

A Review of the Sports Tribunal of New Zealand

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November 2015**



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1. EXECUTIVE SUMMARY

- 1.1 The Sports Tribunal of New Zealand (the “Tribunal”) continues to provide an excellent service to the New Zealand sport sector. This can be attributed, at least in part, to the quality of the Tribunal members themselves. The Chair and Deputy Chairs are lawyers of exceptional skill with strong sporting connections, while the other tribunal members have a strong mix of sport, legal, medical and general business acumen. Previous members of the Tribunal were of a similar calibre.
- 1.2 The Tribunal’s jurisdiction is appropriate, it has a well developed set of procedural rules and has developed a body of case law that is reasoned and consistent with its statutory objectives. The Tribunal’s ability to deal with matters quickly and pragmatically and to issue written decisions (often within very short time frames) in a concise and well reasoned manner has been of great service to New Zealand sport.
- 1.3 Indeed anecdotally it appears the Sports Tribunal model as used in New Zealand is much admired internationally and is held up by other jurisdictions as an example to look to emulate.
- 1.4 However, that is not to say that the Tribunal is meeting all of the dispute resolution needs of the sports sector. There are growing concerns within the sector that too often the wrong types of dispute are being litigated before the Tribunal. Furthermore, the cost of litigation has had an enormous impact on a number of participants.
- 1.5 A large number of the cases that have come before the Tribunal (excluding anti-doping proceedings) appear to have arisen through poor communication and/or clashes of personality. These same cases have also often involved alleged non compliance with highly prescriptive rules and policies which volunteer officials have failed, usually quite inadvertently, to comply with. Many of these cases have resulted in protracted and acrimonious litigation at very significant cost to parties with limited financial resources.
- 1.6 In the majority of such cases, the parties have proceeded to a defended hearing in the Tribunal without having first attempted any form of alternative dispute resolution (ADR) such as mediation. In the author’s view, the lack of promotion of mediation, or any similar form of ADR, is a substantial gap in the current dispute resolution needs of New Zealand sport.
- 1.7 There are many reasons why mediation should be promoted more heavily in the sport sector. These include that mediation gives the parties the opportunity to genuinely communicate and listen to each others’



perspectives; to look at solutions beyond “win or lose”; to reach outcomes that can be kept private and out of the public arena; and crucially the chances of the parties leaving a mediation with the relationship repaired are significantly higher in mediation than at the end of a defended hearing. In situations where the athlete and NSO have an ongoing relationship, this can be crucial.

- 1.8 The time is right in the author’s view to establish a Sports Mediation Service (SMS). This should consist of a panel of skilled, trained mediators who could be called on as needed to mediate cases before the Tribunal. The mediators should have empathy with and knowledge of the world of sport but their primary skill should be as mediators.
- 1.9 While the SMS could potentially be administered by the Tribunal Registrar, it should operate quite independently from the Tribunal. The focus (and skill set) of the SMS needs to be on helping the parties reach their own solutions. The focus of the Tribunal should be to preside over defended hearings and to issue legally binding decisions. The Tribunal should not provide mediation services itself other than on those occasions where, during the course of a hearing, the Tribunal considers the parties would benefit from mediation.
- 1.10 While not all cases before the Tribunal are suitable for mediation, the author would like to see the Tribunal adopt an approach in which it has a prima facie expectation that parties to all disputes before it (excluding anti-doping proceedings) will go to mediation unless there are good reasons for them not to. Good reasons may include a lack of time to mediate or the involvement of multiple parties making mediation impractical. However the presumption should be to mediate if possible. Ideally, the Tribunal’s rules should be amended to reflect this.
- 1.11 There is however a broader mediation need within the sport sector. Many of those interviewed spoke of the highly competitive nature of our sporting environment and the significant amount of conflict which NSOs, in particular, struggle to deal with on a day to day basis. This can include, for example, conflict between NSOs and their regions, conflicts between coaches and athletes, between NSO, athletes and their representatives, personality clashes within the Board, disputes over awards and prizes, and athlete contract disputes, to name just a few.
- 1.12 At present, these conflicts typically “simmer away” within a sport often remaining unresolved and causing deep resentment. Occasionally they escalate into formal legal proceedings. Again, few appear to turn to mediation or other forms of ADR to try to resolve such conflict.



- 1.13 For these reasons, the author believes the SMS should be available to sports on a broader level than purely for disputes that fall within the jurisdiction of the Sports Tribunal. In essence, the parties to any sporting dispute at a national level should have the ability to access this service by mutual agreement.
- 1.14 The SMS will need to be flexible in terms of how it operates. While in some cases, the need may be for a formal mediation, in other cases a facilitated discussion may be more appropriate.
- 1.15 Funding and resourcing an SMS will require further investigation and scoping by Sport NZ. The barriers for entry (particularly the cost of the mediator) will have to be kept low to be successful. Initially, the sport sector will also need to be actively encouraged to use the service and Sport NZ will need to be that “champion”. However, if established and resourced correctly, the SMS should provide significant value to New Zealand sport. It is worth noting that there was overwhelming support from almost every person interviewed for the creation of some form of dedicated mediation service for sport.
- 1.16 As noted earlier, some cases will not be suitable for ADR. This includes most, if not all, anti-doping proceedings.
- 1.17 However, for those cases that do result in formal Tribunal hearings, the single biggest concern raised by the sport sector was the escalating cost of litigation. The author was advised on a number of occasions that parties to hearings before the Tribunal are typically incurring legal costs for a one day hearing of anything between \$10,000 to \$30,000 (and far more for protracted cases). For both an athlete and an NSO, that is a huge use of scarce resources.
- 1.18 Some NSOs are so concerned about these costs, they have either changed their rules, or are contemplating making changes, particularly in terms of selection, to make sure athletes first have to pursue further internal avenues of appeal before going to the Tribunal.
- 1.19 The Tribunal operates in a difficult environment where it is endeavouring to deal with cases as expeditiously as possible, but where the issues can be complex and significant. Lawyers too, can be quick to challenge the Tribunal’s processes. Perhaps inevitably, some parts of the sector argue the Tribunal operates with too much “informality” and is too quick to adopt an equity or fairness based approach, particularly for athletes. Conversely though, others submitted it is too much like a court and requires excessive formality.



- 1.20 In the author's view, the Tribunal largely gets this difficult balance correct. However, there does appear to be some scope for the Tribunal, with the co-operation of the parties and their counsel, to more consciously promote options to keep the costs of litigation under control, without impinging on the fairness of the process.
- 1.21 While litigation is expensive, there may well be scope for the Tribunal to promote (usually at the initial pre trial conference stage) other ways to reach a satisfactory outcome without always proceeding to a fully defended hearing.
- 1.22 These include offering the parties the option of a decision on the papers; offering the option of a non-binding opinion (or neutral evaluation); greater use of video conferencing as an alternative to face to face hearings; encouraging the parties to produce an agreed statement of facts if possible; and (especially in some anti-doping cases) encouraging counsel to explore whether a joint view on the correct sanction is possible.
- 1.23 None of the options noted above are a panacea to the escalating costs of litigation in sport. Each option would also require significant consultation with the Tribunal Chair, potentially in conjunction with experienced lawyers who have appeared before the Tribunal, before determining how far these options can be promoted. However, ultimately the Tribunal was established to meet the needs of the sports sector. The reality is that as sport becomes increasingly professional and commercial, one can expect to see more disputes, particularly in the area of selection. In an environment where funding will always be limited, New Zealand needs a sport dispute resolution system which does its utmost, within reason, to keep the costs of litigation to a minimum. Few could argue that it would be far better use of scarce resources if they were spent promoting sport and winning medals and competitions, than on litigation.
- 1.24 In terms of selection disputes, the number and intensity of these challenges appears to be increasing. In many instances, cases turn on the relevance or otherwise of a breach of a selection policy or guideline. There is some uncertainty in the sector about the affect of such a breach. Consideration should be given to amending the Tribunal rules to clarify that the Tribunal has discretion to find that if a breach of any selection criteria has occurred but has had no substantive effect on the selection decision, then the selection (or non-selection) can stand.
- 1.25 At an administrative level, with the loss of its very experienced Registrar, care will be needed to ensure that the Tribunal remains able to continue to deliver such a timely and efficient service.



- 1.26 There also appears to be scope for the Tribunal to have a greater educational role in the sports sector, and to work more closely with Sport NZ in promulgating its decisions and the learnings from those decisions. Too often, cases come before the Tribunal where the participants appear to have not taken on board learnings from earlier decisions. Sport NZ and the Tribunal have operated quite separately since the Tribunal's inception and there is scope going forward for a greater level of co-operation.
- 1.27 The Tribunal should also be given every assistance to ensure its members (particularly those newly appointed) are brought up to speed with developments in sports law especially the WADA Code, the SADR, and key Court of Arbitration for Sport (CAS) decisions. Most of the Tribunal members have busy and successful full time careers, the area of law they are presiding over is dynamic and changing rapidly, and resources should be allocated to ensure they are kept abreast with developments. Currently, Tribunal members receive little, if any, training save for annual briefings from DFSNZ.
- 1.28 There is also an apparent absence of quality legal education for solicitors practicing in this area (particularly in relation to anti-doping law). Sport NZ should consider working with DFSNZ, the Tribunal, and agencies such as the New Zealand Law Society and ANZSLA to try to ensure solicitors who take on this type of work, have a solid understanding of the area before they do so.
- 1.29 Finally, it is recommended that Sport NZ open discussions with those NSOs which heavily limit or exclude the Sport Tribunal from its dispute resolution processes, to explore their willingness to adapt their rules to place greater jurisdiction in the hands of the Sports Tribunal. This would include three of our largest NSOs, New Zealand Rugby, Cricket and Football.
- 1.30 While each sport should be entirely free to decide whether or not to utilise the services of the Tribunal, in the author's view, better and more consistent justice is likely to be provided by a Tribunal which is totally independent, sits regularly, and has developed its own jurisprudence as compared to an ad hoc appeal committee which is selected by the sport, occasionally brought together and which often has to deal with important and quite complex cases. This is particularly so in the case of anti-doping proceedings. Initial discussions with each of these NSOs indicated a willingness to open such discussions.



2. INTRODUCTION

- 2.1 The Sports Tribunal of New Zealand was established in 2003 by the Board of Sport and Recreation New Zealand (now Sport NZ) under section 8(i) of the Sport and Recreation New Zealand Act 2002.
- 2.2 Originally known as the Sports Disputes Tribunal of New Zealand, the Tribunal adopted its current name pursuant to section 29 of the Sports Anti-Doping Act 2006 (the Act).
- 2.3 The statutory purpose of the Act is to give effect to the World Anti-Doping Code in order to achieve that Code's purpose and, amongst other things, to "continue the Tribunal as an independent body charged with implementing the Code in New Zealand and hearing, considering and determining other sports related matters" (section 3(c)).
- 2.4 The Tribunal's functions are set out in more detail in section 38 of the Act. Essentially, its role is to:
- 2.4.1 Do all things necessary to comply with and implement "the rules" (being those rules of Drug Free Sport NZ (DFS NZ) which implement the WADA Code – currently the Sports Anti Doping Rules (SADR) 2012);
 - 2.4.2 Subject to any other enactment, determine sports related disputes if the parties to the disputes agree in writing to refer the dispute to the Tribunal and the Tribunal agrees in its sole discretion to hear and determine the dispute;
 - 2.4.3 Subject to any other enactment, hear an appeal against a decision of a national sporting organisation (NSO) or the New Zealand Olympic Committee (NZOC) if the constitution, rules or regulations of that body specifically provide for such an appeal;
 - 2.4.4 Consider any matter referred to it by the Board of Sport NZ;
 - 2.4.5 Generally to take all steps necessary or desirable to achieve the purposes of the Act; and
 - 2.4.6 Exercise any other functions, powers and duties conferred on the Tribunal by an enactment or by the Minister of Sport .
- 2.5 The Act also provides at section 39 that the Tribunal can determine its own practices and procedures, providing these comply with SADR. To that end, the Tribunal operates pursuant to a detailed set of its own rules most



recently promulgated on 6 March 2012 (the Rules of the Sports Tribunal). These rules provide most of the detail on how the Tribunal operates in practice.

2.6 However neither the Act nor the Tribunal's own rules outline to any particular extent, what the policy intent was for the creation of a specialist sports tribunal. This policy intent can instead be found in certain reports that preceded the creation of the Tribunal.

2.7 The Sport, Fitness and Leisure Ministerial Task Force Report (commonly known as the "Graham Report") published in 2001 recommended the creation of a sports disputes tribunal with "*a primary focus on national sports*" to, *inter alia*:

- Assist NCOs avoid lengthy and costly legal battles;
- Ensure quality and consistent decision making for athletes;
- Add credibility to elite sport in New Zealand; and
- Provide for appeals to the Court of Arbitration for Sport.

2.8 Well known sports lawyer Maria Clarke was then commissioned to further assess the needs of the sport sector in this area. Ms Clarke concluded in her report (entitled a "Review into the establishment of a Sports Disputes Tribunal in New Zealand") that a specialist body was indeed needed to resolve sports related disputes. She argued such a body would:

"...enhance the credibility of sport in New Zealand and provide a uniform, integrated system for dealing with disputes"

2.9 The Tribunal was established following these two reports and with the specified policy objectives in mind. This is reflected also in the "Mission Statement" which the Sports Tribunal itself adopted, namely:

"To ensure that national sports organisations, athletes and other parties to a sports dispute have access to a fair, objective and just means of resolving sports disputes within the Tribunal's jurisdiction that is also affordable, timely and efficient."

2.10 The role of Sports Tribunal was last reviewed in May 2009 by the consultancy firm, Martin Jenkins. That review looked at the dispute resolution needs of the sport and recreation sector as a whole as well as the role played by the Sports Tribunal¹.

¹ Dispute Resolution Needs in the Sport and Recreation Sector and the Role of the Sports Tribunal. Martin Jenkins, May 2009.



- 2.11 In 2015, Sport NZ, in consultation with the Minister of Sport and the Tribunal Chair, determined that a further review was appropriate. The terms of reference (TOR) for this review are set out in Schedule A.
- 2.12 The rationale for this review, as noted in the TOR, is that while there are no perceived issues with the current operation of the Tribunal and it continues to operate *“effectively and is well utilised”*, the sports sector has changed significantly since the creation of the Tribunal, particularly in the professional sporting environment, with increasing complexity and costs as well as increased commercialisation.
- 2.13 The purpose of the review is to ensure that in the face of this changing sporting environment, the Tribunal continues to be *“effective, efficient, accessible, relevant and respected now and into the future”*.
- 2.14 The review is to also assess how *“fit for purpose”* the Tribunal is for meeting the current and potential future dispute resolution needs of the sport and recreation sector.
- 2.15 By way of disclosure, the author notes he is a current Director of New Zealand Cricket Inc, a former Director of Sport NZ and High Performance Sport NZ (HPSNZ), former Chair of Netball New Zealand, and is a partner of SBM Legal (which has advised both NSOs and elite athletes from time to time). The author has also appeared before the Tribunal as counsel in a small number of cases.

3. METHODOLOGY

- 3.1 Interviews were conducted in person or by conference call with a wide cross section of people involved in sport within New Zealand.
- 3.2 In most cases, a standard set of opening questions were asked, albeit with differences between the questions put to Tribunal members and members of the wider sports sector. A list of those questions is set out at Schedules B and C.
- 3.3 A list of those interviewed is set out in Schedule D. Those interviewed include Tribunal members, sports lawyers, representatives of Sport NZ, HPSNZ, NZOC, NSOs, athletes, and a parent of an athlete who had represented their daughter in a case before the Tribunal.
- 3.4 Inevitably, there will be others who were not interviewed who may have been able to make a valuable contribution to this review of this type. It was simply not possible to identify and interview all such people.



- 3.5 However, in order to ensure a wide cross section of interested parties could comment, Sport NZ invited all NSOs to make their own submissions and a small number elected to do so.
- 3.6 In addition, the Secretary of the Australia New Zealand Sports Lawyers Association (ANZSLA) was encouraged to invite sports lawyers who were not interviewed to make submissions if they so wished.
- 3.7 In short, the author is confident the views of a wide cross section of the New Zealand sport sector were obtained.
- 3.8 In terms of research, the author acknowledges the excellent work contained in the Martin Jenkins review, particularly the research undertaken into the approaches of other countries when resolving sports disputes. Sport NZ has updated that research in the tables set out in Schedule E while also including the additional jurisdiction of Germany. Research into the Canadian model has been of particular help in developing this report.

4. FINDINGS

The Changing Face of Sport

- 4.1 As noted earlier, the rationale for this review as set out in the TOR is that the sports sector in New Zealand has changed significantly since the creation of the Tribunal in 2003. Our sporting environment is perceived to be increasingly complex and more commercialised. The importance of high performance sport is seen to be increasing as is the funding of sport. With such changes, the rationale is that the potential for disputes in the sporting sector is invariably that much higher.
- 4.2 In the author's view, these perceptions are correct. According to leading business consultants, AT Kearney², today's global sports industry is worth between €350 billion and €450 billion. The same research suggests the global sports industry is growing faster than the gross domestic product rates of most countries and that the industry has significant growth prospects for the future.
- 4.3 Much of this growth has been led by the sale of broadcasting and media rights. Deloitte³ predicted last year that the value of premium sport broadcasting rights would increase in 2014 to USD24.2 billion, a 14% lift in one year. In recent times, massive multi billion dollar broadcasting agreements have been negotiated by the four main professional sports in North America and also for the major European football leagues.

