

SPORTS TRIBUNAL of New Zealand

ANNUAL REPORT 2015/16



Mission of the Sports Tribunal of New Zealand

The mission of the Sports Tribunal is to ensure that national sport 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.

Period covered by this Annual Report

The 2015/16 Annual Report of the Sports Tribunal reports on activities and cases decided during the time period 1 July 2015 to 30 June 2016. Cases filed during this time but not decided as at 30 June 2016 will be reported on in the Annual Report for the following year.

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CHAIRMAN'S FOREWORD

The year began very quietly but as the Rio Games approached there was an appreciable workload for us.

Non-selection appeals present demanding challenges. First there are almost invariably very tight timeframes. If the system includes rights of appeal they must be realistic and capable of being provided. When there is the need for an answer to be provided within a few days this creates real pressure on the Tribunal in convening a panel but, more importantly, its demands on the complaining athlete and the responding National Sport Organisation (NSO) are exhausting of time and resource.

Secondly, in most cases there has been a less than optimal level of communication within the particular sport. Not surprisingly an athlete on the cusp of selection will have made an enormous investment in their activity. When they are simply told they have not been nominated there will be frustration, disappointment, and sometimes anger. More effort needs to go into explaining why the decision has been made.

Within most sports there are internal without prejudice meetings before we become involved but too often even these seem to boil down to talking past each other rather than engaging with the critical factors. In most cases we have convened early resolution sessions as part of our scheduling and these have been met with some success.

Anti-drug cases remain a significant part of our workload. We cannot stress too often that every athlete has a high responsibility to ensure that they do not inadvertently break this code. Drug Free Sport New Zealand (DFS) is available to provide advice and clarification and attempting to rely on the web or mates are not wise choices.

During the year, Don Mackinnon undertook a review of the operation and processes of the Tribunal. We appreciate the thoughtful and challenging report he produced and we look forward to improvements arising from it.

One of the understandable concerns he highlighted was the cost of appeals before us. What is being spoken of is the cost of legal representation. It is often to the advantage of parties and the Tribunal to have a legal mind involved, although it is never essential. We are surprised at the number of times a party has engaged two or three counsel which appears to us to be serious overkill.

There have been no changes in the membership of the Tribunal in this year. We were delighted that Georgina Earl was awarded the FISA Thomas Keller Medal, a fitting recognition of the extraordinary contribution she and her sister have made to sport. Megan Lee-Joe has acted as our Registrar and provided excellent assistance and advice at all times.

Hon Sir Bruce Robertson KNZM
Chairman

ABOUT THE SPORTS TRIBUNAL

The Tribunal is an independent statutory tribunal that determines certain types of disputes for the sports sector. It was established in 2003 by Sport and Recreation New Zealand (known as Sport New Zealand) under the name of the Sports Disputes Tribunal of New Zealand. It was set up in response to recommendations of the 2001 report of the Sport, Fitness and Leisure Ministerial Taskforce, “Getting Set for an Active Nation”. The Taskforce identified a need to help National Sporting Organisations (NSOs) avoid lengthy and costly legal battles, and to provide athletes with an affordable forum where they could access quality and consistent decision making to resolve disputes. The Tribunal was continued under the name of the Sports Tribunal of New Zealand pursuant to the Sports Anti-Doping Act 2006 (the Act).

The Tribunal can hear and decide the matters set out in section 38 of the Act. These are:

- Anti-doping violations, including determining whether an anti-doping violation has been committed and imposing sanctions
- Appeals against decisions made by a NSO or the New Zealand Olympic Committee (NZOC) if the rules of the NSO or NZOC allow for an appeal to the Tribunal in relation to that issue. Such appeals include:
 - appeals against not being selected or nominated for a New Zealand team or squad
 - appeals against disciplinary decisions
- Other ‘sports-related’ disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear
- Matters referred by the Board of Sport New Zealand.

The Act sets out the requirements for the appointment of Tribunal members including the Chairperson and Deputy Chairperson(s). Information about the current Tribunal membership is provided towards the end of this report.

Further information about the Tribunal’s procedures and decisions can be found on its website www.sportstribunal.org.nz

ANNUAL REVIEW OF CASES DEALT WITH BY THE TRIBUNAL

A total of 17 cases were filed with the Tribunal during the year. The Tribunal issued 15 decisions in the corresponding period. These are broken down by proceeding type below.

