

**IN THE MATTER OF AN ARBITRATION
BEFORE THE
SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)**

BETWEEN

**NICOLE FORRESTER
("the Claimant")**

AND

**ATHLETICS CANADA
"the Respondent")**

**ARBITRATOR
JAMES W. HEDLEY**

APPEARING FOR THE CLAIMANT:

Nicole Forrester
John Barnet

APPEARANCES FOR THE RESPONDENT:

Rob Lonergan - Counsel
Scott MacDonald

1. These arbitration proceedings result from a team selection dispute. The Claimant, Nicole Forrester, was not chosen to compete on the Canadian Track and Field Team at the World Indoor Games in Qatar, scheduled for March 12th through March 14th, hence this appeal.

2. Ms. Forrester's Request and Notice of Appeal, a form prescribed by the Sport Dispute Resolution Centre of Canada Code (the "Code"), was completed and filed on March 4, 2010 and Athletics Canada filed its Answer to a Request, another prescribed form, on March 5, 2010. The parties had their first meeting for administrative purposes with SDRCC on March 5, 2010. I conducted a further preliminary meeting that evening and a resolution facilitation meeting was scheduled for Saturday, March 6, 2010. There were some further filings of a minor nature but by March 7, 2010 we were prepared to proceed on the understanding that time was very much of the essence, particularly in the sense that Ms. Forrester, if successful, would have to make immediate travel arrangements to join the rest of the Canadian team no later than March 8, 2010.

3. Despite the rush, and to the credit of the parties, by the time of our hearing all relevant facts were in evidence and the issues were well defined. We proceeded with a telephone conference hearing in the presence of the Claimant (without legal representation) and the Respondent (represented by Robert Lonergan). At the conclusion of the hearing I made an award which the parties agreed was deemed to have been communicated to them in accordance with the Code. I undertook to prepare written reasons within the fifteen day period stipulated in Paragraph 6.21 of the Code.

4. In summary, my award was to the effect that the Athletics Canada National Team Committee (NTC) was ordered to hear the Claimant's appeal, "for circumstances related

to athlete illness or injury” pursuant to Paragraph 2 Section 3.0 of the National Team Selection – Rules Book published by Athletics Canada. I was assured that Ms. Forrester’s appeal would be dealt with immediately and that the NTC could and would be convened for that purpose on a timely basis. As I prepare these written reasons, I have not been given any information relating specifically to Ms. Forrester’s Section 3 appeal, but I believe it was not successful. So, as anti-climatic as a written version of this award happens to be, my reasons for the award follow.

The Athlete

5. Nicole Forrester is an elite Canadian athlete. She is a six time Canadian high jump champion, and an Olympian. She has competed for her country on numerous occasions. She is Canada’s best female high jumper and is ranked second in North America. Her personal best in the high jump is 1.95 metres, a figure with some relevance to this proceeding.

6. She is also well educated and articulate, at present a Doctoral candidate.

7. She states that she has a passion about excellence and everything about her appears to support that statement. She apparently thrives on competition and the quest for improvement and, to these ends, has articulately stated her case that she should be included in the Canadian team of track and field athletes going to the World Indoor Games in Qatar. She states she is in the “best form ever”, confidently adding that, but for injuries which will be discussed further, she would have achieved the performance standard required for selection to the Qatar games, or higher. These games moreover are an integral part of her overall training plan.

The Selection Criteria

8. I turn now to the selection criteria prescribed by Athletics Canada as a prerequisite for inclusion on the Canadian team for the Qatar World Indoor Championships.

9. The selection criteria are performance standards and team objectives contained in a document published by Athletics Canada entitled 2010 IAAF World Indoor Championships Selection Criteria. Stated team objectives are:

- (a) to select the most competitive team available that is prepared to compete at its peak level at the World Indoor Championships with the goal of having 75% of athletes finish in the top eight;
- (b) to select athletes who have included the World Indoor Championships as part of their submitted 2010 annual training and competition plan.