² AT Kearney, "The Sports Market" www.atkearney.com

³ Deloitte "Broadcast Sports rights" www2.deloitte.com



- 4.4 Closer to home, this year the AFL announced a new six year AUD2.508 billion deal for six years while the broadcasting rights for the Indian Premier League were sold for \$2.184 billion⁴.
- 4.5 In New Zealand, using information from Statistics New Zealand National Accounts (Industry Benchmarks) and incorporating updated data from the 2013 Census and the 2013/14 Active New Zealand survey, the economic value of sport for the year ended March 2013 was recently valued by Sport NZ as \$4.959B or 2.3% of GDP. This compares to \$4.3B / 2.2% GDP for the 2008/09 year⁵.
- 4.6 The growth in the New Zealand sports sector is also well illustrated through increases in Government funding for sport. In 2012/13, HPSNZ invested \$29.9m directly in NSOs for their high performance programmes and \$48.1m in the total sector for high performance outcomes. The following year, that increased to \$34.1m (\$52.2m total) while the investment increased again to \$34.2m (\$53.2m total) in the 2014/15 year⁶.
- 4.7 Much of this funding is dependent on NSOs achieving world class results. Sports which have performed well on the world stage, such as Rowing, Bike and Yachting have experienced significant lifts in funding over the last three years, while sports who have failed to deliver the desired results have experienced either a drop or static levels of investment.
- 4.8 Athlete support in the form of scholarships and grants is also hugely performance dependent. Those athletes who have performed are receiving better Government support today than ever before.
- 4.9 Internationally, top level athletes have certainly been some of the main benefactors in this rapid growth in the sports sector. Forbes magazine⁷ reported that in 2014, boxer Floyd Mayweather had earnings of USD300 million, while football players Cristiano Ronaldo and Lionel Messi earned USD79.6 million and USD73.8 million respectively. The leading female athletes were Maria Sharapova and Serena Williams with earnings of USD29.5 million and USD24.6 million respectively, while the highest paid coach in sport last year was reportedly NFL New Orleans Saints manager, Sean Payton at USD8 million per year.

⁴ Fox Sports "AFL \$2.508 billion broadcast rights deal stacks up well with other sports"
www.foxsports.com.au

⁵ Sport NZ - The Economic Value of Sport (report released November 2015)

⁶ High Performance Sport New Zealand – Recent Investment Decisions; hpsnz.org.nz

⁷ "The World's Highest Paid Athletes" www.forbes.com/athletes/list



- 4.10 The salaries of New Zealand top athletes are moderate in comparison, but still noteworthy. According to the New Zealand Herald⁸, our two highest paid athletes are Russell Coutts at NZD13 million and All Whites Captain, Winston Reid at NZD12 million. All Black Captain, Richie McCaw is reportedly taking home earnings of approximately NZD2.5 million.
- 4.11 While most of the athletes that appear before the Sports Tribunal are earning nothing like these amounts, there can be no doubt that the sports sector both globally and in New Zealand has gone through a rapid phase of commercial growth, and there are no indications of any slow down in the foreseeable future.
- 4.12 There is also little doubt that athletes have ever increasing incentives to try to reach the pinnacle of their sport. In addition to the thrill of competition and the personal ambition of the athlete, the public recognition and the financial rewards for elite athletes are continually escalating.
- 4.13 It is also no coincidence that at the same time, athletes are becoming far more aware of their legal rights and their “bargaining power.” Player associations now play a huge role in all aspects of many professional sports around the globe. In New Zealand, rugby, cricket, netball and football have extremely strong player associations who have forged “partnership models” with their NSOs. Hockey and swimming appear to be embarking on a similar course, while an Athletes Federation has been established because:
- “the absence of a peak athlete representative body left a significant gap in New Zealand high performance athletes collective representation, and as such, their collective voice and influence could not be fully recognised.”* (NZ Athletes Federation website)
- 4.14 Player agents now also play a strong role in our sporting landscape, particularly in rugby, rugby league and cricket.
- 4.15 In an environment where there is rapid growth in commercialisation, ever increasing pressure on NSOs, coaches and athletes to perform and where athletes are more aware than ever of their rights and bargaining power, the potential for more sports related litigation is obvious.

Trends Within the Sports Tribunal

- 4.16 At first glance, however, this growth in commercialization and “player power” has yet to result in any significant lift in the workload of the Sports Tribunal.

⁸ NZ Herald, “Top 20 Sporting Rich List” 2/10/14 www.nzherald.co.nz/sport



4.17 In 2014/2015, the Tribunal received 19 substantive cases⁹. This represents a modest increase in over the previous three years but well below the number of cases in 2010/11:

- 2013/2014 – 14 substantive cases;
- 2012/2013 – 13 substantive cases;
- 2011/2012 – 10 substantive cases;
- 2010/2011 – 26 substantive cases.

Note - these statistics do not include provisional suspension applications.

4.18 However, it is noteworthy that in 2014/15, only six of the 19 substantive cases dealt with by the Tribunal involved anti-doping. The vast bulk of cases instead involved appeals against non-selection of some form or another.

4.19 This contrasts sharply with the traditional workload of the Tribunal in which anti-doping cases have made up approximately two thirds of all of the Tribunal's work. According to its 2013/14 Annual Report, of the 150 substantive decisions issued by the Tribunal over its lifetime, 98 (approximately 65%) were anti-doping cases. Last year that percentage declined to nearer 31%.

4.20 The most obvious reason for this change is the alteration to the threshold for a positive cannabis test which was introduced by WADA in 2013. That appears to have had an immediate impact on the Tribunal's workload in that the number of anti- doping cases based on use of cannabis has fallen away significantly.

4.21 However, this void has been filled by selection disputes. In the 2014/15 year, there were several difficult and apparently acrimonious cases involving the selection or non-selection of athletes. Many of those interviewed anticipate this is the "tip of the iceberg" and predict that in years where Commonwealth Games and Olympic Games teams are being selected, the number of selection challenges will increase even further.

4.22 Whether that proves the case remains to be seen. However, for the reasons noted earlier view, the author believes the New Zealand sports sector faces a future where participants are far more likely to defend their legal rights and challenge adverse decisions than would have been the case even 10 years ago.

⁹ ST Meeting Presentation by Brent Ellis - 2015



4.23 While most NSOs still depend heavily on volunteers, and operate on very tight budgets, there is more at stake for athletes, in particular, than ever before.

The Relevance of its Policy Objectives

4.24 The argument for the creation of the Tribunal was first advanced in the Graham Report, was developed further by Maria Clarke in her report, and was then promulgated in legislation. The policy objectives of the Tribunal are contained in those documents and are also reflected in the Tribunal's own mission statement.

4.25 In essence, the Tribunal was established with the objective of providing:

- NSOs, athletes and other parties to a national sports dispute; with
- An independent and credible body; which is
- Fair, objective and just; and
- Timely, efficient and affordable.

4.26 In reviewing the performance of the Tribunal, it is prudent to assess its achievements against those policy objectives. Certainly the policy objectives appear as relevant today as when the Tribunal was first established 12 years ago.

“NSOs, Athletes and Other Parties to a National Sports Dispute”

4.27 As set out in section 2 of this report, the Tribunal's jurisdiction derives from the Sports Anti-Doping Act 2006. Under the Act, DFSNZ has a statutory duty to make rules which implement the World Anti-Doping Code. These are currently the SADR 2012.

4.28 The Tribunal is charged with doing all things necessary to comply with and implement the SADR including hearing and determining new cases brought under the SADR. The balance of its jurisdiction largely derives from sports themselves. The Tribunal can hear an appeal against any decision of an NSO or the NZOC if the constitution, rules or regulations of that sport provide for such an appeal. It can also determine any other sports related dispute if the parties agree in writing and the Tribunal agrees to hear that dispute.

4.29 In reality, the vast bulk of the Tribunal's work involves anti-doping violations, selection appeals and disciplinary appeals, all at a national level.



- 4.30 A wide cross section of views were expressed as to whether the Tribunal's current jurisdiction is correct. Some argued strongly that the Tribunal's jurisdiction was too narrow and that there were many disputes outside of doping, selection and misconduct which would have benefited from a hearing before the Tribunal, rather than proceeding to litigation in the ordinary courts. Some argued Sport NZ should compel sports to grant the Tribunal greater jurisdiction, through its funding of those sports.
- 4.31 In contrast, others argued that the jurisdiction of the Tribunal was too wide. In particular, several NSOs commented on how "easy" it was for a relatively low level national athlete to bring proceedings before the Tribunal, often at great expense to the NSO. Others noted how quickly cases seemed to "escalate into full blown hearings".
- 4.32 In the author's view, the Tribunal's jurisdiction is currently appropriate. The rules of almost all NSOs place anti-doping cases before the Sports Tribunal. That is as it should be.
- 4.33 In terms of the Tribunal's additional jurisdiction, it is appropriate that NSOs themselves decide whether to provide in their rules that rights of appeal for selection disputes and disciplinary disputes within their sport, will proceed to the Sports Tribunal, and if so, at what point in those proceedings. It is also correct for those sports to determine what other forms of dispute the Tribunal has jurisdiction over.
- 4.34 In the author's view, it is not the role of Sport NZ nor the Tribunal to look to impose a process on NSOs which forces them to grant wider jurisdiction to the Tribunal. NSOs are independent bodies who should make that determination themselves, potentially in consultation with their athletes and other key stakeholders. The current rules of the Tribunal properly reflect this.
- 4.35 However, that is not to say that the current system is working optimally. Three of our leading sports, New Zealand Rugby, New Zealand Cricket and New Zealand Football have their own procedures in place for most forms of dispute resolution. This means that in the case of cricket and football, the role of the Sports Tribunal is largely limited to anti-doping cases, while for rugby, the Tribunal has no jurisdiction whatsoever.
- 4.36 The sovereignty of these sports is extremely important. Each also has international bodies and rules which have impacted on the creation of their own dispute resolution systems. Each also has strong player associations who would inevitably have a say if these NSOs looked to amend their dispute resolution processes.



- 4.37 However, at the end of the day, New Zealand has a Tribunal which is totally independent from every NSO, a panel of decision makers of very high quality, it sits regularly, has its own well established set of rules, and has developed its own jurisprudence.
- 4.38 The author believes that the Tribunal provides a very attractive alternative to those NSOs which are currently using their own ad hoc appeal committees. As such, it is recommended that Sport NZ look to open discussions with New Zealand Rugby, Cricket and Football (potentially with their respective player associations) to explore their willingness to adapt their rules to place greater jurisdiction in the hands of the Tribunal.
- 4.39 When discussing this option with these NSOs, all three sports indicated a willingness to explore whether it would be possible to adapt their rules, at least in some respects, to provide further jurisdiction to the Tribunal. There may not be a “quick fix” solution but the dialogue should be commenced.

“Independent and Credible”

- 4.40 There was universal acceptance that the Tribunal operates independently and is entirely free from political or other external pressure of any kind.
- 4.41 There was also universal acceptance that the Tribunal has a high level of credibility and indeed adds credibility to the sport sector in New Zealand.
- 4.42 This credibility derives in part from the quality of the Tribunal members. The current Chair of the Tribunal, Sir Bruce Robertson, is a retired Court of Appeal Judge. His Deputy Chairs, Alan Galbraith QC and James Farmer QC are two of New Zealand’s leading Queen’s Counsel. As more than one person noted in their submissions, the quality of this bench alone would be the envy of every tribunal in the land. Both Mr Farmer and Mr Galbraith also have had significant exposure at a personal level to high performance sport.
- 4.43 The remaining Tribunal members also have very strong backgrounds. All have significant experience in sport, coupled with a mix of legal, medical and general business acumen.
- 4.44 All Tribunal members spoken to were passionate about the important role the Tribunal played and were strongly committed to doing the best job they possibly could for sport in this country.
- 4.45 Given the stellar careers of the Chair and Deputy Chairs, it was suggested by some of those interviewed that the Tribunal was at risk of occasionally being dominated by the Chair and Deputy Chairs. That proposition was, however, firmly rejected by all members of the Tribunal. Indeed on the evidence available to the author, there is little doubt that the remaining



members of the Tribunal more than “hold their own” in the decision making processes of the Tribunal.

- 4.46 It is also very apparent that the Chair and Deputy Chairs greatly value the experience and acumen of the rest of the Tribunal members.
- 4.47 Obviously, it will be important when future appointments are made to the Tribunal, to ensure that all future members continue to have both the skill base and the confidence to contribute fully to decision making, as is currently the case.
- 4.48 It was also suggested by some interviewed that in determining which members of the Tribunal should hear a particular case, the panel should contain one person with a sporting background, who is not a lawyer, if that is possible. The rationale for this submission is that the perspective of former athletes and coaches is very important and provides a quite different perspective from those approaching issues primarily from a legal background.
- 4.49 While there is some logic in this submission, it must be noted that the vast majority of members of the Tribunal (including those with legal backgrounds) also have strong sporting backgrounds.
- 4.50 Another difficulty is that panels often have to be brought together under urgency and the composition of the panel will inevitably depend, at least in part, on who is available.
- 4.51 The Chair of the Tribunal, who primarily determines which panel will hear a particular case, indicated that he generally tries to appoint a panel with a cross section of backgrounds and skills, but that is subject to availability. In the author’s view, that system is appropriate. The Tribunal Chair should determine, as part of his/her role, the composition of the panel, just as occurs for many other Tribunals. A mix of skills, including someone who does not look at the issue primarily through the eyes of lawyer, should be the ideal, but should not be a pre-requisite to a hearing proceeding.
- 4.52 In terms of whether the current number of Tribunal members (nine) is appropriate, the general consensus of those interviewed (both Tribunal members and others) was that nine Tribunal members was “just enough” but that the matter will need to be closely monitored, particularly if there is growth over time in the Tribunal’s workload. The author is of the same view.
- 4.53 A final point in terms of credibility is that it is important that members of the Tribunal (particularly new members) are regularly brought up to speed with developments in sports law. The WADA Code and SADR are complex and are often being revised and updated. Decisions mainly by CAS are being



issued in both anti-doping and on other broader sports related matters, which the Tribunal should be fully conversant with.

- 4.54 Many of the issues faced in New Zealand sport are not unique and the decisions reached in other jurisdictions can assist the Tribunal in its deliberations. The author would encourage Sport NZ to engage with the Tribunal Chair and DFSNZ to assess whether enough of this type of training is taking place, and if not, how this could best be addressed. Both the Tribunal and the sport sector are disadvantaged if this does not occur.
- 4.55 Fundamentally though, the Tribunal operates completely independent and is highly credible.

“Fair, Objective and Just”

- 4.56 Once again, there was overwhelming support from those interviewed, regarding the general fairness of the Tribunal, as well as its objectivity and justness.
- 4.57 Somewhat inevitably, some of those interviewed had issues with particular decisions of the Tribunal. As is clear in the TOR, it would be inappropriate for a review of this nature to address those concerns.
- 4.58 However, because in the last two years the Tribunal has issued a number of decisions which were high profile and of significance to sport, a significant number of submissions addressed broader aspects of those cases.
- 4.59 The feedback received however, was anything but consistent. Some of those interviewed felt the Tribunal was very conscious of the potential inequality in the bargaining positions of athlete and NSO and was adopting something of an “equity and good conscience” approach akin to that which the Employment Relations Authority is specifically granted in the Employment Relations Act.
- 4.60 In a similar vein, others referred to the Tribunal as being very conscious of doing justice to athletes and the risk of losing certainty and predictability because of its athlete centred approach.
- 4.61 In contrast, a number of Tribunal members as well as participants in past proceedings spoke of a growing tendency for legal counsel to adopt an overly litigious and formal approach to proceedings before the Tribunal, which does not sit easily with the Tribunal’s mission of affordable, timely and efficient decision making.



- 4.62 There was also a suggestion put forward by more than one party that the Tribunal should operate “more like a Tribunal and not like a court” and as such, be granted broader discretion to achieve fair and balanced outcomes.
- 4.63 However, ultimately the Tribunal’s role is to do all things necessary to implement the SADR and to hear appeals where an NSO’s rules provide for this. That is what it does.
- 4.64 Inevitably, there will be participants who disagree with some of the findings of the Tribunal. Occasionally too, the Tribunal will be overturned on appeal by CAS. That is the nature of every legal process.
- 4.65 However, with one exception, there is no need, in the author’s view, to alter the rules of the Tribunal or its fundamental approach to decision making. There is not, for example, the need to introduce an over-arching equity and good conscience jurisdiction nor a need to grant broader discretion to the Tribunal.
- 4.66 In anti-doping proceedings, the Tribunal has a statutory obligation to meet the fair hearing requirements of the WADA Code (Article 8) and the SADR (Rule 13). Its obligation is, in essence, to conduct a fair hearing and to then issue reasoned decisions consistent with the Code and SADR.
- 4.67 In selection and disciplinary appeals, the Tribunal fulfils at a national level, much the same role as CAS in the global sporting context. In that capacity, the grounds for appeal derive from the rules of the sport, or from the Tribunal’s own rules (Rule 42) and the procedure the Tribunal follows is set out in its own rules.
- 4.68 In the author’s view, the Tribunal currently performs these roles exactly as it is required to do and jurisdictional changes are not needed.
- 4.69 The Tribunal operates in a difficult environment where it is endeavouring to deal with cases as expeditiously as possible, but where the issues can be complex and counsel can be quick to rely on precedent and challenge informality. In the author’s view, the Tribunal largely gets this difficult balance correct. Certainly there is no evidence to suggest the Tribunal’s approach is fundamentally erroneous or its rules or jurisdiction need refining.
- 4.70 Having said this, there is one aspect of selection cases that could potentially be assisted by a rule change. As noted earlier, selection disputes appear to be ever increasing in number and vigour. Many of these appeals derive from selection rules and policies which prove difficult for selectors (many of whom are volunteers) to comply with.