	NUMBER OF PROCEEDINGS FILED	NUMBER OF DECISIONS ISSUED
Anti-Doping (Provisional Suspension)	4	4
Anti-Doping (Substantive)	4	3
Appeals against decisions of NSOs or NZOC	8	7
Sports-related disputes by agreement	1	1
Total	17	15

Out of the eight appeals filed against decisions of National Sports Organisations (NSOs) or New Zealand Olympic Committee (NZOC), seven related to non-selection or non-nomination to compete in international events including the 2016 Rio Olympic Games. Excluding provisional suspension applications for anti-doping cases, selection / nomination appeals accounted for more than half of the proceedings filed and decisions issued this year.

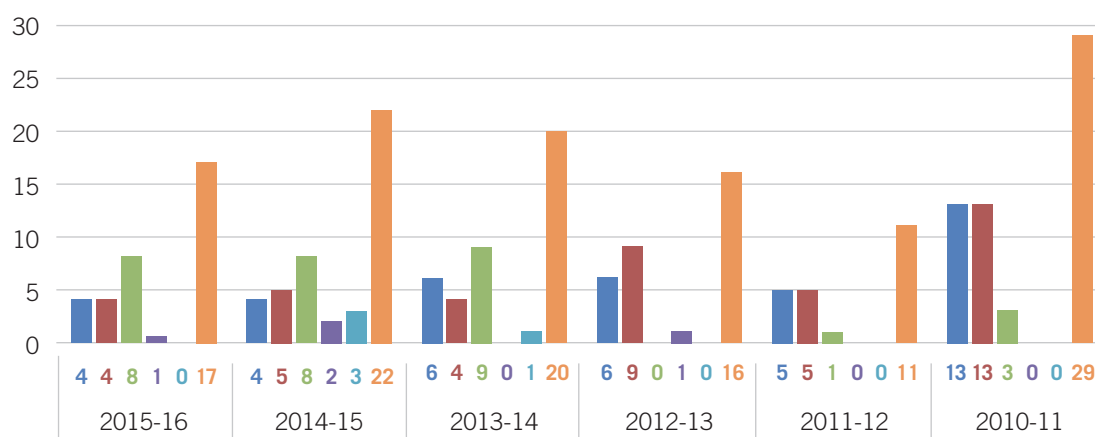
Comparison with previous five years:

Fewer proceedings were filed with the Tribunal this year (17) as compared with the previous two years (22 in 2014/15 and 20 in 2013/14). The number of appeals filed against decisions of NSOs and NZOC has remained steady at around eight appeals for the past three years, although this is a marked increase on the previous three-year period before that.

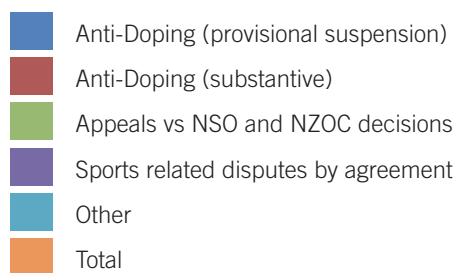
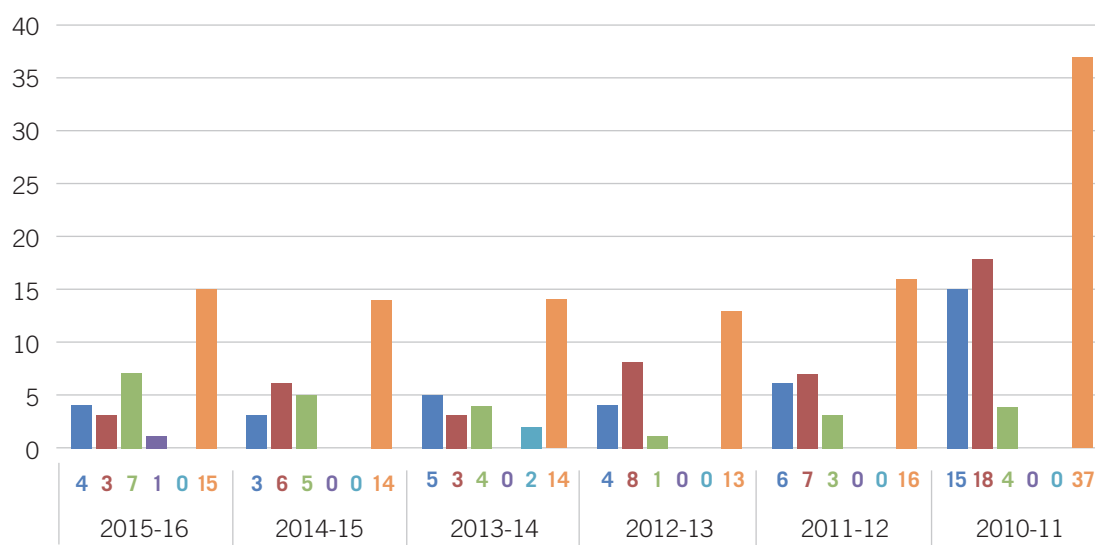
The total number of decisions issued by the Tribunal this year (15) has remained consistent with previous years (with the exception of 2010-2011 when a large number of anti-doping decisions were issued). The general trend over the five-year period is an increasing proportion of appeal decisions compared to anti-doping decisions. Excluding provisional suspension orders, 18% of all decisions in 2010/11 were appeals compared to 63% this year.