10. For the high jump, the specific performance criteria are described in three possible scenarios:

- (a) One jump of 1.94 metres during the 2010 indoor season;
- (b) Top eight at 2009 World Championships or top eight at the 2008 Beijing Olympic Games and one indoor jump of 1.92 metres during the 2010 indoor season;
- (c) One jump of 1.92 metres in the 2009 outdoor season and one jump of 1.92 metres during the 2010 indoor season.

Ms. Forrester has achieved the indoor standard of 1.92, but that is not sufficient for scenario "a". She has not met the first elements of scenarios "b" or "c", despite having jumped the indoor "b" standard.

Appeal

11. Having failed to achieve the performance criteria for these games, Ms. Forrester turned to the appeal procedures available to her through Athletics Canada. I will not go into great detail about the specifics of her initial appeal, mainly because the grounds for her appeal have been adapted somewhat for present purposes, but she then considered herself aggrieved under four basic headings when she appealed to Athletics Canada on February 23, 2010:

- (i). injuries;
- (ii). technical circumstances – relating to the lack of progressions to the 1.94 metre height and lack of competitive options
- (iii). violation of Athletics Canada’s obligations – dealing mainly with length of notice regarding performance criteria;
- (iv). equity and access – mainly a gender equity issue.

12. The appeals process is found in Rule 140 of the Athletics Canada Rules and By-laws, the stated purpose of which is “to enable disputes with members and participants to be dealt with fairly, expeditiously and affordably, within Athletics Canada without recourse to external legal procedures,” whereby:

Any member of Athletics Canada who is affected by a decision of the Board of Directors, of any committee of the Board of Directors, or of any body or individual who has been delegated authority to make decisions on behalf of the Board of Directors, will have the right to appeal that decision, provided there are sufficient grounds for the appeal as set out in Section 5 of this Rule.

Section 5 of the Rule states as follows:

Grounds for Appeal

Not every decision may be appealed. Decisions may only be appealed, and appeals may only be heard, on procedural grounds. Procedural grounds are strictly limited to the Respondent:

- (i). making a decision for which it did not have authority or jurisdiction as set out in the governing documents;
- (ii). failing to follow procedures as laid out in the By-laws or approved policies of Athletics Canada;
- (iii). making a decision that was influenced by bias, where bias is defined as a lack of neutrality to such an extent that the decision maker is unable to consider other views or that the decision was influenced by factors unrelated to the merits of the decision;
- (iv). exercising its discretion for an improper purpose; or
- (v). making a decision that is grossly unreasonable or unfair.

13. Athletics Canada has also published the aforementioned “National Team Selection – Rules Book”. This is the document which describes the mandate of the Athletics Canada National Team Committee (“NTC”) to make athlete selections and to set selection criteria. In Section 3, it says that :

Appeals may be submitted for circumstances related to athlete illness or injury or other reasonable technical circumstance deemed appropriate by the NTC. The NTC will decide all appeals, bearing in mind the team objectives and high performance principles as specified in the Selection Criteria Document.

14. For reasons which are not entirely clear, Ms. Forrester’s appeal proceeded directly to a panel of three established under Rule 140 of the Athletics Canada Rules and By-laws to which I have referred. There was no appeal to the NTC, although two of the NTC members, namely Scott MacDonald (National Team Programs Director) and Alex Gardiner (Head Coach) obviously took part in the selection process. Mr. MacDonald, again I believe in his role as National Team Programs Director, provided information to the appeals panel, mainly in rebuttal to Ms. Forrester’s various points of appeal.