- 4.71 The question that repeatedly arises in these cases is whether the breach is of such importance that it will lead to intervention by the Tribunal. While each case will depend on its own facts, the sports sector may well benefit from a change to the Tribunal's rules which make it clear that where the Tribunal finds that a breach of a selection criteria has occurred, but that breach has not had a material affect on the substantive selection decision or created a material injustice, the Tribunal can still elect to uphold the selection or non-selection decision.
- 4.72 In the author's view, a rule of this nature may help clarify the thinking of some athletes before they launch a selection appeal based purely on what appears to be a technical flaw which does not go to the merits of the ultimate decision. Such a rule change would also provide some guidance to an NSO when facing such an appeal.
- 4.73 There is a risk such a rule could be seen by NSOs as a licence to continue to use poor selection policies and/or to disregard their policies as it suits. However, the rule would not prevent successful appeals where the error or breach is likely to have had a material affect on the decision.
- 4.74 Another issue of fairness raised by a number of submitters was whether it was appropriate that DFSNZ should be actively prosecuting all positive doping infractions. Reference was made to various cases where athletes had taken medication for valid medical reasons (usually in situations of medical emergency) and had made reasonable inquiries in the circumstances about whether the medication contained a banned substance, and who had subsequently provided a positive test. These athletes then had to endure a highly stressful hearing in the Tribunal trying to prove they did not warrant a ban. *(By way of disclosure, the author represented the athlete in one of the cases several submitters referred to.)*
- 4.75 It is not the purpose of this review to assess whether DFSNZ has any discretion in this regard. Suffice to say DFSNZ and its usual legal representatives are firmly of the view that once a positive test is confirmed, it must be dealt with as an anti doping rule violation with the sanction determined by the Tribunal. On the other hand, some Tribunal members and other experienced counsel challenged that view arguing that there is scope for DFSNZ to adopt a role similar to a Crown Prosecutor, and to not put an athlete through a court process where the facts can be easily explained, the athlete is clearly not a drug cheat and the level of any wrongdoing is patently at the very lowest end of the spectrum.
- 4.76 Almost every year, at least one case of this nature seems to arise and it is an important issue going forward. Sport NZ may therefore wish to consider seeking independent legal advice on the issue, and depending upon that advice, determine whether it should take the matter up with DFSNZ.



4.77 However, leaving that issue aside, while there will always be complaints from some quarters about individual cases, the Tribunal is unquestionably meeting its objective of providing fair, objective and just decisions.

“Timely, Efficient and Affordable”

4.78 The Tribunal has shown a remarkable ability to deal with cases quickly and efficiently. This appears to be due to a number of factors including:

- Having the services for 12 years of a dedicated and very experienced Registrar;
- A panel of Tribunal members willing to be available to hear cases at short notice, on some occasions over weekends and during evenings; and
- A recognition by all of those involved with the Tribunal that the matters they are dealing with are often urgent, affect a variety of interested parties and need prompt resolution.

4.79 There was universal praise from all interviewed about the ability of the Tribunal to not only hear cases quickly but to then issue written decisions in a very short time frame. There was also a strong view that the shortness of time frames has not impinged upon the quality of the decisions being issued by the Tribunal.

4.80 Certainly, if one examines the written decisions issued by the Tribunal (all of which are available on the Tribunal’s website) and compares the actual dates for the hearing to the date of the decision, it is apparent how quickly decisions are being delivered by the Tribunal. This contrasts with the ordinary Courts where delays in holding a hearing, let alone receiving a written decision, can be extreme.

4.81 Its highly experienced Registrar, Brent Ellis, recently left the Tribunal. There was concern expressed by both Tribunal members and members of the sector that his efficiency and experience will be missed and that he will be difficult to replace.

4.82 The workload of the Registrar is somewhat inconsistent. At times, the Tribunal can be extremely busy while at other times, its workload can be negligible. For this reason alone, it makes sense that the Registrar (who is an employee of Sport NZ) is available to Sport NZ in those “down times”. On average the role appears to be approximately .7 of a full time role.



- 4.83 However, one of the most important aspects of the role is that whoever holds the position must be able to make the work of the Tribunal their priority when cases are lodged before it. Many of the Tribunal's cases are urgent and complex and will require an immediate response from the Registrar.
- 4.84 The Registrar must also have strong communication skills. He/she must be available to take calls from the sports sector and to point the caller in the right direction if their enquiry does not properly rest with the Tribunal. The Registrar must be able to discuss matters such as legal representation and explain the basic procedures of the Tribunal. This "front of house" role is considered extremely important, not just by the Tribunal but also by athletes and NSOs. Therefore, the next Registrar will need to be a confident communicator, with sufficient knowledge to understand the significance of issues as they come before him/her.
- 4.85 The Registrar will also be called upon by the Tribunal to conduct legal research and sometimes to proof read decisions.
- 4.86 As such, the recommendation is that whoever is appointed to this role has legal training, strong communication skills, and a good understanding of the sports sector in New Zealand. While the role of the Registrar may be mainly a "background" one, the person must be a highly competent administrator, with a range of skills.
- 4.87 Another issue raised by a number of those interviewed was whether the Tribunal needs to take a greater educational role in the sports sector. Apart from the Registrar speaking at a small number of seminars, the Tribunal has tended to take a reasonably low profile approach to education.
- 4.88 The Chairman of the Tribunal indicated he saw more scope for Tribunal members to be speaking at sports seminars, focussing primarily on how the Tribunal operates, but also potentially on general learnings from anti-doping and selection cases. At the same time, he acknowledged there are limits on what a Tribunal member can say publicly, in light of their ultimate decision making function.
- 4.89 In the author's view, the sector would benefit from the Tribunal presenting more seminars, both on procedure and to the extent possible, sports law. At a broader level, however, the best education provided by the Tribunal should be from its written decisions. Unfortunately, it appears that many of the decisions of the Tribunal are not well publicised within sport and/or are quickly forgotten.



- 4.90 There may well be scope for Sport NZ to take a leadership role here. In particular, when the Tribunal issues decisions, Sport NZ should consider in their regular communications to NSOs, ways to inform the sector about those decisions, including perhaps a short commentary on the learnings that can be taken. Such commentary could also potentially be retained on Sport NZ's website as a resource for sport.
- 4.91 Additionally, while not strictly part of this review, a constant theme from those who made submissions, was that greater guidance is required for the sport sector in the area of selection. This included who should be selectors, how they should operate, and what selection policies should or should not say. It appears some work has been done in this area but most NSOs indicated there was a pressing need for a greater level of assistance.
- 4.92 This report turns now to the issue of cost. Quite simply, affordability was by some margin the single biggest concern raised by almost all of those spoken to about the workings of the Tribunal.
- 4.93 Almost all of those who made submissions were concerns about the cost of litigation before the Tribunal. Those concerns were not founded on the administrative costs of the Tribunal (such as filing fees) but instead the cost of legal representation and the "internal costs" that come from devoting so much time and resource into litigation before the Tribunal.
- 4.94 Information was often volunteered about the costs NSOs, in particular, face in cases before the Tribunal. The legal costs for a one day hearing before the Tribunal were often said to be between \$10,000 to \$30,000. Obviously if the proceedings took place over multiple days or involved multiple parties, then those costs were likely to be significantly greater.
- 4.95 This is a sector that operates on very limited resources. Some NSOs are almost entirely dependent on Government funding with some support from gaming trusts. Many of those NSOs do not budget for any legal spend and have little if any reserves. To therefore face a substantial unbudgeted legal expense has a material impact on what that sport can deliver. Inevitably the ability of the NSO to deliver its programmes will be significantly compromised by such litigation.
- 4.96 Many of those who made submissions commented on the position in which Canoe Racing New Zealand found itself in earlier in 2015. This NSO faced three separate selection appeals in the Tribunal relating to the team selected for the Under 23 World Championships. These disputes not only resulted in three defended hearings in the Tribunal but also two mediations and judicial review proceedings in the High Court.



- 4.97 The impact for Canoe Racing New Zealand in defending these appeals and the related litigation, was enormous. The litigation was (inevitably) extremely expensive and the NSO certainly believes the outcomes damaged its reputation.
- 4.98 It is fair to say that there is a high level of nervousness in the sports sector about what occurred to Canoe Racing New Zealand. While each case turns on its own facts (and there were some unique aspects to that litigation), as one CEO said, *“it could just as easily have been us”*.
- 4.99 Indeed, some sports indicated they are seriously contemplating amending their rules in terms of selection and misconduct, to provide a further internal layer of appeals before matters can be placed in the hands of the Sports Tribunal. The primary objective in doing so appears to be to reduce the risk of becoming embroiled in expensive litigation before the Tribunal.
- 4.100 Other sports, such as Rowing and Triathlon, have already introduced an “ombudsman” system in which athletes concerned about a selection can pursue an internal appeal right. Only once that internal process has been exhausted, can a matter be appealed to the Tribunal. This is designed to improve communication and reduce the risk of a formal appeal.
- 4.101 Any step by an NSO to improve communication around selection is obviously to be applauded. However any move back to an environment where sports are dealing with national level appeals through internal ad hoc appeal committees, is of potential concern. One of the reasons the Tribunal was established was to provide sports with an independent, credible voice to deal with national sports disputes. The sports sector will not benefit if sports look to minimise the jurisdiction of the Tribunal simply because of a fear that they will be dragged into expensive proceedings.
- 4.102 This would be particularly concerning if sports look to create their own NSO anti-doping tribunal. As far as the author is aware, NZ Rugby is the only sport that does this. Given the complexity of anti-doping cases, any trend for NSOs to look to deal with such matters through their own tribunals would not be positive.
- 4.103 These NSOs complained it was just “too easy” for an athlete to embark on a case before the Tribunal, especially if their costs were totally covered.
- 4.104 Many of the NSOs which made submissions also raised a concern that athletes seemed far more able to find a “friendly lawyer” or someone from the Legal Assistance Panel to work pro bono. The NSOs felt that if the athlete was not paying for their legal advice, then he/she was far more likely to “have a crack” at an appeal, particularly as they were also unlikely to face an award of costs if unsuccessful.

- 4.105 There is, however, a converse view. The reality is most athletes have invested a huge amount of time and effort to become elite competitors and they must be entitled to challenge decisions that they believe are fundamentally wrong or in breach of policy. While NSOs may feel that it is too easy for athletes to pursue an appeal, few appeals decided by the Tribunal appear to be entirely devoid of merit. The appeals are often based on a breach by the NSO of their own rules or policies, or because of poor or non-existent communication by selectors.
- 4.106 Where NSO's and/or their selectors breach their own policies, athletes are understandably concerned and upset. As the representative of one athlete who took a case to the Tribunal described it, the athlete had "*worked so hard*" and "*just had to make a point about the appalling lack of communication or process*".
- 4.107 The solution is obviously, in part, to assist NSOs to improve their rules and their levels of communication so that appeals over selection or misconduct decisions are reduced in number and complexity. However, beyond this, in the author's view, the New Zealand sports sector must turn to mediation far more readily than is currently the case.
- 4.108 The Tribunal does have power under its current rules to order mediation before a Tribunal member or other person. The Tribunal Chair indicated that mediation is always considered and often discussed with the parties at a pre-hearing conference. However, the Chair also acknowledged that mediation was often not taken up by the parties as their preferred option.
- 4.109 The Tribunal's own statistics bear this out. Only three of the 19 substantive cases heard by the Tribunal in 2014/15 attempted mediation and one of these was during the hearing itself. The Registrar described this as an improvement from the typical use of mediation over previous years.
- 4.110 High performance sport is, by its very nature, intense, demanding and highly competitive. Emotions run high and concerns such as not being selected for an event or being accused of misconduct will often provoke strong reactions. High performance sport is also an arena where, in the author's experience, communication is not always the strongest skill of those involved and where athletes, coaches, administrators and even supporters can sometimes sadly be driven by personal agendas.
- 4.111 High performance sport is, however, an ideal arena for the use of mediation. A well conducted mediation, led by a skilled mediator, will place the parties in a position where they not only have to talk to each other but also listen to each other. A mediation can move parties from entrenched positions and look at their underlying motives and interests. It provides the opportunity for



resolution without publicity. Crucially, it also allows the parties to explore solutions which are not “win or lose” and it creates the opportunity for the relationship between the parties to be repaired and preserved, which can be crucial if the athlete has an ongoing career.

- 4.112 Take, for example, a typical selection dispute. A young up and coming athlete may be incensed she was not selected for a national team and intensely frustrated that no-one has properly explained to her why she was omitted. In a Tribunal hearing challenging her non-selection, she will need to base her claim on one of the specific grounds for appeal noted in the Tribunal’s rules or the sport’s selection policy. She will either win or lose her appeal. There is no middle ground.
- 4.113 Conversely, if such a dispute went to mediation, the NSO, its selectors and the athlete will have the opportunity to explain their thinking and to listen to each other’s position. Ultimately, the parties can then look at solutions that might include, for example, an apology for the poor communication and an agreement that while the athlete will not make the national team, if she achieves certain targets or goals, she will be selected in the national high performance training squad. These types of outcomes are simply not available in a Tribunal hearing but they can be reached by the parties in a mediation. The resolution will also be private and invariably less costly than a full defended hearing.
- 4.114 Clearly not all cases are suitable for mediation. Some selection appeal cases will involve a team travelling within days or even hours. There may simply not be the time, in those circumstances to mediate.
- 4.115 There may also be cases where the parties have communicated fully, remain in disagreement and require a binding decision. Similarly, in selection cases, multiple parties may be involved which would make mediation difficult. So, in the example noted above, if for the athlete to make the national team, a player would have to be “de-selected” then that other player would undoubtedly be an interested party and would be rightly concerned if mediation took place without their involvement.
- 4.116 Having said that, it does not mean that this type of dispute should not be mediated. In such a case, either:
- The mediation could proceed more as a facilitated discussion between the non-selected athlete, the NSO and the selectors; or
 - The mediation could occur with both the non-selected and the selected athlete involved, as well as the NSO and selectors. A skilled mediator should be able to ensure such a process is fairly conducted and that all parties are given a full and fair right to be heard.



- 4.117 There is of course nothing to stop NSOs and athletes from voluntarily deciding to mediate current disputes (the exception being anti-doping cases). However, only one NSO indicated it had voluntarily organised a mediation in such circumstances. This lack of recourse to mediation may be attributable to a range of factors including a lack of familiarity with mediation, a lack of awareness of how to appoint a mediator and who to appoint, and concerns about cost.
- 4.118 Another difficulty is that no person or entity within the sports sector is actively promoting mediation. While, as noted earlier, the Tribunal does discuss mediation as an option, it does so in a relatively neutral manner and, with respect to the Tribunal, it is not strongly promoted.
- 4.119 To overcome these barriers, the author recommends the creation of a Sports Mediation Service (SMS). Logically, the SMS should come under the control of Sport NZ. It could potentially be administered by the Registrar of the Tribunal but it should operate quite separately from the Tribunal.
- 4.120 It is recommended that the SMS consist of a panel of skilled mediators willing to mediate sports disputes either on a pro bono basis or, more likely, for a set (and relatively modest) daily rate.
- 4.121 To be successful, the costs of mediation must be kept low for the parties. In fact, ideally, the costs of mediation should be free. However, that would require Sport NZ to accept some budgetary responsibility for this service.
- 4.122 To be appointed to the SMS panel, mediators would need to have had suitable training in mediation and proven experience as mediators. They would need to operate pursuant to a consistently worded mediation agreement which would commit the mediator and the parties to, amongst other things, proceeding on a without prejudice basis, with full confidentiality regarding all that was said in mediation, unless the parties agreed otherwise.
- 4.123 Consideration would also need to be given to a range of other factors such as who would provide the mediation facilities, how the costs of those facilities might be met, and also who would prepare any settlement agreement/document resolving the matter.
- 4.124 The author recommends Sport NZ establish, as a priority, a working party to consider these issues with a view to having the SMS operational and as soon as reasonably possible. In the author's view, it would be sensible to include at least one independent mediator with demonstrated skills in this area on the working party. There would also be merit in inviting a representative of the Athletes Federation to participate, as the SMS will need to be "athlete friendly" and win the buy in of athletes.

- 4.125 New Zealand would not be unique in establishing this form of service. The Sport Dispute Resolution Centre of Canada (SDRCC) offers national sports within Canada an arbitration/mediation option, with mediation a default mandatory step in its sport ADR process. It appears that mediation has resolved a significant number of SDRCC non-doping cases. Somewhat surprisingly, a form of mediation is also used in anti-doping violation cases (entitled “Resolution Facilitation”) although this appears to operate more as an information sharing session before the defended proceeding, and not a settlement discussion.
- 4.126 A number of other jurisdictions also offer mediation in sport, if requested by the parties. In the United Kingdom for example, mediation is available though take up levels are not high. Commentary out of the UK sport sector suggests this is due, at least in part, to the fact that no single body actively promotes the mediation option.
- 4.127 In the author’s view, if an SMS is established in New Zealand then it would be essential that the role of the SMS is strongly promoted by the Tribunal. This would be done by the Tribunal adopting an approach in which it has a prima facie expectation that all parties to disputes before it (excluding anti-doping proceedings) will go to mediation unless there are good reasons for that not to occur. The onus would be on the parties to set out those reasons to the satisfaction of the Tribunal, perhaps in their originating documentation when putting the matter before the Tribunal.
- 4.128 It is anticipated that a lack of time to mediate may well be a good enough reason to make mediation impractical in some cases. On other occasions, the involvement of a large number of interested parties may convince the Tribunal to move straight to defended proceedings.
- 4.129 However, the fundamental starting point for the Tribunal, in all cases except anti-doping, should be that the matter needs to proceed to mediation unless good reasons exist not to. The Tribunal should therefore have the ability to order the parties to mediate, if they have not done so and no good reasons exist. The Tribunal’s rules would need to be amended to reflect this new approach.
- 4.130 In terms of anti-doping, the author would encourage Sport NZ, DFSNZ, and the Tribunal Chair to engage in discussions about whether some form of resolution facilitation could be introduced in anti-doping proceedings, as is the case in Canada. While it is acknowledged that there are strong public policy requirements that make mediation impractical in anti-doping cases, it is claimed by a number of people involved in the Canadian system that resolution facilitation has proven helpful to both the prosecuting body and many affected athletes, as a first step in dealing with anti-doping cases.