The following tables show the number of proceedings filed with the Tribunal and decisions issued (classified by proceeding type) for the current financial year as compared with each of the previous five years.

Number and type of proceedings filed - yearly comparison



Number of decisions issued - yearly comparisons



Anti-Doping Cases

The Tribunal is responsible for hearing provisional suspension applications and substantive proceedings for anti-doping rule violations filed by Drug Free Sport New Zealand (DFS), New Zealand's National Anti-Doping Organisation. The Tribunal is empowered to determine whether a violation has occurred and impose the appropriate sanction under the Sports Anti-Doping Rules (SADR) promulgated by DFS. The SADR mirrors the World Anti-Doping Code, the latest version of which came into effect on 1 January 2015. Most NSOs have adopted SADR as their anti-doping policy.

This year, three substantive anti-doping proceedings were heard and decided by the Tribunal. The anti-doping violations, prohibited substances, sanctions imposed, and sports the athletes were competing in are identified below. All three cases involved the unintentional presence of a prohibited substance in samples taken in competition.

ANTI-DOPING VIOLATION	PENALTY	SPORT
Presence of prohibited substance - methylhexanamine (aka 1, 3 dimethylpentylamine)	15 months' ineligibility	Touch rugby
Presence of prohibited substance - probenecid	6 months' ineligibility	Football
Presence of prohibited substance – prednisone and terbutaline	2 years' ineligibility	Cycling

The three cases are summarised below.

PRESENCE OF PROHIBITED SUBSTANCE – METHYLHEXANAMINE (AKA 1,3 DIMETHYLPENTYLAMINE)

Drug Free Sport New Zealand v Quentin Gardiner

(ST 06/15) Decision 8 July 2015; Provisional Suspension Decision 29 April 2015

The Sports Tribunal suspended touch player, Quentin Gardiner, for 15 months for the presence of the prohibited substance methylhexanamine (also known as 1, 3 dimethylpentylamine) in a sample taken from him after competing in the Touch Nationals final.

Mr Gardiner admitted the violation and said that the positive test for methylhexanamine was due to him taking one or both of two supplements. He listed both products on his doping control testing form. He gave evidence that both historically contained methylhexanamine but they no longer do. He said he took one supplement during the Touch Nationals competition and the other the day before the competition, three days before testing. He contended that the supplements he used must have come from an old batch. The Tribunal was satisfied methylhexanamine entered Mr Gardiner's system through consumption of either or both supplements coming from an out-of-date batch.

Under the 2015 SADR, the penalty for an anti-doping violation involving this substance was two years' suspension unless Mr Gardiner could show no significant fault. Mr Gardiner said he had no significant fault as: he didn't recall receiving any anti-doping education and there was no record of him attending such a seminar; he was previously told by supplement suppliers that both supplements did not contain any banned substances; gym members and team members had told him one of the supplements was safe to use; and he had checked an earlier container and sachet of both products and hadn't see any warning they contained banned substances. The Tribunal found Mr Gardiner had established no significant fault and was eligible for a penalty of less than 2 years' suspension.

In deciding the appropriate sanction, the Tribunal had to assess Mr Gardiner's degree of fault.