15. The Appeals Committee (and I will refer to the panel or committee as such), in recognition of its role as an appellate body with limitations on its decision making role, quite properly expressed a reluctance to exempt Ms. Forrester from established performance criteria. In doing so, the panel stated, “The panel does not have the authority to review or revise criteria or standards. These are set by Athletics Canada, a body that has the necessary expertise to do so.” As well, “In the absence of a provision of the selection rules that allows this panel to exempt an athlete from performance demands, we are reluctant to do so.”.(emphasis mine) and went on to conclude:

The panel is not willing to disturb the decision of Athletics Canada that Ms. Forrester has failed to achieve these high standards and has also failed to otherwise demonstrate that she is capable of a top eight result at the World Indoor Championships.

16. Ms. Forrester did not get the relief she sought from the Appeals Committee. In the Athletics Canada Rules and By-laws, the Appeals Committee’s decision is expressed to be final and binding, subject to the right of review pursuant to the rules of SCRCC. Ms. Forrester then availed herself of her right to an SDRCC review.

17. The arbitration general rules for SDRCC hearings are to be found in Article 6 of the Code and I set out two rules of interest in this matter from Article 6:

6.17 Scope of panel’s review.

The panel shall have full power to review the facts and the law. In particular, the panel may substitute its decision for

- (i). the decision that gave rise to the dispute...and may substitute such measures and grant such remedies or relief that the panel deems just and equitable in the circumstances.

6.7 Onus of Proof in Team Selection Disputes

Where an athlete is involved in a proceeding as a Claimant in a team selection dispute, the onus will be placed on the Respondent to demonstrate that the criteria were appropriately established and that the selection decision was made in accordance with such criteria. Once that has been established, the onus of proof shall shift to the Claimant to demonstrate that the Claimant should have

been selected in accordance with the approved criteria. Each onus shall be determined on a balance of probabilities.

Both parties were aware of and recognized the onus imposed on each of them and, as is to be expected, the parties had differing perspectives as to the advisability of this panel making decisions in substitution for those made by the Respondent.

18. As I have mentioned, Ms. Forrester is an extremely articulate person and exudes not only a passion for her sport, but an unwavering pride in her accomplishments in the past and potential for the future. Although self-represented, she pleaded her case very forcefully. There were many documents tendered to me prior to the hearing, but they were well organized and all served to assist in illustrating or establishing a relevant fact. The same can be said for the Respondent's submission and the related documentary foundation provided to me.

19. In the short period of time in which Ms. Forrester's appeal evolved from the initial Appeals Committee process to the SDRCC review/appeal, she had narrowed the grounds of her appeal for the most part to two grounds:

- (i). The injury considerations I raised were not given appropriate weight in the decision by Athletics Canada, nor were they treated appropriately by the internal appeal panel.
- (ii). Athletics Canada violated their contractual obligations as specified in the AAP document (which is the "Athlete Assistance Program Athlete Agreement").

20. For the purposes of this appeal the other two points of her previous appeal were touched upon, but effectively withdrawn from consideration.

21. I will deal with the grounds of Ms. Forrester's appeal in reverse order.

Contractual Obligations – Submissions

22. The reference to contractual obligations in the second ground of appeal is essentially a reference to the following paragraph of the Athlete Agreement:

1.0 Athletics Canada's Obligations

1.2 To publish selection criteria for all national teams at least three months before the selection for any particular team and at least six months before the selection of major games teams (e.g. Olympic, Paralympic, Commonwealth, Pan-American Games, Para-Pan-American Games and World Championships), provided AC has all the required information from the organizing committee or the multi-sport Canadian organization in charge.

23. The performance criteria for selection to the World Indoor team were published by Athletics Canada on December 2, 2009. The team was selected on March 1, 2010. That is a period of not quite three months.

24. Athletics Canada submitted to the Appeals Committee that three month's notice, and not six, was sufficient because the 2010 Indoor World Games are not *major games*. *Major games* is not a defined phrase to be found in a definition section in any of the rules manuals to which I was referred, or to which the appeal panel was referred. The appeal panel stated that it "is aware that the historic practice has been to not consider that the Indoor Worlds are major games." There is reference in the Athlete's Manual to Tier 1, Tier 2 and Tier 3 competitions, but not to major or minor games.