- 4.131 In addition, the same parties should seriously consider the viability of mediation being available where an athlete challenges a “whereabouts failure” under rule 3.4 of the SADR. While not reaching a definitive opinion, it appears to the author that this is one area where DFSNZ and an athlete may have a genuine misunderstanding about the circumstances of the whereabouts failure and where mediation could potentially be of value.
- 4.132 However, subject to these observations, the author agrees with the position advanced by DFSNZ and its legal counsel that in the anti-doping area, there is no room for mediation in terms of trying to achieve a facilitated settlement.
- 4.133 In addition to using the SMS for matters before the Tribunal, the author believes there is substantial merit in having a mediation service available to sport across the entire sector, at national level. Many of those who made submissions spoke with conviction not only about the need for mediation when disputes have become formalised but also at much earlier stages and in far broader circumstances.
- 4.134 Many spoke of the highly competitive nature of our sporting environment and the significant amount of conflict which NSOs, in particular, have to deal with. Anybody involved with national sport will be well aware of the amount of conflict that can occur between an NSO and some of their member organisations and between those member organisations themselves. There can also be conflict between national coaches and their athletes and between the NSO, the athletes and their representatives (including, more recently, player associations). Sports are also often embroiled in personality clashes within a board or amongst key staff, disputes can arise over awards and prizes, over athlete contracts, over intellectual property, and so on.
- 4.135 If the dispute is based on an employment relationship, then obviously there are mediation services available to the parties through the Ministry of Business, Innovation and Employment. However, if the dispute is not purely one of employment, mediation will only occur if the parties consider this as an option, promote it, and agree to it. As noted earlier, this is not happening a great deal in practice. Instead, these types of disputes typically simmer away within a sport, often remaining unresolved and causing deep resentment and angst.
- 4.136 Accordingly, it is recommended that the SMS should be available to sports on a broader level than purely those for disputes that fall within the jurisdiction of the Tribunal. Like the Canadian model, this service should be available to all sports at a national level.



- 4.137 To succeed in this area, Sport NZ will also need to be a significant promoter of the SMS. Sport NZ is often asked to intervene and assist sports which are divided by conflict and is well placed to recommend these parties turn to a quality mediation service.
- 4.138 Ultimately, the author believes the SMS, if properly constituted, resourced and promoted, could provide an outstanding resource for the New Zealand sporting community. It will not be the panacea for all sports disputes nor will it resolve all issues of affordability, but mediation should be playing a far greater role in the sector.
- 4.139 Inevitably, however, a variety of cases will still need to be determined by the Tribunal through defended proceedings. Obviously, the Tribunal must deal with these in accordance with its statutory powers, including compliance with the WADA code, SADR, and its own rules.
- 4.140 Litigation in just about any forum is expensive. In cases before the Tribunal, legal counsel for all participating parties will be determined to do the best job they possibly can for their clients. In anti-doping and in selection cases, the entire career of the athlete can be at stake. Indeed even in misconduct appeals, the athlete's entire reputation can be at risk. In the case of anti-doping proceedings, DFSNZ is also looking to enforce principles that have been developed on the international sporting stage, and which place stringent obligation on athletes. DFSNZ is obliged to enforce these principles with rigour.
- 4.141 For all of these reasons, there will be an inevitable tendency in a number of cases before the Tribunal, for the participants and their legal counsel to leave no stone unturned. There is often much at stake.
- 4.142 However, as noted earlier, if sports finds the Tribunal process too threatening and too expensive, they will look to minimise its jurisdiction and turn elsewhere. NSOs can achieve this relatively easily by changing their rules regarding appeals. They can also look to create their own anti-doping tribunal if they so elect.
- 4.143 The onus is therefore on the Tribunal and counsel who regularly appear before it, to explore ways to keep costs under control and to ensure the Tribunal remains accessible to those involved in national sports.
- 4.144 Some of those options will include:
- Offering at pre-trial conferences, the option of a non-binding opinion (or a neutral evaluation);



- Offering at the same pre-trial conference, the option of the Tribunal issuing a decision on the papers;
 - Encouraging the parties to conduct proceedings by telephone or to utilise more fully video conferencing;
 - Encouraging the parties to consider whether an agreed statement of facts can be provided to the Tribunal; and
 - In anti-doping cases, especially those at the lower end of the spectrum, encouraging counsel to consider whether they can reach a joint position on sanctions for the Tribunal to consider.
- 4.145 It is acknowledged that the Tribunal already takes some of these actions, at least informally. One NSO referred, for example, to the Tribunal indicating at a pre-trial conference, its willingness to provide a preliminary indication of outcome if that would assist the parties. The NSO considered this an extremely helpful offer which it took up and which helped ensure the parties did not commit to unnecessary litigation.
- 4.146 However, in the author's view, these processes should become more formalised and discussed at every pre-trial conference. As sport becomes increasingly professional and commercialised, one can expect to see more disputes, particularly in the area of selection. In an environment where funding will always be limited, we need a sports dispute resolution system which does its utmost, within reason, to keep the costs of litigation to a minimum.
- 4.147 In essence, while parties involved in elite sport need the right to challenge and litigate disputes, the sector needs a system that forces the parties to explore other avenues and ways to keep costs under control, before a full defended hearing is undertaken. At the end of the day, in a sector with limited financial resources, those resources should ideally be spent on promoting sport and winning medals and competitions – not on litigation.
- 4.148 Turning now to the Legal Assistance Panel, the Tribunal maintains a list of legal counsel who have demonstrated experience and competence in the area of sport law and who have agreed to be available to do work for the sector at either discounted or pro bono rates. If the Registrar is asked by one of the participants to a sports dispute for the name of a solicitor competent in the area, the Registrar will usually provide them with a list of those on the Legal Assistance Panel, while making it clear that it is up to the party to the dispute to select their counsel and to agree their own cost arrangements.



- 4.149 It appears that the Panel is primarily used by athletes. Most NSOs already have solicitors which they engage for day to day work and invariably, those solicitors act in proceedings before the Tribunal or refer their NSO to counsel who they instruct.
- 4.150 In practice, the Panel system seems to work reasonably effectively and significant changes are not required. However, in the author's view, there is scope for the existence of the Panel to be more transparent. In particular, it is recommended that the list of counsel on the Panel is placed on the Tribunal's website.
- 4.151 In addition, there should be the opportunity for other solicitors who wish to be placed on the Legal Assistance Panel to be able to do so. In the author's view, counsel who have acted in, perhaps at least two or three cases before the Tribunal, and who have agreed to consider accepting instructions on a pro bono or discounted fee basis, should be able to be listed on the Panel. An additional requirement could be that those solicitors have to have also demonstrated a commitment to ongoing education in the sports sector.
- 4.152 To that end, the author also believes there is a significant gap in quality legal education for solicitors wishing to practice in this area. This is particularly so in the complex and, at times, rapidly evolving area of anti-doping law. The author would encourage Sport NZ to open dialogue with the Tribunal and the New Zealand Law Society to look at the option of running an annual professional development course for solicitors in the area of sports law, particularly anti-doping matters. Such a course will help to ensure that solicitors who accept instructions in a dispute before the Tribunal have a reasonable knowledge base to start from.
- 4.153 The Law Society is a strong promoter of continuing professional development and such a course would appear to fit perfectly within its ambit.
- 4.154 In summary, the Tribunal is fully meeting its policy objectives in terms of timeliness and efficiency. The issue of affordability however, and its impact on the accessibility of the Tribunal is the biggest challenge for the Tribunal going forward.
- 4.155 Better use of mediation will assist the sector but it is not the panacea for all issues. Better policies, rules and communication within NSOs will also help. So too will a greater focus by the Tribunal and legal counsel on ways to streamline the work of the Tribunal. The objective has to be to ensure that justice is not only delivered to the sports sector but that justice is also affordable.



5. RECOMMENDATIONS

- 5.1 Sport NZ should look to open discussions with New Zealand Rugby, New Zealand Cricket and New Zealand Football to explore their willingness to adapt their current dispute resolution processes to place greater jurisdiction in the hands of the Sports Tribunal. It would be prudent for the Chair of the Tribunal or some other representative of the Tribunal, to be involved in these discussions;
- 5.2 The Tribunal Chair should continue to endeavour to ensure that each Tribunal panel has a cross section of skills and experience, both legal and sporting, always acknowledging the restrictions arising from availability;
- 5.3 Sport NZ, the Tribunal Chair and DFSNZ should consider whether adequate induction training is being provided to new Tribunal members as well as sufficient ongoing training of the Tribunal, especially in relation to the WADA code, SADR, and decisions being issued by CAS both on anti-doping and other broader sports law related matters.
- 5.4 The Tribunal rules should be amended so that there is a specific provision which makes it clear that if the Tribunal finds that a breach of selection criteria has occurred, but that breach has not had a material impact on the substantive selection decision, the Tribunal can still elect to uphold the selection or non-selection of the relevant athlete.
- 5.5 The next Registrar of the Tribunal will need to have a similar range of skills to his/her predecessor. While there is merit in potentially filling the role on a .7 or similar basis (with the balance of the Registrar's time devoted to Sport NZ work), it is essential that whoever secures the position is able to prioritise Tribunal work as it arises. The Registrar should also ideally have a strong legal background, an understanding of the sports sector, and strong communication skills.
- 5.6 The Tribunal and Sport NZ should work closely to explore opportunities for senior Tribunal members to speak at appropriate sports conference, not just about the approach of the Tribunal but also, to the extent possible, learnings from key cases.
- 5.7 Sport NZ should actively inform the sports selector of key decisions emanating from the Tribunal and the learnings to take from those decisions.
- 5.8 A sports mediation service (SMS) should be established for disputes before the Tribunal and also for disputes at a broader national level. The Tribunal's rules should be amended to actively promote mediation in all cases



excluding anti-doping, and should insist that the parties proceed to mediation in all such cases unless good reasons exist for this not to occur.

- 5.9 The Tribunal, Sport NZ and DFSNZ should consult and explore whether there is any scope for a form of resolution facilitation to be utilised in anti-doping cases, and whether mediation would be appropriate for disputes regarding whereabouts infractions.
- 5.10 Before the SMS is created, it may be prudent for Sport NZ to establish a working party to actively scope the work to be performed by SMS, and to explore, amongst other things, funding options. Any working party should include at least one independent mediator with demonstrated skills in this area and potentially also a representative of the Athletes Federation, as the system will need to be “athlete friendly” and achieve their buy in. Inevitably though, for the SMS to succeed, it will require significant support from Sport NZ.
- 5.11 For matters that do proceed to a full defended hearing before the Tribunal, the Tribunal needs to have processes in place that actively encourage the parties to consider ways to reduce hearing time and costs. These need to be actively promoted by the Tribunal, whilst always acknowledging the rights of the parties to proceed to a full defended hearing if they so elect.
- 5.12 In terms of the Legal Assistance Panel, greater transparency is encouraged. In particular, those on the panel should be listed on the Tribunal’s website and there should be scope for other counsel to be added to the panel, where they have demonstrated sufficient experience in the sector and have indicated a willingness to act on a pro bono and/or reduced fee basis.
- 5.13 Sport NZ should open dialogue with the Tribunal and the New Zealand Law Society to look at the option of running an annual continuing professional development course for solicitors in the area of sports law, particularly anti-doping.

6. CONCLUSION

- 6.1 The New Zealand sports sector is well served by the Sports Tribunal and those involved in its creation and administration deserve considerable credit.
- 6.2 The Tribunal continues to meet almost all of its policy objectives. However affordability (and its impact on the accessibility of the Tribunal) is far and away the biggest challenge going forward.



- 6.3 There is a real risk that sports will look to diminish the jurisdiction of the Tribunal (or avoid it altogether) if proceedings become too complex or expensive. There are a range of potential solutions to this problem identified in this paper.
- 6.4 Disputes in sport are inevitable. There is often much at stake. In matters of doping, the integrity of sport is also on the line.
- 6.5 However, at the end of the day, top level sport is not a purely commercial transaction. It is about athletes competing often under intense pressure, relying on coaches, selectors and administrators who are doing their best, but who do not always have the skills or resources they need. Success in sport is also often dependent on the quality of the relationships between those same people.
- 6.6 While in most sporting events there has to be a winner and a loser, in sport dispute resolution, we need a system that provides a broader range of alternative solutions.



SCHEDULE A

Terms of Reference: Review of The Sports Tribunal – August 2015

Introduction

1. These terms of reference govern the review of the Sports Tribunal of New Zealand (the Tribunal).

Background

2. The complexity and resource constraints of the sector means sport and recreation organisations are not always well equipped to prevent disputes from emerging or dealing effectively with them when they arise. As a result, it is important that safeguards exist, particularly where the issues affect people's livelihoods.
3. The Tribunal was established in 2003 by the Board of Sport and Recreation New Zealand under s 8(i) of the Sport and Recreation New Zealand Act 2002 as an independent body to hear and resolve sports-related disputes in a fair, consistent, timely and affordable way. It was continued under section 29 of the Sports Anti-Doping Act 2006 (the Act).
4. The types of disputes the Tribunal can hear and decide are set out in section 38 of the Act:
 - Anti-doping violations in the first instance;
 - Appeals against decisions made by a National Sporting Organisation (NSO) or the New Zealand Olympic Committee (NZOC) provided the rules of the relevant body specifically allow for an appeal to the Tribunal in relation to that issue. Such appeals could relate to:
 - non-nomination or non-selection for a New Zealand team or squad;
 - disciplinary decisions.
 - Other sports-related disputes that all the parties to the dispute agree to refer to the Tribunal and the Tribunal agrees to hear;
 - Matters referred to the Tribunal by the Board of Sport NZ.



5. The roles and responsibilities of the Tribunal, Sport NZ and the Minister for Sport and Recreation are set out in a memorandum of understanding, the expiry date of which has been extended from 30 June 2015 to 30 November 2015 to allow this review to occur.
6. A previous review of the Tribunal was conducted in 2009 by consultants Martin Jenkins. That review found that the Tribunal was operating well and was fulfilling the original policy intent that led to its creation.

Rationale for the Review

7. There are no issues with the current operation of the Tribunal signaling the need for a change in approach. The Tribunal continues to operate effectively and is well-utilised.
8. However, the sport sector has changed significantly since the creation of the Tribunal, in particular with the growth of the professional sporting environment, the increasing complexity and cost of high performance and the increased commercialisation of sport.
9. Given the changing and increasing complex nature of the sport and recreation sector, and the time that has passed since the last review, the three parties to the memorandum of understanding (the Tribunal, Sport NZ and the Minister for Sport and Recreation) have agreed that it is timely to review the Tribunal.

Purpose of the Review

10. The purpose of the review is to ensure that in the face of the changing sporting environment the Tribunal continues to be effective, efficient, accessible, relevant and respected now, and into the future.
11. The review will assess how fit-for-purpose the Tribunal is for meeting the current and potential future dispute resolution needs of the sport and recreation sector. It will assess the needs of different parties to provide a balanced view of the Tribunal, from athletes to sports administrators and government agencies.

Scope of the Review

12. The questions to be addressed by the review will include:
 - The dispute resolution needs of the sport and recreation sector, including the frequency and types of disputes, the preferred mechanisms for resolving them and how this has changed over time;



- The extent to which athletes and other persons are informed about disputes resolution rights and procedures within the sector, including the role of the Tribunal;
- Whether adequate use is being made of the Tribunal and whether it is meeting its original policy intent, especially in relation to credibility, accessibility, affordability, appropriateness of jurisdiction, and effectiveness of the Legal Assistance Panel scheme;
- The appropriate level of servicing and support required to enable the Tribunal to fulfil its functions.

13. The review will not cover:

- The substance of Tribunal decisions;
- The reasons for disputes (although it may note themes or areas of work that could merit further investigation);
- The performance of Tribunal members.

Governance

14. The review will be conducted independently of the Minister, Sport NZ and the Tribunal by a person (the reviewer) agreed by the Chief Executive of Sport NZ and the Chair of the Tribunal.
15. Tribunal members, including the Chair, and the Board of Sport NZ will be consulted on a draft report.
16. The reviewer will then present a final report to Sport NZ.
17. The final report will be provided to the Minister for Sport and Recreation ahead of an updated memorandum of understanding being finalised between the three relevant parties. The review will then become a public document.

Methodology

18. The reviewer will study all relevant documentation, including but not limited to the Act and the 2009 Martin Jenkins Review.
19. Broad consultation with a balanced selection of stakeholders will occur to ensure those with an interest in the operation of the Tribunal have the opportunity to contribute. This is likely to involve interviews with a range of parties, including but not limited to:



- Current and former athletes from a range of sports (including those with recent experience of the Tribunal).
 - The Chairperson and Members of the Tribunal
 - Sport NZ and High Performance Sport NZ
 - New Zealand Olympic Committee (NZOC)
 - NZOC Athletes Commission
 - Players Association
 - Drug Free Sport NZ
 - A selection of National Sport Organisations
 - The Registrar of the Tribunal
 - Relevant sports lawyers
 - Anyone else the reviewer considers relevant
20. Research will also be undertaken appropriate to the New Zealand context, including an assessment of sports-related dispute resolution systems in comparable overseas jurisdictions.