The Tribunal referred to the unusual circumstances that Mr Gardiner "had checked earlier labels of the same product, which did not note any prohibited substance or give a warning. The current stock of the product appears to not contain any prohibited substances. Mr Gardiner has been caught by what appears to be old stock".

The Tribunal considered Mr Gardiner's fault was at the higher end of the scale as he:

- did not examine the labels of the products he actually took
- sourced the supplements at a discounted rate from a friend, rather than through a reputable supplier
- did not conduct any internet searches in respect of the products
- did not contact DFS in respect of the products
- used the supplements immediately before and during competition.

Counsel for DFS and Mr Gardiner jointly submitted that 15 months' suspension was appropriate in the circumstances and the context of the recent rule changes and the Tribunal agreed.

Mr Gardiner's suspension from participating in sport commenced from 8 March 2015 (the date of sample collection) in light of his co-operation.

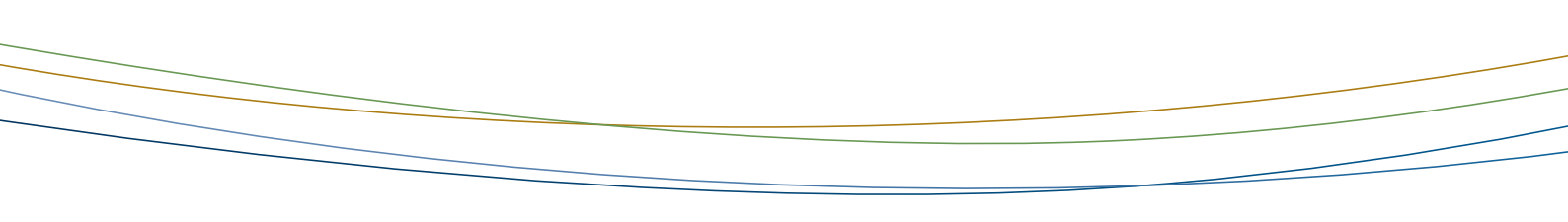
PRESENCE OF PROHIBITED SUBSTANCE – PROBENECID

Drug Free Sport New Zealand v Kelsey Kennard

(ST 14/15) Decision 1 March 2016; Provisional Suspension Decision 23 December 2015

National Women's League (NWL) football player, Kelsey Kennard, was suspended for six months for the presence of the prohibited substance, probenecid, in a sample taken from her in competition on 22 November 2015.

Ms Kennard was provisionally suspended without opposition on 23 December 2015. Ms Kennard promptly admitted the violation, but asked to be heard as to the appropriate sanction. The case involved the unintentional use of probenecid, for which the standard period of ineligibility is two years under the SADR.



On 10 September 2015, Ms Kennard attended an Urgent Doctor's clinic and was diagnosed with a bad case of cellulitis. She was administered the protocol treatment for cellulitis, being antibiotics together with probenecid to boost the effectiveness of the antibiotics. Ms Kennard returned to the clinic the following two evenings and received the same treatment, including a further dose of probenecid on each occasion. At the time of treatment, Ms Kennard was not intending to play football for the next few months and therefore did not tell the doctors treating her that she was subject to the anti-doping testing regime, nor did she make inquiries about what medication she was being given.

Shortly after, Ms Kennard was persuaded to play football and commenced training for the 2015 NWL competition. She attended a DFS educational seminar with her NWL team on 24 September 2015, as she had at the start of the previous NWL season. Ms Kennard did not make any inquiries about the medication she had taken to treat her cellulitis at, or following, this seminar.

Ms Kennard was tested at her last NWL game for the season. She did not disclose probenecid on the doping control form as over two months had elapsed since her treatment, although she did disclose the iron medication that she had taken in the past week.

The World Anti-Doping Agency Code on which the SADR are based was amended in 2015. The Tribunal can still consider a reduction of the two-year period of ineligibility for cases involving a specified substance, however, the athlete must first establish that there was no significant fault or negligence in relation to the violation.

The Tribunal was satisfied that Ms Kennard could establish no significant fault given the exceptional circumstances of the case including:

- the emergency nature of the treatment and the clear therapeutic reason for taking the substance
- the fact that she was not intending to play in the NWL at the time she took the substance
- the length of time the substance remained in her system from the time it was taken to the time of testing
- the change in status from a non-national level athlete to a national level athlete between the time of taking the substance and the time of testing.