25. To that, Ms. Forrester makes a very practical response, "To deny that the World Indoor Championships are anything but a world championship would be contrary to the ordinary meaning of the words." It is noted further that the Pan-Am Games are listed under Tier 2 competitions, to which I have referred, but called major games in the AAP.

26. In her submission Ms. Forrester stated that the late publication, in December, 2009 made a “huge difference” to her. She submitted that, firstly, she was shocked and frustrated that the performance standard was set at 1.94 metres and, secondly, left with insufficient time to adapt her training plan to compensate for it. To worsen matters, Ms. Forrester recalled a conversation with Scott MacDonald in mid-November, 2009, in which Mr. MacDonald suggested that the applicable standard would be “IAAF” and that he “thought” it might be 1.92 metres.

27. Still, Athletics Canada maintains that the full six month notice period would have been unlikely to make the necessary difference. The Appeals Committee agreed and stated it was “doubtful that earlier notice would have had any impact on the Appellant’s preparation for this competition”:

The Appellant was undergoing rehabilitation for injury and likely would not have been in any position to be jumping standards before her rehabilitation was concluded. It is speculative to consider that earlier notice would have allowed the Appellant to have any different result.”

28. Ms. Forrester stated that, with proper notice, she could have made changes to her training and competition plan with an eye on 1.94 metres or, alternatively, focused during this time on rehabilitation.

Injury Exemption – Submissions

29. In Ms. Forrester’s opening statement, as previously mentioned, she asserted that “but for my injury I would have achieved the standard or higher.”

30. On June 5, 2009 Ms. Forrester suffered a serious sacro/iliac injury sustained during a competition in Greece. She was mainly in rehabilitation mode for six months following that injury and further sustained a strained muscle on December 16, 2009.

Her evidence is that her rehabilitation was complete six months after the June 5th sacro/iliac injury. However, she was involved in an automobile collision on January 19, 2010 and sustained further injuries as a result.

31. She continued to compete, but her progress was slower than it would have been resulting, she notes, "in three subsequent performances of 1.92 metres". She stated in her initial appeal that, "(t)he injury problems I have been dealing with over the last eight months have limited my ability to jump at my best. Despite these problems I was able to attain the IAAF standard of 1.92 metres and attain a world ranking of 13th for the World Indoor Championships." She notes that the 13th place world ranking would have been higher than most of the athletes chosen for the World Indoor Games team.

32. Athletics Canada, in its written submission in response to Ms. Forrester's of February 23, 2010, stated, in respect of the injury ground, as follows:

While Ms. Forrester presents several challenges explaining why she may not have achieved the required standard, this does not change the fact that she did not achieve the performance. Being close to standard or having setbacks that lead to not achieving the standard is not grounds to appeal a decision made based on the published criteria."

No reference is made here to the appeal section of the National Team Selection Rules Book.

33. Ms. Forrester, besides firmly believing in herself and in her abilities, makes her case for an exemption on the basis of injury by:

- (a) citing precedents among other injured Canadian athletes;
- (b) presenting medical evidence of the extent of her injuries and her progress in rehabilitating her injuries; and

(c) presenting her own performance history with comparative evidence that she could well have been in the top eight high jumpers in Qatar.