SCHEDULE B

Key Questions for Tribunal Members / Registrar

| Key Questions | Additional Questions |
|---|--|
| 1. What are your general impressions of how well the Tribunal is functioning? | <ul style="list-style-type: none"> • What are the current strengths and weaknesses? |
| 2. The Tribunal was established in 2003 as an independent body to hear and resolve disputes in a fair, consistent, timely and affordable way. To what extent is this being achieved? | <ul style="list-style-type: none"> • Is the decision making consistently independent? • Should there be more/less members? • Is the skill mix correct? • Is the appointment process effective? • Is the Tribunal adequately resourced to allow disputes to be heard and resolved in a speedy manner? • How effective is the Registrar function/ views on proposals for change? • How quick is the Tribunal in resolving disputes? What improvements could be made to improve the speed of the process? • Is there consistency and fairness in decision making? |
| 3. The sport sector in New Zealand has changed significantly over the last 12 years particularly in terms of commercialisation and professionalism. To what extent has this impacted on the Tribunal's work load and skill set? | <ul style="list-style-type: none"> • Is the Tribunal's current jurisdiction correct, too wide/too narrow? • Is the work load increasing/decreasing? • Is the nature of the work changing? • Does it need to be expanded to include disputes not presently allowed for or only allowed for by agreement of the parties? • Is the Tribunal well placed to deal with the ever increasing levels of funding to sport and the potential for more disputes? |

| Key Questions | Additional Questions |
|---|---|
| <p>4. Alternative dispute resolution (ADR) has become extremely popular in recent years, in many forms of litigation. Does the sport sector need greater access to ADR and is the Tribunal well placed/ the best place to provide this?</p> | <ul style="list-style-type: none"> • How effective is the Tribunal's current approach to mediation? • Should mediation be compulsory and/or the parties be expected to mediate unless they can show good reasons not to, before any adjudication process? • Should a separate mediation panel be established? |
| <p>5. The Tribunal's existing work load has been heavily weighted toward dealing with anti-doping matters (65%) of which nearly half have been cannabis related. How has this changed with the recent changes in testing limits for cannabis?</p> | <ul style="list-style-type: none"> • Are there alternative models for dealing with some types of anti-doping disputes (particularly cannabis) worth considering? • Does the Tribunal require any additional resourcing or expertise to manage its anti-doping jurisdiction? • Is the Tribunal receiving adequate evidence from Drug Free Sport NZ to allow it to fulfil its role adequately? • How effective is the Tribunal's relationship with DFSNZ? |
| <p>6. Selection disputes particularly in Olympic and Commonwealth Games years are also increasingly prevalent. Are similar mistakes being made in the sport sector in the area of selection?</p> | <ul style="list-style-type: none"> • If so, why and what are the learnings? |
| <p>7. Under its MOU with Sport NZ and the Minister of Sport, the Tribunal is able to develop and make available educational resources for sports organisations about the role of the Tribunal. How well has this function been achieved?</p> | <ul style="list-style-type: none"> • Does the Tribunal have a broader education role to play especially in terms of selection processes? • Is there sufficient education of the sport sector to ensure mistakes are not being repeated? • If not the Tribunal's responsibility, where might this responsibility lie with? |

| Key Questions | Additional Questions |
|--|---|
| 8. The Tribunal has little involvement with New Zealand's largest sport (at least in terms of profile and commercialisation) rugby union. Does this need addressing and is this a weakness of the current model? | <ul style="list-style-type: none"> • If so, what are the potential solutions? |
| 9. Substantive Tribunal hearings are frequently conducted by tele-conference. Does this in any way compromise the process and are there alternative options worth pursuing? | <ul style="list-style-type: none"> • What are the disadvantages in not being able to assess the credibility of witnesses face to face? • How is the lack of evidence on oath addressed? • Are the time and cost savings presented by this model sufficient to justify this approach? |
| 10. How effective is the Tribunal's legal assistance panel? | <ul style="list-style-type: none"> • Is there any consistency in the approach of those on the panel, particularly in terms of costs? • In what way could this resource be improved? |
| 11. Do NSOs and related sports organisations (including Sport NZ , HPSNZ and NZOC) do enough to make athletes and other persons aware of sports disputes resolution procedures and do they make this information easily accessible and understood? | <ul style="list-style-type: none"> • Should there be statutory appeal rights and processes for some matters so that the jurisdiction of the Tribunal to hear these matters does not depend on them being in rules/constitution of the NSO? • How well informed are athletes and their advisors of their legal rights especially appeal rights and timeframes to meet? • Do NSOs do enough to make their members sufficiently aware of dispute resolution procedures set out in their own rules? • Do NSOs act promptly in relation to disputes raised by their members and provide the necessary information to members so that they can adequately act on these disputes in a timely manner? |
| 12. Other general observations and/or comments? | |

SCHEDULE C

Key Questions for Rest of Sports Sector

| Key Questions | Additional Questions |
|---|--|
| 13. What are your general impressions of how well the Tribunal is functioning? | <ul style="list-style-type: none"> • What are the current strengths and weaknesses? |
| 14. What are the current dispute resolution needs of the sport sector? | <ul style="list-style-type: none"> • Is there a need for the Tribunal to be more accessible to recreation organisations and persons involved in physical recreation? |
| 15. The Tribunal was established in 2003 as an independent body to hear and resolve disputes in a fair, consistent, timely and affordable way. To what extent is this being achieved? | <ul style="list-style-type: none"> • Is the decision making consistently independent? • Is the skill mix correct? • Is the Tribunal adequately resourced to allow disputes to be heard and resolved in a speedy manner? • How quick is the Tribunal in resolving disputes? What improvements could be made? • Is there consistency and fairness in decision making? |
| 16. The sport sector in New Zealand has changed significantly over the last 12 years particularly in terms of commercialisation and professionalism. To what extent has this impacted on the Tribunal's work load and skill set? | <ul style="list-style-type: none"> • Is the Tribunal's current jurisdiction correct? • Does it need to be expanded to include disputes not presently allowed for or only allowed for by agreement of the parties? • Is the Tribunal well placed to deal with the ever increasing levels of funding in to sport and the potential for more disputes? |
| 17. Alternative dispute resolution (ADR) has become extremely popular in recent years, in many forms of litigation. Does the sport sector need greater access to ADR and is the Tribunal well placed/ the best place to provide this? | <ul style="list-style-type: none"> • How effective is the Tribunal's current approach to mediation? • Should the Tribunal have the power to compel parties to attend mediation before commencing the adjudication process? |

| Key Questions | Additional Questions |
|--|---|
| <p>18. The Tribunal's existing work load is heavily weighted toward dealing with anti-doping matters (65%) of which nearly half are cannabis related. Is this an effective use of Tribunal resources?</p> | <ul style="list-style-type: none"> • Are there alternative models for dealing with some types of anti-doping disputes (particularly cannabis) worth considering? • Does the Tribunal require any additional resourcing or expertise to manage its anti-doping jurisdiction? • Is the Tribunal receiving adequate evidence from Drug Free Sport NZ to allow it to fulfil its role adequately? |
| <p>19. Selection disputes particularly in Olympic and Commonwealth Games years are also increasingly prevalent. Are similar mistakes being made in the sport sector in the area of selection?</p> | <ul style="list-style-type: none"> • Does the Tribunal have an education role to play in terms of selection processes? If not, who might this responsibility lie with? • Is there sufficient education of the sport sector to ensure mistakes are not being repeated? |
| <p>20. The Tribunal has little involvement with New Zealand's largest sport (at least in terms of profile and commercialisation) rugby union. Does this need addressing and is this a weakness of the current model?</p> | <ul style="list-style-type: none"> • If so, what are the potential solutions? |
| <p>21. Substantive Tribunal hearings are frequently conducted by tele-conference. Does this in any way compromise the process and are there alternative options worth pursuing?</p> | <ul style="list-style-type: none"> • What are the disadvantages in not being able to assess the credibility of witnesses face to face? • How is the lack of evidence on oath addressed? • Are the time and cost savings presented by this model sufficient to justify this approach? |
| <p>22. How effective is the Tribunal's legal assistance panel?</p> | <ul style="list-style-type: none"> • Is there any consistency in the approach of those on the panel, particularly in terms of costs? • In what way could this resource be improved? |

| Key Questions | Additional Questions |
|---|---|
| <p>23. Do NSOs and related sports organisations (including Sport NZ , HPSNZ and NZOC) do enough to make athletes and other persons aware of sports disputes resolution procedures and do they make this information easily accessible and understood?</p> | <ul style="list-style-type: none"> • Should there be statutory appeal rights and processes for some matters so that the jurisdiction of the Tribunal to hear these matters does not depend on them being in rules/constitution of the NSO? • How well informed are athletes and their advisors of their legal rights especially appeal rights and timeframes to meet? • Do NSOs do enough to make their members sufficiently aware of dispute resolution procedures set out in their own rules? • Do NSOs act promptly in relation to disputes raised by their members and provide the necessary information to members so that they can adequately act on these disputes in a timely manner? |
| <p>24. Under its MOU with Sport NZ and the Minister of Sport, the Tribunal is able to develop and make available educational resources for sports organisations about the role of the Tribunal. How well has this function been achieved?</p> | |
| <p>25. How costly are proceedings before the Tribunal? What could be done to reasonably reduce those costs?</p> | |
| <p>26. Other general observations and/or comments?</p> | |

SCHEDULE D

Parties Interviewed and/or Made Submissions

- Sir Bruce Robertson (Tribunal Chair);
- James Farmer QC (Tribunal Deputy Chair);
- Alan Galbraith QC (Tribunal Deputy Chair);
- Brent Ellis (former Tribunal Registrar);
- Ron Cheatley (Tribunal Member);
- Chantal Brunner (Tribunal Member/ NZOC Athletes Commission);
- Peter Miskimmin (CEO, Sport NZ);
- Alex Baumann (CEO, HPSNZ);
- Kereyn Smith (General Secretary, NZOC);
- Simon Wickham (HPSNZ Director, NZOC Selector)
- Graeme Steel (CEO, DFSNZ);
- Rob Nicol (CEO NZRPANZ Athletes Federation);
- Heath Mills (CEO NZCPA/NZ Athletes Federation);
- Lindsay Crocker (Head of Cricket, NZ Cricket);
- Mark Weatherall (CEO, Canoe Racing NZ);
- Daniel Farrow/Andy Martin (Head of Competitions/CEO, NZ Football);
- Dave Abercrombie (CEO, Yachting NZ);
- Simon Peterson (CEO, Rowing NZ);
- Alan Cotter (HP Director, Rowing NZ);
- Mark Copeland (former Chair, Paralympics NZ, lawyer);
- Keith Binnie (General Counsel, NZRU);
- Iain Potter (CEO, Basketball NZ);
- Kris Gemmell (athlete, party in sport dispute);
- Robyn Muir (parent/advocate for Kate Henderson, athlete);
- Paul David QC (lawyer);
- Isaac Hika (lawyer);



- Maria Clarke (lawyer);
- Ian Hunt (lawyer);
- Stephen Cottrell (lawyer);
- Tara Pryor (lawyer/NZOC).

SCHEDULE E

International Comparison

International Comparison – Jurisdiction

| Country and Organisation | Eligibility | Scope of Disputes | Decisions/Appeals/Enforcement |
|--|---|--|--|
| <p>Australia – South Australia</p> <p>State Sport Dispute Centre (SSDC) in South Australia</p> | <p>Members of Sport SA, who enter into a Memorandum of Agreement with SSDC and ensure that their rules and by-laws are consistent with the process of the SSDC, are eligible to use the service. There are currently 154 members who enter into the MOA services as required.</p> <p>Categories of membership include: <u>Full membership</u> is available to:</p> <ul style="list-style-type: none"> • All State Sporting Organisations • Significant umbrella or sporting industry bodies <p><u>Associate Membership</u> is available to:</p> <ul style="list-style-type: none"> • Significant sporting organisations not recognised as the state body • Commercial organisations involved in or associated with sport or the sporting industry <p>Once sports are members, whether arbitration is voluntary or mandatory is determined by members' constitutions, policies and procedures.</p> | <p>The Centre can handle a diverse range of disputes, including, but not limited to, the following:</p> <ul style="list-style-type: none"> • Issues relating to disciplinary hearings, drugs in sport, selection / non-selection for either teams /squads or the appointment of coaches/managers and officials • Member complaints of harassment, equal opportunities and discrimination or similar grievances under Member Protection Policy or volunteer screening • Disputes in the workplace between colleagues, or between staff and management, volunteers or the Board | <p>Arbitrator decisions may be binding and again this is determined by the policies and procedures of the organisation.</p> <p>In terms of appeals from the SSDC, parties are only able to pursue the matter through the courts, which is always available to them and if applicable through the process as defined in the Rules.</p> <p>There could also be an appeal against the process in terms of natural justice as determined by an Appeals procedure.</p> <p>The policy on publication of arbitration decisions is determined by the member of Sports SA who engaged the services of SSDC, while the principle of confidentiality applies to mediations between parties.</p> |

| Country and Organisation | Eligibility | Scope of Disputes | Decisions/Appeals/Enforcement |
|--|---|--|--|
| <p>Australia – Western Australia</p> <p>WA Sport and Active Recreation Dispute Resolution Service (WASDRS)</p> | <p>WASDRS' services are available to WA State Sport Associations and Recreation Peak bodies. A dispute may only be brought by one of these bodies once the organisation's internal dispute mechanisms have been exhausted.</p> | <p>WASDRS offers assistance to State Sport Associations and Recreation Peak bodies ranging from information, education, referral to further support agencies and subsidised mediation.</p> <p>The type of disputes that may be referred include governance related matters, conflicts of interest, grievances under the organisation's Member Protection policy and by-law breaches for out of competition conduct.</p> | <p>Services offered are aimed at facilitation rather than adjudication.</p> |
| <p>Canada</p> <p>Sport Dispute Resolution Centre of Canada (SDRCC)</p> | <p>All members of the Canadian sport community who are involved in a dispute with a National Sport Organisation or a Multisport Service Organisation subsidised by Sport Canada are eligible to use the dispute resolution services of the SDRCC.</p> <p>The types of members include athletes, coaches, officials, affiliated sport organisations, managers and administrators, volunteers and any other Person as defined by the Canadian Sport Dispute Resolution Code.</p> <p>The Government of Canada, under the Funding Policies and Terms of Sport Canada's Sport Support Program, mandates as a condition of funding for national organisations that they make accessible</p> | <p>The SDRCC Dispute Resolution Secretariat is comprised of three tribunals:</p> <p>The Doping Tribunal hears cases where a Person is asserted as having committed a doping rule violation by Canada's anti-doping agency, the Canadian Centre for Ethics in Sport.</p> <p>The Doping Appeal Tribunal hears appeals of Doping Tribunal decisions when an athlete is not an international-level athlete as defined by WADA. This tribunal also hears appeals of decisions regarding therapeutic use exemptions.</p> | <p>Arbitrators have full power to review the facts and apply the law. They may conduct a procedure de novo; they may substitute their decision for the decision(s) that gave rise to the dispute and they may also substitute such measures and grant such remedies or relief that they deem just and equitable in the circumstances.</p> <p>The arbitrator's decision is final and binding. The only exceptions concern decisions of the Doping Tribunal, which can be appealed either to the Court of Arbitration for Sport or to the Doping Appeal Tribunal, as applicable. In other cases, the parties have the possibility of asking for the interpretation of an award if they require further guidance in its implementation.</p> |

| Country and Organisation | Eligibility | Scope of Disputes | Decisions/Appeals/Enforcement |
|---|---|---|--|
| <p>Canada</p> <p>(continued)</p> | <p>to their athletes and coaches, the dispute resolution services of the SDRCC once their internal appeal mechanisms have been exhausted. An internal mechanism is deemed exhausted when the right to an internal appeal has been rejected, when the final appeal body has rendered a decision, or when the sport organisation has failed to apply its internal appeal policy within reasonable time limits.</p> <p>When not governed by these provisions, jurisdiction can only be obtained by consent of the parties or through another authority which is binding on the parties, such as an arbitration clause or policy. Mediation and Med/Arb are entered into voluntarily by parties.</p> <p>Disputes involving international sport organisations or disputes at the provincial, municipal and local levels may only fall under the jurisdiction of the Dispute Resolution Secretariat by consent of all parties. In such cases, the SDRCC may offer its dispute resolution services on a fee-for-service basis.</p> | <p>The Ordinary Tribunal deals with any dispute that is not a Doping Dispute or Doping Appeal. Decisions rendered by a federally funded National Sport Organisation or a Multisport Service Organisation affecting its members can be appealed before the Ordinary Tribunal. Only sports-related disputes can be appealed to the SDRCC.</p> <p>The most common type of disputes filed with the SDRCC relate to:</p> <ul style="list-style-type: none"> • National team selection or selection to an international event; • Athlete assistance program funding; • Eligibility / Membership; • Disciplinary sanctions. • Other types of disputes filed with the SDRCC concern harassment, interpretation of agreements, field-of-play decisions, sponsorship, quota, event bids, etc. | <p>In agreeing to arbitration, parties waive their rights to request further or alternative relief or remedies from:</p> <ul style="list-style-type: none"> • The courts of any provincial or federal jurisdiction of Canada; • The domestic courts of any other country; • Any international court or any other judicial body to which an appeal may be otherwise made. <p>If one of the parties fails to comply with the agreement or decision, the injured party can ask a court to confirm (ratify) it. When the court confirms (ratifies) the agreement or decision, it becomes enforceable, just as if it had been handed down by the court itself.</p> |