The Tribunal then went on to assess the appropriate sanction having regard to Ms Kennard's degree of fault. This was in a context where athletes have strict obligations under SADR to exercise utmost caution to ensure what they ingest does not contain a prohibited substance even though there is no suggestion of drug cheating. Ms Kennard's level of fault was assessed on each of the three occasions where she may have been at fault – the time of treatment, at the DFS seminar, and at the time of testing. Considering the totality of the circumstances, the Tribunal determined that a period of six months' ineligibility was appropriate.

Ms Kennard's suspension from participating in sport commenced from 22 November 2015 (the date of sample collection) in light of her prompt admission of the violation, with at least one-half of the period of ineligibility to be served from the date of the Tribunal's decision on 1 March 2016.

PRESENCE OF PROHIBITED SUBSTANCE – PREDNISONE AND TERBUTALINE

Drug Free Sport New Zealand v Mark Spessot

(ST 15/15) Decision 23 March 2016; Provisional Suspension Decision 23 December 2015

The Sports Tribunal suspended veteran cyclist Mark Spessot for two years for the presence of two prohibited substances in a sample taken from him. Mr Spessot tested positive for the specified substances, prednisone and terbutaline, after the Twizel to Timaru cycling race in September 2015.

The substances were taken by Mr Spessot in the two days before the race for genuine medical reasons and not to enhance sport performance. The Tribunal accepted Mr Spessot's evidence that the substances had been taken to relieve the symptoms of his longstanding asthma. This condition had been exacerbated by extreme temperature changes in his place of work as a silviculture contractor in the week prior to the event. Due to his work commitments, Mr Spessot had not been able to see a doctor in relation to this asthmatic episode and self-administered the prednisone and terbutaline obtained from an earlier prescription.

At the time of testing, Mr Spessot duly disclosed the substances on his Doping Control Form. He subsequently exercised his right as a non-national level athlete to apply for a retroactive Therapeutic Use Exemption (TUE) from the Drug Free Sport New Zealand (DFS) TUE Committee. His application was declined on the basis that insufficient medical evidence had been provided to meet the TUE International Standard requirements. To meet the Standard in this case, he would have been required to produce medical evidence that the taking of the prohibited substance was necessary at the time, highly unlikely to provide undue performance advantage, and there was no other reasonable therapeutic alternative. This would have required a doctor's visit in relation to the specific episode, despite it being a recurrent condition.

Mr Spessot was provisionally suspended on 23 December 2015. He admitted the anti-doping rule violation and asked to be heard as to sanction. Under the 2015 SADR, the standard period of suspension for an anti-doping violation involving the substances in question, where unintentional, is two years unless Mr Spessot could show no significant fault or negligence in relation to the violation.

The Tribunal was not persuaded that Mr Spessot could establish no significant fault or negligence. In light of his experience and general awareness of the testing regime and the prohibited status of prednisone, notwithstanding his lack of any formal education from DFS, Mr Spessot's decision to enter the race without at least making further inquiry from DFS, disregarded the strict obligations on all athletes under the SADR. The Tribunal noted that "while the Rules are complex and stringent, if Mr Spessot had thought to make inquiry from DFS in this particular case to clarify the rules about TUE's and the meaning of 'in competition', he could have avoided his predicament".

Although Mr Spessot could not meet the high threshold to avoid the standard two-year period of ineligibility, given all the circumstances of the case and his timely admission after exercising his right to apply for a retroactive TUE, the Tribunal exercised its discretion for that period to commence from the date of sample collection on 19 September 2015. Mr Spessot advised the Tribunal that he had not competed since that date.

Appeals against Decisions of NSOs or NZOC

The Tribunal heard and decided seven appeals against decisions of NSOs this year. All but one related to non-nomination or non-selection decisions.

Seven appeals filed during the year to 30 June 2016 related to the 2016 Rio Olympic and Paralympic Games. Two of these appeals were withdrawn prior to hearing. Many of these appeals were determined under considerable urgency due to the deadlines imposed by the International Sports Federations to accept quota allocation slots for the Olympic Games.

The appeal decisions issued by the Tribunal this year are summarised below.

NOMINATION / SELECTION APPEALS

Michael Bias v Cycling New Zealand

(ST 08/15) Decision 3 July 2015

Michael Bias appealed against a decision of Cycling New Zealand not to select him for the New Zealand men's BMX team to compete at the 2015 World Championships in Belgium.

