, the content of the obligation must be determined in the light of the particular statutory framework under which the proceeding is conducted. The requirements of procedural fairness are flexible and must be moulded to the circumstances of the particular case.
26. The Olympic Selection Bylaw clearly contemplates that an Appeals Tribunal will operate quickly and relatively informally. Thus, it is required to conduct hearings with as little formality and technicality and with as much expedition as the proper consideration of the parties permits.
27. The Tribunal hearing was convened quickly. Thus the hearing occurred within three days of Joel Simpson's notice of his appeal. The content of the hearing requirement, and particularly the extent of the opportunity to read and respond to submissions made by other parties, was necessarily affected by the compressed timetable that was adopted. When assessing the content of procedural fairness, what is fair may depend partly upon what is practically possible. Thus, the Olympic Selection Bylaw provides in clause 11.3 that the Tribunal must, **so far as is practicable**, require that notice be given to interested persons. Clause 11.3 requires that interested parties be permitted to participate in a hearing and to make submissions.
28. The Appellants were notified of the hearing on 20 March 2012 and were provided with a copy of Joel Simpson's notice of appeal, which asserted that the ground of his appeal was denial of a fair opportunity for nomination. As I have said above, on 21 March 2012, the Appellants were invited by email to make submissions. While Joel Simpson's submissions were not received by the Appellants until shortly before the hearing, and, in some cases, during the hearing, the Appellants already had substantial material relating to the appeal by that time.
29. Importantly, Murray Stewart was granted leave to be represented by counsel, in circumstances where leave was to be granted only in exceptional circumstances. Murray Stewart's counsel participated in the hearing, and the Appellants were all invited to make oral submissions. The Appellants participated in the hearing either in person or by telephone.
30. No complaint was made by any of the Appellants at the hearing about the compressed timetable. No application for an adjournment or for additional time was made by any of the Appellants. Fairness is not an abstract concept, but is essentially practical. The concern of the law is to avoid practical injustice. None of the Appellants has asserted that he suffered any practical injustice as a result of the compressed timetable.

31. It has not been suggested that any of the Appellants had arguments available to him that were not advanced by counsel who appeared for Murray Stewart. The compressed timetable was adopted essentially for the benefit of the athletes who had been selected for nomination. In all of the circumstances, I would be disposed to conclude that there was no denial of procedural fairness on the part of the Tribunal. However, in the light of the conclusion that I have reached on the principal question of law, it is unnecessary to express a final view on that matter.

Conclusion

32. The decision of the Tribunal was in error on a question of law, in that it proceeded on an erroneous basis, namely, that the ground of appeal relied upon by Joel Simpson, that he was impeded in Trial 1 by weed, was a ground upon which the Tribunal could interfere with the decision of the selection panel. It was not open to the Tribunal to uphold Joel Simpson's appeal from the decision of the selection panel on the ground advanced by Joel Simpson. It follows that the appeal to the Court should be upheld.
33. There would be no utility in remitting the matter to the Tribunal for reconsideration. The only basis upon which the Tribunal was invited to intervene depended upon its review of the decision of the Competition Committee. No complaint was made about the conduct of the selection panel. It follows that the appropriate decision of this arbitration is that there be substituted for the decision of the Tribunal an order that the appeal to the Tribunal be dismissed.

The Court of Arbitration for Sport rules:

1. The appeal by Murray Stewart, Ken Wallace, David Smith, Jesse Phillips and Stephen Bird against the decision of the Australian Canoeing Inc Appeals Tribunal given on 23 and 29 March 2012 regarding the non-nomination of Joel Simpson to the Australian Olympic Committee for selection to the Australian team for 2012 Olympic Games be upheld.
2. The interim orders made by the Australian Canoeing Inc Appeals Tribunal on 23 March 2012 be set aside.
3. In lieu of the orders made by the Australian Canoeing Inc Appeals Tribunal, it be ordered that the appeal of Joel Simpson to the Australian Canoeing Inc Appeals Tribunal of 20 March 2012 be dismissed.