| Country and Organisation | Eligibility | Scope of Disputes | Decisions/Appeals/Enforcement |
|---|--|--|---|
| <p>Ireland</p> <p>Just Sport Ireland (JSI)</p> | <p>Voluntary & Mandatory</p> <p>Mandatory: Claimants can use JSI if their sport federation, governing body, club, association or other sports-related body provides for the resolution of a dispute under the JSI Arbitration rules, or by JSI or where resolution for JSI is provided for in a contract etc.</p> <p>Voluntary: Alternatively, where resolution of a dispute is not provided for in the rules of a sports-related body, parties to a sports related dispute may elect to submit the dispute to JSI provided all parties to the dispute are in agreement.</p> <p>As at 2014, 46 National Sport Governing Bodies had made provision for the referral of disputes to JSI.</p> | <p>The range of disputes able to be heard include:</p> <ul style="list-style-type: none"> • Selection • Registration issues • Inter National Governing body, Branch, Club disputes • Disputes arising under a sponsorship agreement • Disputes relating to the administration of discipline in sport <p>JSI does not deal with anti-doping matters.</p> | <p>The Arbitral award is final, binding and enforceable in favour of and/or against the parties.</p> <p>The only instance in which an appeal against an arbitral award can be made is where the rules of a sporting organisation make provision for an appeal to the Court of Arbitration for Sport in Lausanne.</p> <p>Mediation is not binding until all parties have signed a document setting out the terms of the negotiated settlement.</p> <p>An award will only be published in full where all parties to a dispute agree that it can be published. JSI do however reserve the right to publish an award with the identity of the parties withheld.</p> |

| Country and Organisation | Eligibility | Scope of Disputes | Decisions/Appeals/Enforcement |
|---|--|--|--|
| <p>New Zealand</p> <p>Sports Tribunal of New Zealand</p> | <p>The members of any National Sports Organisation or the New Zealand Olympic Committee are entitled to appeal to the Tribunal against the decisions of those bodies provided the relevant body has given jurisdiction to the Tribunal in its constitution and/or rules, and the grounds for appeal are consistent with those rules.</p> | <p>The range of disputes that the Tribunal hears includes:</p> <ul style="list-style-type: none"> • Anti-doping violations • Appeals against decisions of NSOs or the New Zealand Olympic Committee (NZOC) – so long as the rules of the NSO or NZOC allow for an appeal to be made to the Tribunal. Such appeals could include: • Appeals against disciplinary decisions • Appeals against not being selected for a NZ team or squad • Other sport-related disputes • Matters referred to the Tribunal by the board of Sport NZ <p>The Tribunal does not hear employment related or human rights related disputes as there are other bodies with exclusive jurisdiction in these matters.</p> | <p>In general, the decisions of the Tribunal are final and binding and cannot be questioned in any New Zealand court of law. Decisions and orders of the Tribunal may be enforced through the District Court.</p> <p>However, a further right of appeal to the International Court of Arbitration for Sport may be possible where the rules or policies of the relevant NSO or International Federation provide for this.</p> <p>After the Tribunal has released the decision to the parties, the Tribunal will issue a media statement on its decision and post the decision on its website. In exceptional circumstances, it can decide not to publish to protect confidentiality.</p> |

| Country and Organisation | Eligibility | Scope of Disputes | Decisions/Appeals/Enforcement |
|--|---|--|--|
| <p>UK</p> <p>Sport Resolutions UK</p> | <p>The only limitation on the use of Sport Resolutions UK is that all parties must agree to the referral – either specifically in the individual case or through the acceptance of a constitution, rules or regulations which provide for such a reference.</p> <p>The dispute may involve sport federations, governing bodies, clubs, associations, individual athletes, agents or other bodies.</p> <p>The service is open to any sport at any level (elite, Olympic, recreational and professional).</p> | <p>Sport Resolutions UK not only operates in the regulatory field of sport but also in relation to contractual disputes of any kind. The range of disputes that can be heard is broad and includes: discipline, selection, child welfare, personal injury, intellectual property, commercial, employment and professional negligence.</p> <p>For example:</p> <ul style="list-style-type: none"> • Appeals against lengthy bans arising from serious conduct related disputes such as match fixing, doping and other forms of cheating. • Disputes arising from alleged monies owed under commercial agreements. • Disputes arising from point deductions and their subsequent impact on promotion and relegation issues. | <p>In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.</p> <p>All decisions and/or awards of the Tribunal are final and binding. By submitting to arbitration parties waive irrevocably their right to any form of appeal, review or recourse to any state court or other judicial authority, subject to and applicable statutory or other rights.</p> <p>The proceedings are confidential. The Tribunal's award or decision and its reasons may be (but not usually) published unless the parties expressly agree prior to the Tribunal making its award or decision that they should remain confidential.</p> <p>Sport Resolutions UK may publish generic, non identifying information relating to the arbitration.</p> |

| Country and Organisation | Eligibility | Scope of Disputes | Decisions/Appeals/Enforcement |
|---|--|--|--|
| <p>Germany</p> <p>German Court of Arbitration (German CAS)</p> | <p>Parties to a sports dispute in Germany can choose to proceed through the civil courts or submit to arbitration or an alternative dispute resolution through the German CAS.</p> | <p>The range of disputes that the German CAS can hear include:</p> <ul style="list-style-type: none"> • Disputes relating to breaches of anti-doping rules – either direct sanctioning of a violation or an appeal against the decision of an internal disciplinary body of a sports federation. The German CAS can also review an arbitral award by the International Court of Arbitration for Sport; • Disputes arising in context of sports events; • Player transfer disputes; • Disputes respecting licensing and sponsorship agreements; • Disputes arising from membership in a sports club or association; • Appeals against decisions of disciplinary bodies of Sports Federations. | <p>Anti-doping cases can be appealed to the International Court of Arbitration for Sport.</p> <p>The parties and their representatives, and arbitrators are obliged to maintain confidentiality of the arbitral proceedings.</p> |

| Country and Organisation | Eligibility | Scope of Disputes | Decisions/Appeals/Enforcement |
|---|---|--|--|
| <p>International</p> <p>FIFA Disputes Resolution Chamber (DRC)</p> | <p>DRC is only able to hear disputes of an international nature (involving players or clubs from different countries).</p> <p>Rules of DRC contained in FIFA Regulations which are compulsory for FIFA members.</p> | <p>Resolves disputes between players, clubs and national associations, coaches and licensed match agents on the following issues:</p> <ul style="list-style-type: none"> • Maintenance of contractual stability • Employment related disputes between player and club; • Disputes related to training compensation; • Disputes related to solidarity compensation. • Majority of cases are employment disputes relating to termination of contracts, unpaid wages and payment of training compensation. | <p>Players and clubs are entitled to pursue claim through civil court system, but if they do, they are subsequently barred from using DRC.</p> <p>The decisions of DRC are enforceable through the FIFA disciplinary committee rather than through the civil courts.</p> <p>Decisions may be appealed to International Court of Arbitration (CAS).</p> <p>Decisions are based on FIFA Statutes and Regulations, lex sportiva (specifics of sport prevail over national laws), and all relevant arrangements, laws and / or collective bargaining agreements that exist at national level.</p> <p>Decisions of general interest are published by FIFA's general secretariat in the form of media releases. A party can make a request to exclude certain elements from publication.</p> |

International Comparison - Structure, funding and administration

| Country and Organisation | Establishment and Structure | Membership and Expertise |
|---|--|--|
| <p>Australia – South Australia</p> <p>State Sport Dispute Centre (SSDC) in South Australia</p> | <p>The SSDC was established in 2005 and prior to this Sport SA provided a mediation service for members. SSDC is jointly funded by the Office for Recreation and Sport and Sport SA to provide a confidential and impartial mediation and dispute resolution service for the South Australian Sporting Community. The SSDC is managed by Sport SA which is a not for profit organisation and peak industry body.</p> <p>SSDC is overseen by an Advisory Management Committee comprising of Sport SA Director and staff, mediators, state sporting organisation representatives, Office for Recreation and Sport nominee, supported by a panel of trained Member Protection Information Officers, Mediators and Arbitrator.</p> <p>SSDC provides 7 main services:</p> <ul style="list-style-type: none"> • Independent advice – SSDC provides advice to assist individuals or organisations to resolve disputes themselves. Advice might extend to policy, procedures, dispute-handling or constitution changes. • Referral service – where deemed inappropriate for the SDCC to deal with a specific issue, referral is made to a suitable agency (e.g. Equal Opportunities Commission, Industrial Relations Commission, South Australian Police) • Member Protection Information Officers (MPIOs) – The Office for Recreation and Sport trains people to be the first point of contact within sporting organisations for any person making a complaint under the Member Protection Policy. MPIOs provide confidential, impartial and timely information about the local complaint resolution options available to address the individual’s concerns. MPIOs are not advocates but they may elect to accompany complainants, if requested, to talk with someone else or in the hearing. • Independent Chair – the provision of a trained and independent person to chair a Tribunal, Disciplinary Hearing or Appeal. • Mediation Service and the provision of trained mediators. • Arbitration and the provision of qualified arbitrators. • Policy development. Assistance can be provided to sporting organisations to develop grievance policies and procedures, hearing guidelines and appeal processes. | <p>The CEO of Sport SA manages the SSDC and the list of arbitrators, of whom there are currently 8 on the list.</p> <p>Arbitrators are appointed to the list on the basis of their experience and expertise in sports law and the sports industry.</p> <p>Arbitrators are recommended to members by Sports SA. The arbitrator must be approved by the Board of the organisation using the service.</p> <p>Arbitrators are assigned cases depending on their availability and reference to the Conflict of Interest Procedures.</p> <p>There are 8 mediators who have undertaken training through the Resolution Institute (LEADR and IAMA) and 5 Investigators who have completed investigation training and can be appointed to assist organisations. In addition, experienced industry personnel assist as panel and tribunal members.</p> |

| Country and Organisation | Establishment and Structure | Membership and Expertise |
|---|---|--|
| <p>Australia – Western Australia</p> <p>WA Sport and Active Recreation Dispute Resolution Service (WASDRS)</p> | <p>WASDRS was established in 2014.</p> <p>The WASDRS is a partnership between the Department of Sport and Recreation and the Western Australia Sports Federation (WASF) to provide additional support to State Sport Associations and Recreation Peak Bodies.</p> <p>Financial support is provided by the WA Government to WASF to manage this service.</p> | <p>WASDRS is managed by WASF supported by a Reference Group.</p> |

| Country and Organisation | Establishment and Structure | Membership and Expertise |
|---|--|--|
| <p>Canada</p> <p>Sport Dispute Resolution Centre of Canada (SDRCC)</p> | <p>The SDRCC was established in June 2003, under federal statutes, by the Physical Activity and Sport Act adopted by the Canadian Parliament (S.C. 2003, c.2). Its funding is provided at 99.5% by the Government of Canada. In 2015-2016 the total grant for the SDRCC was \$1,000,000(in Canadian dollars).</p> <p>The affairs and business of the SDRCC are managed by a Board of Directors consisting of 12 voting directors. Board membership is not remunerated but directors are entitled to reimbursement of travel and expenses. The Chief Executive Officer of the SDRCC is also an ex officio director. The 12 voting directors are appointed by the federal minister responsible for sport in Canada. Guidelines were created in consultation with the sport community for these ministerial appointments. The appointed Board of Directors comprises men and women who:</p> <ul style="list-style-type: none"> • are committed to the promotion and development of sport; • have the experience and capability to enable the SDRCC to achieve its objectives; • are representative of the sport community (minimum three current or recently retired athletes; one representative of a National Sport Organisation and one of a Multisport Service Organisation; one coach); • are representative of the diversity and linguistic duality of Canadian society (no more than eight members can be of the same gender) <p>The SDRCC is a not-for-profit organisation. It is not an agent of Her Majesty (Queen of England), a departmental corporation or a Crown corporation. The SDRCC head office is located in Montreal, in the province of Quebec, with arbitrators and mediators located across the country, specifically in 7 of 10 provinces and 1 of 3 territories. The SDRCC is not a government organisation; it is also not a federal board, commission or other tribunal within the meaning of the Federal Courts Act.</p> | <p>The SDRCC maintains a list of mediators and arbitrators (as of October 2015, there are 44). The SDRCC deems these individuals to:</p> <ul style="list-style-type: none"> • have appropriate training (e.g. law degree(s), certification in arbitration or mediation or both); • possess recognised competence with regard to sport and alternative dispute resolution procedure; • have the requisite experience in conducting such matters; • be a fair representation of the different regions, cultures, genders and bilingual character of Canadian society; • Be comfortable using web-based technologies and conducting virtual proceedings (by teleconference or videoconference). <p>Mediators and arbitrators are selected and mutually agreed upon by the parties. When parties cannot agree, arbitrators and mediators are assigned by the SDRCC on a rotational basis.</p> |

| Country and Organisation | Establishment and Structure | Membership and Expertise |
|--------------------------------------|---|---|
| <p>Canada (continued)</p> | <p>In addition to the better-known alternative dispute resolution processes of mediation and arbitration, the SDRCC also offers the following services:</p> <ul style="list-style-type: none"> • Resolution facilitation: It is a voluntary, confidential, and informal process to help parties to a potential dispute discuss their options and consider a settlement. It can be used to prevent disputes when requested early, as soon as a disagreement or a misunderstanding occurs. Resolution facilitation can also be mandatory: all parties opting to go directly to arbitration (as opposed to mediation or med/arb) must take part in a mandatory three-hour resolution facilitation session. Since 2009, resolution facilitation is used in doping cases, not with the intent of settling the matter but rather as a facilitated exchange of information between the parties, in a confidential and non-prejudicial setting, the resolution facilitator acting as a third neutral party. Discussions may take place about, for example, assumptions, burdens and standards of proof, substantial assistance and other applicable provisions of the anti-doping rules. • Med/arb: It is a dispute resolution process that combines mediation and arbitration. Initially, the parties try to reach a settlement through mediation. If there are issues that are not resolved through mediation, the mediator then becomes the arbitrator and renders a final and binding decision. | <p>Where a panel of three arbitrators is required, the claimant and the respondent will each appoint one; the two selected arbitrators will appoint the third arbitrator who then acts as chairperson.</p> <p>Arbitrators and mediators are remunerated on an hourly basis for their work with the SDRCC.</p> |

| Country and Organisation | Establishment and Structure | Membership and Expertise |
|---|---|---|
| <p>Ireland</p> <p>Just Sport Ireland (JSI)</p> | <p>Established by the Federation of Irish Sport with financial support from the Irish Sports Council. Just Sport Ireland is a company, limited by guarantee, created to establish and oversee the operation of an independent and specialised Irish sports dispute resolution service. There is a maximum of 10 directors on the Board of JSI including a board member of the Federation of Irish Sport, an Irish Sports Council representative, 3 persons nominated by the Federation of Irish Sport, and 4 with legal qualifications.</p> <p>Just Sport Ireland has been operating since October 2007. It provides mediation, arbitration as well as general advice to sporting bodies.</p> <p>Just Sport Ireland is funded by the Federation of Irish Sports. This financial assistance is made possible by the grant aid sport received by the Federation from the Irish Sports Council. The operating budget is however small.</p> | <p>All arbitrators and/or mediators are:</p> <ul style="list-style-type: none"> • entirely independent • are accredited arbitrators/mediators • have some interest in sport <p>The list of arbitrators is managed by the Registrar of Just Sport Ireland who is a full time employee of the Federation of Irish Sports. The arbitrators are appointed on approval of the board. The selection criteria are as follows:-</p> <ul style="list-style-type: none"> • professional qualification • experience • sporting interest & experience <p>The arbitrators are assigned cases on the basis of availability and the absence of any conflict. On JSI's website, there is a list of 7 arbitrators and 6 mediators on its respective panels. Panel members are required to comply with the JSI Code of Conduct for Panel Members.</p> |

| Country and Organisation | Establishment and Structure | Membership and Expertise |
|---|--|--|
| <p>New Zealand</p> <p>Sports Tribunal of New Zealand</p> | <p>The Sports Tribunal is a statutorily based independent body that determines certain types of disputes for the sports sector. It was established in 2003 by the Board of Sport and Recreation New Zealand (now Sport NZ) and continued under Section 29 of the Sports Anti-Doping Act 2006.</p> <p>In accordance with a Memorandum of Understanding between the Minister for Sport and Recreation, the Sports Tribunal and Sport NZ, Sport NZ provides the Sports Tribunal with accommodation and administrative support, and provides the Minister with advice relating to the Sports Tribunal.</p> <p>A Registrar conducts the day-to-day administration and management of the Tribunal.</p> | <p>The Tribunal consists of between 5 and 9 members including one Chairperson and at least one Deputy Chairperson. Each member is appointed by the Governor-General on the recommendation of the Minister made after consultation with the Ministry of Culture and Heritage.</p> <p>The Tribunal comprises a mix of people with experience in the judiciary, as lawyers, sports administrators and athletes.</p> <p>For hearings, a panel of 3 tribunal members is normally formed and usually involves at least one lawyer (usually the Chair or a Deputy Chair of the Tribunal) who chairs the panel, with a mix of other members as suits the case and the availability of the members.</p> |
| <p>UK</p> <p>Sport Resolutions UK</p> | <p>Sport Resolutions UK is the principal organisation in the UK for delivering independent sport-specific dispute resolution, offering arbitration, mediation and tribunal appointment and administration services. It is also the independent provider of the National Anti-Doping Panel (NADP) and Tribunal Service for sport in the United Kingdom.</p> | <p>The service has recently been reviewed and restructured. At the present time there is a panel of arbitrators (n= 130) and a panel of mediators (n=28). The panel of arbitrators is divided into two classes. Legal arbitrators (n=58) who must be experienced lawyers who regularly preside over court or tribunal hearings and Specialist arbitrators (n=46) who may be medical professionals, scientists, or retired athletes and who sit as wing members.</p> |