34. She cited several examples of injury exemptions given in the past by Athletics Canada. In particular, there is the case of Mark Boswell. The A standard for men's high jump in 2005 for the World Outdoor Championships was 2.30 metres. Mark Boswell, who had an ankle injury, was selected for this team despite not jumping 2.30 metres. He went on to finish fourth in Helsinki, with a jump of 2.27 metres, finishing the second highest on the Canadian National Team. However, Athletics Canada questioned the applicability of the Boswell precedent. At the internal appeal, Mr. MacDonald described Mr. Boswell's history of performing "on demand" at major competitions. According to the Appeals Committee, Mr. Boswell's reputation as an on demand performer "factored into the decision to put him into the World Championship team, despite his ankle injury." Mr. MacDonald also provided to the Appeals Committee a history of Ms. Forrester's performances at major competitions which contrasted with Boswell's. For example, in the words of the panel, "At the 2008 Olympics, Ms. Forrester qualified with a 1.95 metre jump to make the team, but jumped 1.87 metres in competition and did not advance." The appeal panel noted that, "It is for this reason that her circumstances can be easily distinguished from Mark Boswell's, as she has rarely followed through on promising qualifications to perform well, and on demand at big competitions." In response, Ms. Forrester indicated that, regarding the competitions to which Mr. MacDonald referred as being disappointments, she had sustained injuries. On the other hand, she cited cases in which she had jumped personal bests as evidence that, "(w)hen I am not hindered by injury I can perform at the big events."

35. This panel received copies of medical reports in support of her assertion that her rehabilitation efforts were succeeding. She presented a letter from Dr. John Vargo dated February 23, 2010 in which he stated that her injury of June, 2009 “hampered her ability to compete at Canadian Nationals” and that the second injury “also hampered the window of opportunity for her to train and as such her training was reduced, although she feels that at this time she has returned to form and is able to compete.”

36. Dr. Lawrence Bell on February 24, 2010 provided a longer report. In summary, he states:

Ms. Forrester has recovered from her injuries and has performed at a level that does not necessarily reflect her true ability to attain a standard mark of 1.94 metres...the time away from training (four weeks) has taken away from Ms. Forrester’s ability to reach the A standard in the allotted time...Ms. Forrester is deserving of consideration for an exemption on the grounds of her injuries derailing her abilities to train and the proximity of recent results (1.92 metres) to the A standard (1.94 metres).

He states that she is “healthy going into March and the World Indoor Championships.”

This implies that she is ready to do the 1.94 metre standard.

37. In the final analysis Ms. Forrester states that she would have been ready for a world class performance at the Qatar games. But for having been set back by injury, she would have attained the performance standard.

38. Why then did Athletics Canada not consider the discretion available to NTC? At the SDRCC hearing Athletics Canada conceded that the Claimant’s right to an appeal to NTC was the victim of time constraints, but suggested that somehow the discretion on the part of Athletics Canada to consider injury circumstances had been exercised – just not exercised in Ms. Forrester’s favour. I repeat, though, that Athletics Canada concedes there was no formal appeal made to NTC.

Contractual Obligations – Analysis

39. The parties submitted for my consideration a number of arbitral orders and awards made by SDRCC arbitrators. Some were carding appeals, but nonetheless applicable, at least in spirit, to the present team selection appeal for various reasons. The precedents contained often-quoted and often-applied statements concerning the role of an arbitrator in controversies such as the one between Ms. Forrester and Athletics Canada. So, I will refer to the precedents by quoting from them liberally as I express my reasons for this decision on the contractual violation ground.

40. A national sport organization owes duties of care to its constituent athletes. For the sake of Ms. Forrester's argument, I will refer to such duties of care as contractual duties and a breach of a duty as a contractual breach. An example of the contractual duty is the obligation to provide proper notice of such things as performance criteria for team selection.

41. On the subject of the duty to give notice, I am not assisted greatly by the documents tendered and described earlier on the subject of major/minor games and the ultimate issue of six month's notice versus three month's. I would observe, however, that the rules distinguishing between six month's notice and three month's were made for a purpose and, in my view, they should be applied for the same purpose, which I would think is to give high performance athletes adequate notice to adapt their training routines for competitions.

42. I expect that Athletics Canada will expend some effort toward tightening up its standards on this particular issue.

43. For present purposes, the complaint made by Ms. Forrester regarding notice does fall within Rule 140 – Grounds for Appeal, “Failing to Follow Procedures as Laid Out in the By-laws or Approved Policies of Athletics Canada”. However, in my opinion, in order for her to succeed there must be a significant consequence to the failure to follow procedures, or breach, and there must be a remedy available to her.

