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2016 is, as I'm sure all of us would know, an Olympic year. Nothing focuses attention on Olympic games like the national swimming championship and Olympic selection trials.

Whilst there is some discretion with selection, the way to guarantee selection in the Olympic swimming team is to come first or second in your event and swim faster than the qualifying time. The selections have certain other discretions but that's how you guarantee selection in the team.

Selections in the Olympic team are a little different to most national teams. Sports nominate athletes to the AOC and the AOC selects the team. Precedent would suggest that the AOC selects the athletes nominated.

Pursuant to the agreement between the AOC and the Sports, athletes are able to appeal their non-selection. You don't see that in other teams, such as the Australian Cricket team, 7's Rugby team, Davis Cup team, but you do see it for the Olympics. Indeed, even sports that don't normally have an appeals process but are Olympic sports (such as Rugby and Tennis) have an appeals process for the Olympics.

Swimming in many respects is fortunate because it has found a highly effective methodology. In many other sports, and particularly team sports, it is not possible to have a simple selection policy, as in swimming.

All sports that are Olympic sports must have team selection policies and the policies must contain the right of appeal.

Where the appeal relates to whether or not someone has met a qualifying standard, that is quite straightforward. But when someone wants to say that in for example a Softball, Kayaking or Rowing team that they should be selected ahead of someone else, it becomes very difficult.

It may be necessary for the athlete to nominate the person who they should replace on the team, which naturally can lead to some fairly significant issues between these athletes and indeed, the athlete who is being appealed against has the right to make their own

submissions in relation to the appeal. Where a decision is discretionary however, it is nearly impossible to overturn the selection.

To succeed you need to prove that a reasonable person could not have come to that decision. As you can anticipate with subjective determinations as to the value of a person to a team, it is nearly impossible to meet that test.

Coming up to the next Olympics we will see selection appeals (it has already started) and if history repeats we will see the vast majority of these fail. Determining a selection appeal is not about fairness or entitlement or reward, it is about complying with the selection policy.

I won't be acting for athletes in conducting appeals in the selection where there is any discretion, because in my experience these are nearly impossible, if not impossible, to win.

Understandably athletes are extremely disappointed when their life's ambition has not been realised and they have not been selected in the Australian team for the Olympics. I have found that conducting an appeal simply perpetuates the athletes faint hope of being selected, which I've seen in most cases is met with further disappointment.

My advice to athletes is that if they are not picked in the team where discretion applies the answer, as difficult as it may be, is to accept the decision and either get back to training or get on with life.



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