| Country and Organisation | Establishment and Structure | Membership and Expertise |
|-------------------------------------|--|--|
| <p>UK</p> <p>(continued)</p> | <p>Sport Resolutions UK is a not-for-profit company, established to meet the needs of sport in the UK. Current members of the company include:</p> <ul style="list-style-type: none"> • The British Athletes Commission • The British Olympic Association • The British Paralympic Association • The Sport and Recreation Alliance • The Professional Players Federation • The European Sponsorship Association • The Northern Ireland Sports Forum • The Scottish Sports Association • The Welsh Sports Association <p>Sport Resolutions UK is funded through a grant from UK Sport, case fees, commercial contracts, and the contract to operate the UK National Anti-Doping Panel and Tribunal Service which is awarded by the UK government's Department for Culture Media and Sport.</p> <p>As a not-for-profit company any surplus generated by Sport Resolutions UK will be used for the promotion of good practice and education in Sport.</p> <p>Sport Resolutions UK maintains close links with other dispute resolution organisations including the Court of Arbitration for Sport, based in Lausanne, which deals with sports disputes at the international level and National Sports Dispute organisations in Canada, New Zealand and Ireland.</p> | <p>Arbitrators are also assigned to thematic panels as follows:</p> <ul style="list-style-type: none"> • National Anti-Doping Panel • National Safeguarding Panel • Football Panel • Discipline and Integrity Panel • Athlete Selection & Eligibility Panel • Disability and Paralympic Panel <p>The experience of different panel varies. All panel members are required to demonstrate expertise in both dispute resolution and sport. They offer a broad level of experience and specialisation across a full range of areas including discipline, anti-doping, selection, child welfare, personal injury, intellectual property, commercial, employment and professional negligence.</p> <p>The National Anti-Doping panel consists of a President, 10 lawyers, 6 doctors/scientists and 6 former athletes. The doctors and athletes sit alongside the legally qualified chair as appropriate.</p> <p>Selection to the Panel of Arbitrators and Mediators are made on recommendation of a sub-committee of the Sport Resolutions UK Board called the Panel Appointments and Review Board (PARB).</p> |

| Country and Organisation | Establishment and Structure | Membership and Expertise |
|--------------------------|---|--|
| | <p>Sport Resolutions has a three tiered structure:</p> <ul style="list-style-type: none"> • An experienced Management Board and Board of Directors to determine the overall strategy, direction and management of the service; • An expert standing Panel of Arbitrators and Mediators to resolve disputes as they arise; • A full time Secretariat to undertake the day to day management and operation of the service. <p>Sport Resolutions (UK) has an operating budget of c £950, 000.</p> | <p>Appointments are made for a three year term in accordance with published selection criteria. The Sport Resolutions UK Secretariat manages the list.</p> <p>The National Safeguarding Panel consists of a President, 8 lawyers and 12 specialist members drawn from policing, social work and offender management backgrounds. Arbitrators are allocated strictly on qualification and relevant experience, to fit the budget specified by the parties i.e. Sport Resolutions (UK) does not operate a quota or rota system for case allocation. The Executive Director of Sport Resolutions (UK) appoints arbitrators and mediators to specific cases or selects a shortlist for the parties to select from.</p> <p>In National Anti-Doping Panel cases, the NADP President selects the Panel with the Panel and Appointments Committee of Sport Resolutions UK. The President is solely responsible for appointing a chair and wing members to specific anti-doping tribunals.</p> <p>The National Anti-Doping Panel and The National Safeguarding Panel both work in accordance with specific procedural rules that differ from the general arbitration rules of UK Sport Resolutions.</p> |

| Country and Organisation | Establishment and Structure | Membership and Expertise |
|---|---|--|
| <p>Germany</p> <p>German Court of Arbitration (German CAS)</p> | <p>The German CAS was established on 1 January 2008 as a joint initiative of the German Institution of Arbitration (DIS) and the German National Anti-Doping Agency. The German Institution of Arbitration is a registered association formed in 1920 to promote arbitration for the resolution of disputes generally. The German CAS operates under a modified form of the DIS Arbitration Rules specifically developed for sports related disputes.</p> | <p>The DIS is governed by a Board of Directors (18 members) and an Advisory Board (22 members) some of whom are experienced in sports law and provide advice to its sports dispute resolution arm, the German CAS.</p> <p>Arbitrators must have extensive experience in sports law to be selected as an arbitrator for the German CAS.</p> |
| <p>International</p> <p>FIFA Disputes Resolution Chamber (DRC)</p> | <p>The DRC was established in 2001 under the FIFA Regulations for the Status and Transfer of Players.</p> <p>FIFA also have a Players' Status Committee (PSC) which monitors compliance with the above Regulations. If there is an issue as to which body should hear a case, the chairman of the PSC will decide.</p> | <p>The DRC is comprised of a Chairman, Deputy Chairman, 12 player representatives (nominated by FIFPro), and 12 club representatives (nominated by different national associations) ie. equal representation from players and clubs.</p> |

International Comparison - Accessibility

| Country and Organisation | Information | Cost | Geographical |
|---|--|---|---|
| <p>Australia – South Australia</p> <p>State Sport Dispute Centre (SSDC) in South Australia</p> | <p>Information is available through:</p> <ul style="list-style-type: none"> • Sport SA website • Sport SA membership meetings and newsletters • The Office for Recreation and Sport also promote SSDC through their network. <p>Presentations have been made at seminars for sport and recreation organisations, the community including law and mediation organisations.</p> <p>The SSDC maintains links with ANZSLA and the Resolution Institute (LEADR and IAMA)</p> | <p>Cost to parties:</p> <ul style="list-style-type: none"> • Independent Chair - \$125 for up to 3 hours • Mediation - \$125 for up to 3 hours then \$100 per hour • Arbitration fees at market rates – this is negotiated between the parties and varies significantly according to the nature of the matter • Travel expenses • Long distance calls, couriers • Room hire fees <p>There is no filing or application fee SSDC meets the costs of initial advice, management and coordination of the</p> | <p>State-level body.</p> <p>Generally, matters are heard at Sport SA premises on a face to face basis.</p> <p>Telephone conferences are used where necessary.</p> |
| <p>Australia – Western Australia</p> <p>WA Sport and Active Recreation Dispute Resolution Service (WASDRS)</p> | <p>Information about the WASDRS is available on the WASF website.</p> | <p>Mediation services are subsidised.</p> | <p>State-level body.</p> |

| Country and Organisation | Information | Cost | Geographical |
|---|---|--|---|
| <p>Canada</p> <p>Sport Dispute Resolution Centre of Canada (SDRCC)</p> | <p>Through its Resource Centre, the SDRCC dispute prevention and resolution services are promoted through a website, social media, a newsletter, promotional and educational publications, and participation at sport organisations' events with workshops, presentations, or displays (kiosk). The SDRCC dispute prevention and education services are accessible to all members of the sport community at no cost.</p> <p>The main goal of those prevention services and programs is to help the members of the Canadian sport community prevent the occurrence or the severity of sports-related disputes by improving their practices in sound policy-making and fair decision-making processes, as well as raising awareness about natural justice, rights and responsibilities.</p> <p>Access to the SDRCC is therefore encouraged not only in response to a dispute, but also in anticipation or in prevention of a dispute.</p> | <p>Cost to parties:</p> <ul style="list-style-type: none"> In the Ordinary Tribunal, a filing fee is payable by the claimant; as of October 2015 the fee is set at \$250 per case (in Canadian dollars) and is not reimbursable; The parties' own legal representation (if they choose to be represented); Travel costs to attend hearings in person for parties, their representatives and witnesses, if applicable. <p>Cost reduction/ recovery: The SDRCC has a pro bono program through which parties unable to hire counsel can receive free legal advice and representation during SDRCC proceedings.</p> <p>The arbitrator also has the authority to compel a party to reimburse fees and expenses incurred by another party.</p> <p>Costs met by the SDRCC:</p> <p>For cases involving federally funded sport organisations, the SDRCC will pay for costs related to the process itself, including for arbitrator and mediator fees and expenses, translations of documents, dispute secretariat personnel salaries and meeting logistics (such as facilities rental, toll-free conferencing services, videoconferencing services), as may be required.</p> | <p>In consideration of potential costs to parties, arbitration hearings and mediation sessions are generally held via teleconference, but they can also be held in person, by videoconference or any combination of these formats. In certain circumstances and when the arbitrator deems it appropriate, a hearing can take the form of a documentary review.</p> <p>In-person arbitrations and mediations can be conducted in any Canadian province or territory agreed upon by the parties.</p> <p>Since 2011, the SDRCC has used the Case Management Portal (CMP), a proprietary online platform, to enable paper-free filings, document sharing and communications between the tribunal, the parties, counsel, and the arbitrator and/or mediator. Through the CMP, all participants have 24-hour access to their case file, including an interactive calendar of proceedings. The CMP is available from any device (computer, laptop, tablet or smart phone) connected to the Internet.</p> |

| Country and organisation | Information | Cost | Geographical |
|--------------------------|-------------|---|--------------|
| Canada (continued) | | Under the fee-for service program, all the above costs, except for translation of arbitral awards, are payable by the parties, according to the proportions or conditions set out in the arbitration agreement. | |

| Country and organisation | Information | Cost | Geographical |
|---|--|--|---|
| <p>Ireland</p> <p>Just Sport Ireland (JSI)</p> | <p>The Federation of Irish Sports promotes Just Sport Ireland to its members.</p> <p>JSI advertises its services through a website.</p> <p>The Irish Sports Council has indicated it will require all National Governing Bodies to sign up to a dispute resolution process in its rules and is promoting JSI as the preferred approach to dispute resolution.</p> <p>Just Sport Ireland seeks to facilitate the adoption by NSO's of JSI's services within their rules and provides advice in this regard.</p> | <p>Cost to parties:</p> <ul style="list-style-type: none"> • €250 filing fee for arbitration • €100 filing fee for mediation • Estimated at €1,000 per party, per day plus VAT and outlay for use of a mediator or arbitrator, but this depends on the complexity of the case and the time required to resolve the dispute. <p>Cost reduction/ recovery:</p> <p>The Bar Council of Ireland encourages and supports the involvement of qualified members of the Bar to act as advocates on a pro bono basis to represent parties who are without the resources to afford legal representation and where such representation may be necessary.</p> <p>In general, the parties bear their own costs, except where the Arbitrator determines that a contribution should be provided by one party to another.</p> <p>The Federation of Irish Sports is located at Sport HQ where there are meeting rooms etc available to host mediations/arbitrations thereby reducing the mediation/arbitration costs to the time of the arbitrators only.</p> | <p>Arbitrations are generally staged at Sport HQ, Park West, Dublin 12.</p> <p>Arbitrations can however be held anywhere in the country although this may incur additional costs.</p> |

| Country and Organisation | Information | Cost | Geographical |
|---|---|---|---|
| <p>New Zealand</p> <p>Sports Tribunal of New Zealand</p> | <p>The primary channel of accessing information about the Sports Tribunal is its website.</p> <p>There is also a free phone line to the Tribunal Registrar.</p> | <p>Cost to parties:</p> <p>Filing fee to lodge a claim the cost depends on the type of dispute:</p> <ul style="list-style-type: none"> • No fee for an Anti-Doping violation • \$500 per application, for an Appeal • \$250 per party, for a sports-related dispute by agreement • Lawyers' fees <p>Costs to Sport Tribunal: Remuneration to tribunal members, travel costs, cost of hearing venue, overheads.</p> <p>Cost reduction/ recovery: A legal assistance panel scheme enables parties access to low cost or even free services.</p> <p>Witnesses summoned to the Tribunal are entitled to be paid witness fees, allowances, and travel expenses. Determined by the regulations made under the Criminal Procedure Act 2011. Tribunal has the power to award costs in favour of any party or itself and may dismiss any proceeding that it considers frivolous or vexatious. The Tribunal tends to award costs only in exceptional cases.</p> | <p>Tribunal hearings may be conducted through written submissions but the norm is for a physical hearing.</p> <p>Hearings are generally held in a location convenient to all parties.</p> <p>Hearings also frequently take place by teleconference, for example where the matter can be dealt with promptly and efficiently, or where a physical hearing is not convenient for the parties.</p> |

| Country and Organisation | Information | Cost | Geographical |
|--|--|--|--|
| <p>UK</p> <p>Sport Resolutions UK</p> | <p>The primary avenue for information about Sport Resolution is through their website.</p> <p>Sport Resolutions UK produces a monthly newsletter, advertises its services in industry publications, publishes an annual report and runs an annual education programme. In 2014-15 this included the delivery of 9 seminars and an annual conference which were attended by a total of 341 individuals.</p> <p>Sport Resolutions UK is there to support NSO's, athletes and sports personnel who need an independent, sport- specific body to settle disputes quickly and cost effectively.</p> <p>Sport Resolutions UK is referenced in over 300 rules and regulations of UK sporting organisations as the body to whom disputes needs to be referred. This includes not just the rules and regulations of amateur sports but also those of professional sports and leagues. Eg. Association Football, Rugby Football Union, Cricket and Golf.</p> | <p>Cost to parties:</p> <ul style="list-style-type: none"> • A non-refundable deposit due at notice of appeal • Travel costs • Arbitration fees • Hire of venue • Management of case <p>Fees are case specific and confirmed to the parties at the outset.</p> <p>All requests for arbitration made to the National Anti- Doping Panel are managed through to conclusion without charge to the parties. In non-doping cases, Sport Resolutions UK charges an arbitrator/mediator fee and a case management fee at cost to the parties. Sport Resolutions UK's aim is to provide affordable arbitration and mediation to the UK sport industry and offers a flexible fee structure.</p> <p>Cost reduction/ recovery: The cost of the Tribunal is equally shared between the parties unless otherwise agreed or directed by the Tribunal. The parties do not incur any tribunal costs in making requests for arbitration to the National Anti-Doping Panel.</p> | <p>Office is located in central London. The seat of the Arbitration will be in London unless otherwise determined by the Tribunal.</p> <p>Sports Resolution provides services in England, Scotland, Wales, and Northern Ireland. Occasionally Sport Resolutions hosts international arbitrations where the parties wish to elect London as the seat of arbitration.</p> <p>Arbitrations can be held by telephone conference if necessary to overcome geographical restrictions, but in practice all substantive hearings are held in person and directions hearings held by telephone conference call. Sport Resolutions UK's panel members are drawn from all parts of the country making it possible in most cases to hold hearings and mediations at a location which is of convenience to the parties.</p> |

| Country and Organisation | Information | Cost | Geographical |
|--|---|---|---|
| <p>Germany</p> <p>German Court of Arbitration (German CAS)</p> | <p>Information is provided on the DIS and German CAS websites.</p> <p>The German CAS held its first joint conference with the International Court of Arbitration for Sport in September 2015.</p> | <p>Costs are determined in accordance with the DIS Sport Arbitration Rules.</p> | <p>German CAS is based in Cologne and DIS has other offices in Berlin and Munich.</p> |
| <p>International</p> <p>FIFA Dispute Resolution Chamber (DRC)</p> | <p>The Regulations and Rules are available on FIFA's website. A database of DRC's published decisions is available on a subscription basis.</p> | <p>Disputes between club and player regarding maintenance of contractual stability and international employment related disputes are heard at no cost.</p> <p>For solidarity mechanism and training compensation cases, an advance of costs is required depending on the amount in dispute (up to CHF5000 for disputes involving more than CHF200,000).</p> <p>Maximum costs of CHF25,000 may be ordered on the basis of parties' degree of success in the proceedings.</p> | <p>Proceedings of the DRC are usually held at FIFA's headquarters in Zurich, Switzerland.</p> |

International Comparison - Procedure

| Country and Organisation | Prerequisites/Timeframe | Steps in the Process | Representation |
|--|--|--|---|
| <p>Australia – South Australia</p> <p>State Sport Dispute Centre (SSDC) in South Australia</p> | <p>The Constitution, policies and procedures of the organisation need to be in place.</p> <p>The timeframe to be met is not prescribed and is determined by the parties.</p> | <p>The steps in the process are dependent on the procedures outlined in the organisation's documents.</p> | <p>Whether parties can have legal representation is determined by the panel in line with the procedures and policies of the organisation.</p> |
| <p>Australia – Western Australia</p> <p>WA Sport and Active Recreation Dispute Resolution Service (WASDRS)</p> | | <p>Dispute is referred by a State Sports Association or Recreation Peak body through WASF. WASF considers if it is appropriate for referral to the WASDR ie. whether it should be resolved internally or whether external assistance is required. Assistance is provided as appropriate eg. providing information, referral to other support agencies or mediation.</p> | |
| <p>Canada</p> <p>Sport Dispute Resolution Centre of Canada (SDRCC)</p> | <p>The dispute must be "sports-related". The 2015 Canadian Sport Dispute Resolution Code defines a sports-related dispute as "a dispute affecting participation of a Person in a sport program or a sport organisation".</p> | <p>The procedural rules of the SDRCC are found in the Canadian Sport Dispute Resolution Code. There are five general steps to the dispute resolution process under the Ordinary Tribunal:</p> <p><u>Step 1: Request.</u> Using a standard form, a written request must be made to the Dispute Resolution Secretariat to initiate mediation, med/arb, or arbitration.</p> | <p>Parties have a right to be represented or accompanied by a person (parents, coaches, friends, guardians, teammates, lawyers), but it is not mandatory.</p> |