44. In Ms. Forrester’s submission, there is a “huge difference” between six months’ notice and three months’. She gave examples of ways in which she could have changed her training routine from September, 2009 on with a view to achieving the 1.94 metres standard. Athletics Canada responds by noting that she did not enquire in or around September about the performance criteria. Ms. Forrester’s rebuttal at this panel’s hearing was that she had a personal medical issue in September of 2009 and, as a result, the performance criteria would have been the last thing on her mind.

45. Whatever the circumstances, there is too much uncertainty surrounding the consequences of the notice issue for me to find that, on a balance of probabilities, Ms. Forrester could have met the standard had she received three month’s more notice. Thus, I am unable to find a significant consequence to whatever breach may have occurred.

46. That aside, another question to be asked is whether the error complained of, if found to be a breach of Athletics Canada’s contractual obligations, constituted a material breach of the sport organization’s obligations. Was it sufficient to vitiate or cancel the performance criteria set by Athletics Canada? Cancellation of the performance criteria is the remedy sought by Ms. Forrester and, given the fact that there is no time to be granted an extension for want of notice, it is the only practical remedy

available. I would either have to substitute my own version of the applicable performance criteria or require Athletics Canada to reconsider the decision in the absence of the performance criteria.

47. In this regard, previous SDRCC decisions submitted by the parties are useful.

48. Ms. Forrester referred me to the case of *Judith Island/Dax Adam v. Equine Canada*, a case decided by Arbitrator John Sanderson, Q.C. in 2004. In that case, Equine Canada had made its decision based in large measure on an addendum to “Schedule B” contained in its selection documentation. The addendum had been issued a mere four days prior to team selections being announced. In this case, the complaints were upheld and the arbitrator directed the selection committee to review the decision without regard to the offending addendum.

49. Arbitrator Sanderson said in his written reasons:

Absent the issuance of the addendum to Schedule B, I would not have interfered in the selection process as there would not have been a proper basis for arbitral intervention. It is the duty and responsibility of the selection committee to decide who is to be nominated to be named to the team. Only if the selection process is conducted in an unfair manner, or the decision was made arbitrarily, discriminatorily or in bad faith, should an arbitrator set aside the committee’s decision.

Arbitrator Sanderson reached the conclusion that the process had been flawed and stated that the issuance of the addendum “was an act which cast doubt on the integrity and credibility of the selection process.” He voided the addendum and directed the selection committee to make its decision without it.

50. Are the facts of the *Island/Adam* case similar to the present one? In my view, the main distinction is the late date upon which notice was given to the athletes. In my opinion, the present case more accurately is a case of procedural uncertainty which

may, or may not, have had an effect on Ms. Forrester's ability to meet the performance standard in play.

51. In the present case, I do not find that the breach complained of by Ms. Forrester was "an act which cast doubt upon the integrity and credibility of the selection process", as found by Arbitrator Sanderson in the *Island/Adam* case.

52. I find the cases cited by Athletics Canada to be more on point regarding the appropriateness of waiving the criteria and/or substituting my own.

53. As Arbitrator Richard Pound, Q.C. pointed out in the decision *Palmer v. Athletics Canada* (SDRCC 08-0080, Pound, July 2, 2008), arbitrators "will be willing to do so (and are required to do) only when it has been shown to their satisfaction that the impugned decision has been so tainted or is so manifestly wrong that it would be unjust to let it stand."