| Country and Organisation | Prerequisites/Timeframe | Steps in the Process | Representation |
|---|---|--|--|
| <p>Canada (continued)</p> | <p>The most common types are team selection disputes and disputes arising from the application of the Canadian Anti-Doping Program.</p> <p>An agreement needs to exist between parties to go to arbitration; however such agreement may be explicit, or tacit in one of the parties' policies, funding contracts or other legally binding documents.</p> <p>Once the eligibility conditions have been met, and in the absence of a specified time limit in the sport organisation's own internal appeal policy or arbitration agreement, the time limit to file a request is 30 days following:</p> <ul style="list-style-type: none"> • The date on which the claimant becomes aware of the existence of the dispute; | <p><u>Step 2: Administrative Procedures by the Secretariat.</u> Upon receipt of the request, the SDRCC informs the respondent. The SDRCC holds an administrative meeting by telephone conference call to discuss matters such as communication protocol, language of proceedings, resolution process to be used, choice of mediator or arbitrator, scheduling and other administrative procedures. If parties cannot agree on the type of resolution process, the default is arbitration.</p> <p><u>Step 3: Resolution Facilitation.</u> Barring exceptional circumstances, parties requesting an arbitration hearing must first participate in an informal resolution facilitation meeting (at least 3 hours). This meeting will allow the parties to express their comprehension of the dispute, to clarify the issues and to analyse possible path of solutions in order to avoid, if possible, having to participate in the arbitration hearing. This meeting is confidential and without prejudice. Resolution facilitation is not mandatory when parties agree to do mediation or med/arb.</p> <p><u>Step 4: The Hearing or Mediation Session.</u> The parties then meet with the arbitrator or mediator in an attempt to resolve the dispute. Prior to the mediation session or the hearing, a preliminary meeting may be convened by conference call to address any preliminary or procedural issues. More precisely in arbitration, each party will have the opportunity to make its case. The arbitrator will be presented with the facts and evidence, and will hear arguments. In the presentation of facts and evidence, parties have the right to call witnesses. At any time during the arbitration process, if both parties agree, the arbitration can be adjourned to allow for mediation to be pursued. If no agreement is reached, the arbitration process will resume.</p> | <p>Representation by an authorized adult is mandatory when the party is under the age of majority.</p> <p>Although parties can take part in SDRCC proceedings without legal representation, it is increasingly frequent that parties retain legal counsel. The SDRCC pro bono program has enabled affordable access to legal services.</p> |

| Country and Organisation | Prerequisites/Timeframe | Steps in the Process | Representation |
|---|--|---|----------------|
| <p>Canada (continued)</p> | <ul style="list-style-type: none"> • The date on which the claimant becomes aware of the decision being appealed; • The date on which the last step in attempting to resolve the dispute occurred, as determined by the SDRCC. | <p><u>Step 5: Agreement or Decision.</u> If the mediation was successful, parties are required to write and sign a settlement agreement and provide a copy to the SDRCC. If the dispute was resolved through arbitration, the arbitrator has seven days to render a short decision, and will have fifteen days after the hearing to provide a decision with reasons. Arbitral decisions are final and binding.</p> <p>Disputes are usually heard by panels of a single arbitrator, except in the Doping Appeal Tribunal; where a panel of 3 arbitrators is required. The rules also allow for a panel of 3 arbitrators to be appointed when the complexity of the case so justifies. SDRCC arbitrations are based on an adversarial approach. While the arbitrator is not responsible for fact finding, most arbitrators will adapt their procedures to be less rigid when dealing with unrepresented fails to yield a mutually agreed upon settlement, parties may opt to submit their dispute to arbitration for a final and binding award.</p> <p>SDRCC mediations are much less formal than arbitrations. The mediator will often meet the parties individually in private caucuses to enable them to speak freely in the hopes of bringing the parties closer together towards an agreement. The mediators have no authority to impose a settlement or any other solution to the dispute. If mediation fails to yield a mutually agreed upon settlement, parties may opt to submit their dispute to arbitration for a final and binding award.</p> | |

| Country and Organisation | Prerequisites/Timeframe | Steps in the Process | Representation |
|---|--|--|--|
| <p>Ireland</p> <p>Just Sport Ireland (JSI)</p> | <p>Parties must agree to use arbitration.</p> <p>Dispute must be sports-related and not be related to a doping matter.</p> | <p>JSI provides arbitration and mediation services in accordance with its Rules for Arbitration and Mediation.</p> <p><u>Arbitration process:</u></p> <p><u>Step 1: Agreement to submit to Arbitration:</u> Parties must agree to go to arbitration.</p> <p><u>Step 2: Notice of Appeal:</u> The appropriate forms, including notice of appeal, statement of appeal and reply, must be completed by the parties.</p> <p><u>Step 3: Appointment of Arbitrator:</u> The parties agree on an arbitrator from the JSI panel of arbitrators. Where the parties cannot reach an agreement, the JSI Register will appoint an arbitrator.</p> <p>The rules provide that there be a single arbitrator save where a party requests that the matter be heard by a three party panel. A three party panel will be appointed in such circumstances where the other party agrees. Where there is a dispute between the parties as to the number of arbitrators to sit on a panel the Registrar has the discretion in light of the circumstances to determine the number of arbitrators on the panel.</p> <p>Where it has been agreed that a dispute is to be heard by a 3 person arbitration panel, each party appoints one arbitrator with the third person who shall act as Chairperson of the panel appointed by the JSI registrar.</p> <p><u>Step 4: Conduct of Arbitration:</u> The proceedings will be carried out in a manner seen fit by the arbitrator. As a general rule, an oral hearing shall be held. The decision of the arbitrator shall be delivered in writing and with reasons. Arbitrations are based on an adversarial approach.</p> | <p>Parties need not be represented by lawyers.</p> |

| Country and Organisation | Prerequisites/Timeframe | Steps in the Process | Representation |
|--|-------------------------|---|----------------|
| <p>Ireland</p> <p>(continued)</p> | | <p><u>Mediation process:</u></p> <p><u>Step 1: Agreement to Mediate:</u> Parties must agree in writing to mediation.</p> <p><u>Step 2: Filing forms:</u> Parties to complete and file Request to Mediate and reply forms.</p> <p><u>Step 3: Appointment of Mediator:</u> The parties agree on a mediator from the JSI panel of mediators. Where the parties cannot reach an agreement, the JSI Register will appoint a mediator.</p> <p><u>Step 4: Conduct of Mediation:</u> The mediation shall be conducted in the manner agreed by the parties, or failing agreement, as laid down by the mediator. Prior to mediation, the mediator will contact each Party to ensure all relevant documentation has been exchanged. On the day of mediation, the mediator will first hold a joint introductory session, then meet individually with each party. The parties will then have a further joint session with a view to reaching settlement. If settlement is reached, an agreement setting out the settlement terms is drafted and signed by the parties.</p> | |

| Country and Organisation | Prerequisites/Timeframe | Steps in the Process | Representation |
|---|---|---|---|
| <p>New Zealand</p> <p>Sports Tribunal of New Zealand</p> | <p>All parties to a dispute must agree in writing to refer the dispute to the Tribunal. Often this is implicit in the constitution or rules of a sporting organisation and is, therefore, automatic.</p> <p>For appeal proceedings, internal NSO or NZOC dispute resolution procedures must first be exhausted.</p> <p>Sports-related matters may also be referred by agreement in certain circumstances.</p> | <p>The Tribunal has the power to make its own rules and procedures, subject to the Rules, provisions of the Sports Anti Doping Act and the Anti-Doping Rules. The Sports Tribunal operates a 5 step process:</p> <p><u>Step 1: Application:</u> A written application form must be submitted to the Tribunal</p> <p><u>Step 2: Advice of proceedings:</u> The Registrar informs everyone that the dispute is filed and advises of the next steps. General communication between parties and the Tribunal will go through the Registrar.</p> <p>In anti-doping cases, the defendant has 7 working days after advice of proceeding to respond to the application. This includes filing a Notice of Defence and serving a copy on the applicant. This allows the Tribunal and the applicant to know what the defendant wishes to do (e.g. deny, admit).</p> <p>In appeal proceedings, the appellant has 10 working days after advice of proceedings to file an Appeal Brief. This sets out details of the appeal and is usually accompanied by evidence. This is served on the respondent who has 14 working days to file a Statement of Defence. This is served on the appellant.</p> <p><u>Step 3: Pre-hearing proceedings:</u> The chair of the panel will usually hold a pre-hearing conference with all involved parties. This will usually be done through teleconferencing. Pre-hearing conferences are generally concerned with preliminary and/or procedural matters leading up to the hearing. The sorts of things the Chairperson might do include:</p> <ul style="list-style-type: none"> • Discuss the matter under dispute • Examine the documents received from the parties and decide whether anyone else needs to attend the proceedings • Consider whether or not the dispute fits within the types of disputes the Tribunal has the power to hear and if appropriate make a ruling • Request further information from the parties | <p>Parties choose whether they want to be represented by a lawyer.</p> <p>People under the age of 18 are bound by the rules of the Tribunal as if they were an adult. The Tribunal may appoint a representative in these cases.</p> <p>Approximately half of all proceedings involve legal representatives.</p> <p>Legal representation is more common in disciplinary and selection appeals than in anti-doping cases.</p> |

| Country and Organisation | Prerequisites/Timeframe | Steps in the Process | Representation |
|--|-------------------------|--|----------------|
| <p>New Zealand</p> <p>(continued)</p> | | <ul style="list-style-type: none"> • Decide whether independent experts are needed to assist the Tribunal during the hearing • Explore the possibility of referring parties to alternative dispute resolution, such as mediation - the Tribunal is able to order mediations and assist in mediating cases itself where appropriate • Set the date and venue for the hearing <p><u>Step 4: The hearing:</u> The hearing gives all involved parties the opportunity to present their case to the Tribunal. The Tribunal follows the principles of 'natural justice'. This means that all parties have a fair opportunity to understand the issues, to consider all the relevant material and to prepare and to present their evidence. Each hearing is heard by usually 3 Tribunal members – the chairperson or one of the lawyers, and two others – and tends to follow an inquisitorial approach.</p> <p><u>Step 5: The Tribunal decision:</u> The Tribunal aims to make decisions that are not only fair and well reasoned, but also speedy and timely. Some cases, such as appeals against not being selected for a New Zealand team, will often require urgency. If appropriate, the Tribunal may make an oral decision at the end of the hearing. In some cases, the Tribunal will need further time to consider the matter and will “reserve” its decision. This means it will let the parties know its decision at a later date. The Tribunal always releases a written decision, which includes an explanation of the reasons for the decision, to all the parties. Decisions are generally published on the Tribunal’s website.</p> | |

| Country and Organisation | Prerequisites/Timeframe | Steps in the Process | Representation |
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| <p>UK</p> <p>Sport Resolutions UK</p> | <p>Parties must agree to use the service.</p> <p>In the absence of a time-limit set in the regulations of the sports body concerned or of a previous subsisting agreement, the time limit for the receipt by Sport Resolutions is 21 days from the date of the decision from which the appeal is made or to be made. Sport Resolutions seeks to arrange early directions hearings in most cases to set the timetable for proceedings and to iron out any disputes concerning the procedures to be followed.</p> | <p>Sport Resolutions UK operates a 3 step process:</p> <p><u>Step 1: Notice of Appeal:</u> The appropriate forms must be completed by the parties. The claimant must write a statement of appeal explaining the dispute. The respondent can then write a written reply setting out the facts as they see it. If they do not reply the Tribunal may nevertheless proceed with the arbitration and deliver its award. Written Counterclaims are possible under the Full Arbitration Procedure.</p> <p><u>Step 2: Formation of the Tribunal:</u> Any dispute will be decided by a one or three member tribunal appointed by Sport Resolutions UK. The decision is made depending on all the circumstances and in discussion with the parties.</p> <p>Where parties agree that the Tribunal will consist of one arbitrator, either the parties agree on an arbitrator or one is appointed.</p> <p>Where it has been agreed that a dispute is to be heard by a 3 person arbitration panel, each party is permitted to nominate one arbitrator. If either party fails to nominate an arbitrator in accordance with the rules they will be chosen by Sports Resolution.</p> <p><u>Step 3: Conduct of Arbitration:</u> The Tribunal conducts the proceedings of the arbitration in the manner it considers fits and may follow any arbitral procedure agreed by the parties if it is in the Tribunal's opinion reasonably practicable so to do.</p> | <p>Parties need not be represented by lawyers, although many parties choose to have legal representation at their own expense.</p> <p>Sport Resolutions also maintains a list of specialist sports lawyers who act for athletes of limited means on a pro-bono basis. This scheme is a legacy of the London 2012 Olympic and Paralympic Games that Sport Resolutions operated on behalf of the Bar Council, Law Society of England and</p> |

| Country and Organisation | Prerequisites/Timeframe | Steps in the Process | Representation |
|---|-------------------------|--|--|
| <p>UK</p> <p>(continued)</p> | | <p>Any party requesting an oral hearing has the right to be heard in front of the Tribunal. In the absence of any such request, the Tribunal shall endeavour to reach a decision without a hearing on the basis of written evidence.</p> <p>As a general rule, an oral hearing shall be held. The decision of the arbitrator shall be delivered in writing and with reasons.</p> <p>Arbitrations are determined in the manner determined by the contractual clause under which the arbitration is being conducted. Generally the approach tends towards inquisitorial rather than adversarial.</p> | <p>Wales and the British Association for Sport and Law.</p> |
| <p>Germany</p> <p>German Court of Arbitration (German CAS)</p> | | <p>Arbitration is conducted according to modified DIS Arbitration Rules. There are also DIS Rules for Mediation and Conciliation and Rules for Expert Determination if those alternative dispute resolution methods are used.</p> | |
| <p>International</p> <p>FIFA Dispute Resolution Chamber (DRC)</p> | | <p>Steps in the process are set out in the Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber.</p> <p>Written petitions are submitted to FIFA's general secretariat with details of the claim and evidence. They are also sent to the opposing party with a time limit for reply. If there is no reply by the specified time limit, a decision will be made.</p> <p>Hearings usually proceed on the basis of written submissions but an oral hearing may be conducted if the circumstances warrant it.</p> <p>DRC should have at least 3 members including the Chairman or the Deputy Chairman when adjudicating, except certain decisions (under CHF100,000 or not complex in nature) may be made by a single DRC judge. Decisions are by majority vote with each member having 1 vote. Abstentions are not allowed. Decisions are made in writing, but in urgent cases, a decision may be made orally with written grounds following within 20 days.</p> | <p>Players have the option of legal representation. The players association usually provides assistance.</p> |

International Comparison - Efficiency

| Country and Organisation | Volume of Cases and Speed of Resolution |
|---|---|
| <p>Australia – South Australia</p> <p>State Sport Dispute Centre (SSDC) in South Australia</p> | <p>In 2014/15, SSDC conducted 12 mediations and 5 arbitrations. It trained 8 Member Protection Information Officers. It provided independent chairs and panel members for disputes processes in 9 cases. It dealt with approximately 60 other matters, such as provision of advice and referrals.</p> <p>The operating budget for SSDC for 2015/16 is \$40,000. Additional costs are negotiated with each action in terms of panel member, mediator and arbitrator expenses.</p> |
| <p>Australia</p> <p>– Western Australia</p> <p>WA Sport and Active Recreation Dispute Resolution Service (WASDRS)</p> | <p>41 dispute enquiries have been received since October 2014.</p> |
| <p>Canada</p> <p>Sport Dispute Resolution Centre of Canada (SDRCC)</p> | <p>In the first 10 years of its operations, a total of 432 disputes were filed with the SDRCC, including 210 doping cases and 3 doping appeals. This brings the annual averages to 43 disputes, of which 49% are doping-related.</p> <p>Over a span of 10 years, the SDRCC Ordinary Tribunal has maintained an average of 29% of case resolved amicably through a mediated settlement between the parties, reaching a high of 54% in the fiscal year 2006-2007.</p> <p>Over the last 10 years, the average delay for resolving team selection appeals, which are often urgent, is under 20 days. The average duration of doping cases is maintained between 30 to 60 days. Otherwise when the cases are not time-sensitive or when delays do not cause prejudice to any of the parties, the SDRCC usually follows the pace set by the disputing parties and sometimes these cases can take several weeks or a few months to get fully resolved.</p> |

| Country and Organisation | Volume of Cases and Speed of Resolution |
|---|--|
| <p>Ireland</p> <p>Just Sport Ireland (JSI)</p> | <p>The JSI website refers to 4 arbitration proceedings in 2014 – 2 of which were withdrawn either by agreement or due to lack of jurisdiction. The website refers to 1 mediation agreement in 2014.</p> <p>Under its rules, JSI aims to complete arbitration proceedings within 8 weeks and mediation cases within 4 weeks.</p> |
| <p>New Zealand</p> <p>Sports Tribunal of New Zealand</p> | <p>In 2014-15, the Tribunal 18 substantive cases were filed resulting in 16 decisions comprising 6 anti-doping, 3 provisional suspension, 4 selection appeals, 1 other type of appeal, and 2 jurisdiction decisions.</p> <p>Hearings are typically conducted in one day and straightforward anti-doping matters can take less than an hour.</p> |
| <p>UK</p> <p>Sport Resolutions UK</p> | <p>During 2014-15, 225 enquiries were received which resulted in 145 case referrals from various sports. These were broken down as follows:</p> <ul style="list-style-type: none"> 26 – National Anti-Doping Panel 18 – National Safeguarding Panel 37 – General arbitrations 48 – Independent appointments to third party tribunals/panels 7 – Mediation 8 – Other (reviews, investigations etc) <p>The average hearing length is one day. The average time to determine a case from referral to conclusion is determined in accordance with the applicable rules and at the request of the parties. In practice this means that some selection disputes have been resolved in 48 hours and some complex anti-doping disputes involving challenges to the athlete biological passport scheme have taken 9 months to resolve. The drivers are almost always the competitive timescales of the sport and time requested by the parties to prepare their case.</p> |
| <p>Germany</p> <p>German Court of Arbitration (German CAS)</p> | <p>According to the DIS website, in 2012, the German Court of Arbitration handled 16 arbitration proceedings, 3 mediation / conciliation proceedings, and 1 request for Expert Determination.</p> |

| Country and Organisation | Volume of Cases and Speed of Resolution |
|--|---|
| <p>International</p> <p>FIFA Dispute Resolution Chamber (DRC)</p> | <p>Between 2002 and 2006, DRC made over 2000 decisions. 1,611 claims were lodged with the DRC and PRC in 2014. Decisions of the DRC are to be made within 60 days of a valid request, and decisions of a single DRC judge need to be made within 30 days. However, according to Reuters (http://www.euronews.com/sport/3071555-fifpro-to-lodge-complaint-with-eu-over-transfer-system/), the average time to process cases through the DRC is 590 days.</p> |