54. In other words, there must be an extremely compelling case made in order that the results of the team selection process can be interfered with, even if an irregularity appears in the process, which may have had some bearing on the ultimate fairness of how the criteria are applied. As stated by Arbitrator Michel Picher in *Jeffrey Adams v. Athletics Canada* (SDRCC 09-0098, Picher, January 28, 2009):

It is true that the remedial jurisdiction of SDRCC arbitrators is broadly cast, as it must be, as reflected in the language of Article 6.17 of the Canadian Sport Dispute Resolution Code. However, the fact that the Code grants to the panel the authority to substitute its decision for the decision which gives rise to a dispute should not be misconstrued as a licence to impose on the world of Canadian sport what would be tantamount to a rule of NSO management by arbitrators.

55. In the present case, I choose not to rule on whether procedure has been violated. I think that a good case has been made that it has, but in light of all the facts, the result is not so badly tainted as to compel me to act on it in the manner preferred by Ms. Forrester, which is to reconstruct the performance criteria.

Injury Exemption – Analysis

56. I will deal with the request for an injury exemption by referring again to the decision of the Appeals Committee

57. First, in the summary decision (not the formal written reasons):

While the panel feels compassion for Ms. Forrester in terms of her injury in the 2009 season and her re-injury following a recent car accident this is not a reason to uphold the appeal. Ms. Forrester states that, but for the injury and re-injury she may have achieved the standard, but the fact remains that she did not achieve the standard.” Many appeals are brought using the argument that in different circumstances a different result might have been achieved, but this is not sufficient to uphold an appeal of a decision making process that is driven by the achievement of objective, performance based standards. (emphasis mine)

58. In the written reasons, the panel says: “In the absence of a provision in the selection rules that allows this panel to exempt an athlete from performance demands, we are reluctant to do so (emphasis mine). Then:

the panel is not willing to disturb the decision of Athletics Canada that Ms. Forrester has failed to achieve these high standards, and has also failed to otherwise demonstrate that she is capable of a top eight result at the World Indoor Championships.

59. What I observe is deferential language being used by an appellate body in respect of an adjudicative process which never took place.

60. It appears that significant reliance was placed on Mr. MacDonald’s testimony in which he doubted the applicability of the Boswell precedent, apparently gave evidence

in praise of Mr. Boswell and the opposite for Ms. Forrester. He apparently expressed the opinion that Ms. Forrester was not likely to achieve the top eight standard sought by Athletics Canada. The essential difficulty there is that Mr. MacDonald was stating his opinions in his role as Respondent. In effect, he was Ms. Forrester's adversary but, in his defense, he was placed in that role. If he were assuming his role as a member of the NTC, his thought process might lean more toward judiciousness than contrariness. Perhaps, in that context, his thinking relative to the Boswell/Forrester example would be altered and he might attribute more weight to it in favour of Ms. Forrester.

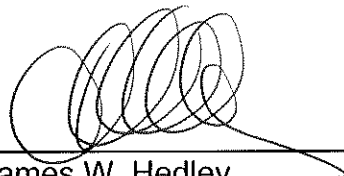
61. In my view, Ms. Forrester had made a good *prima facie* case in the present appeal for an injury exemption, but it seems her right to appeal at first instance to NTC fell by the boards for reasons which are no longer relevant. Her *prima facie* case took the form of her own forceful testimony, medical and statistical evidence and precedent on the same point. However, I was relieved of the necessity of deciding whether or not I could or would fill in by making a decision, where none had been made by Athletics Canada, when I was assured that NTC could convene on a timely basis and reach a conclusion in time for Ms. Forrester to travel to Qatar, if need be.

62. For NTC to hear the appeal is, of course, the preferred course of action. These decisions should be made by experts in the field, not by sport arbitrators and, as I stated to the parties at the conclusion of the hearing, Ms. Forrester's submissions on the injury exemption appeal were fully evolved and well organized. I have every confidence that

both parties were prepared to deal quickly but effectively with the merits of her claim for an injury exemption.

63. I again thank the parties for the care with which they prepared for this panel's hearing, briefing this Arbitrator and stating their respective positions.

Dated at Winnipeg, Manitoba this 18th day of March, 2010.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

James W. Hedley
Sole Arbitrator