Mr Bias contended that the Selection Regulations had not been properly followed or implemented and that he had a better world ranking and better results at a number of events than another rider who was selected. The Tribunal was satisfied that the selectors took into account the rankings, even though this was not mandatory, and gave them appropriate weight. The Selection Regulations required selectors to give priority to results in certain events. While Mr Bias performed better in some events, evidence showed the other rider performed better than Mr Bias in the events that were required to be given priority under the Regulations. The Tribunal was not satisfied that the selectors had not properly followed the Regulations.

Mr Bias also argued that because he was not a member of the High Performance (HP) Squad, he had not had the same opportunity as those within the HP Squad to satisfy the criteria. The Tribunal rejected this argument. The evidence was that the overwhelming factor in selection was the results and performance data from the international and national events weighted in accordance with the priority set out in the Selection Regulations. Information about the performance of riders in the HP squad and Mr Bias was available to the Selection Panel.

The Tribunal rejected an argument that the decision not to select Mr Bias was affected by actual bias in favour of riders involved in the HP Squad and the head BMX coach's involvement in the selection process. This argument was not supported by the evidence.

The Tribunal considered whether bias had affected the Selection Panel's decision in relation to a shoulder injury Mr Bias suffered in a training session that prevented him participating in a priority event. The Tribunal was concerned that the selectors took the injury into account in their decision not to select him but did not make further inquiries into prognosis of the injury and concluded on the basis of their own, and the High Performance Director's, knowledge of such injuries that he would be unlikely to be ready to race at the World Championships. Although it would have been better to have sought further information on Mr Bias's medical position, the Tribunal did not consider this as prejudging or otherwise constituting actual bias.

The appeal was therefore dismissed. The Tribunal stated in conclusion:

We note that both parties indicated their willingness to work together and commend both parties for the way they have conducted themselves during this dispute. The Appellant has expressed his commitment to BMX and to representing New Zealand at BMX. He also indicated that he would embrace the opportunity to be part of the HP programme. Everything submitted at the Hearing gives the Tribunal confidence that both parties will work together in the pursuit of the Appellant's excelling at the sport of BMX.

Kate Henderson v New Zealand Water Polo

(ST 12/15) Decision 29 July 2015

Kate Henderson appealed against a decision of New Zealand Water Polo (NZWP) not to select her for the New Zealand Women's Under 20 World Championship team to compete in Greece.

Ms Henderson was in a squad of 14, from which a final team of 11 was to be selected. She was one of those not selected. She appealed on a number of grounds including: she was not afforded a reasonable opportunity to satisfy the selection criteria; the selection criteria were not properly followed or implemented; natural justice had not been followed through the process; and bias.

The Tribunal considered the procedure followed by the Selection Panel and concluded that on the evidence the selectors had approached the matter in a rational way and had brought their own experience to bear in a manner that was open to them. The Tribunal stated it did not feel able to challenge the reasoning of the Selection Panel as to its decision. The Tribunal then considered other matters including the manner in which the non-selection decision had been communicated, which the Tribunal considered unfortunate but did not think provided grounds for setting aside the decision.

The Tribunal found that there were deficiencies in relation to the appointment of the Selection Panel and in the decision-making process that was followed. Specifically:

- there was no evidence that the Panel was selected, as required, after the last AGM, which was held in March 2015;
- only three and not four, as required, selectors were appointed; and
- the Panel made and announced the selection decision before it was ratified by the Board.

It was argued that the deficiencies were technical or not material. The Tribunal took a more serious view. NZWP laid down rules, relating to appointment of selectors and processes leading to the final selection decision, which were published and known or available to players seeking selection. They are entitled to expect that NZWP will follow and abide by its own rules.

All Tribunal members acknowledged there was force in the submission made by NZWP that the three selectors had consulted with others who had knowledge of the U20 players and that the views expressed by those persons were consistent with the views of the Panel, so that the outcome of deliberations by any new expanded panel (if the matter were referred back) was likely to be the same. A previous Tribunal decision (*Sarah Her-Lee v Table Tennis New Zealand*, ST 08/14, 2 July 2014) was cited where the Tribunal said on its view on the facts of that case the fact that the decision was made by a quorum of two selectors, rather than the three prescribed, did not affect the validity of the selection decision because the Tribunal was not persuaded "that the appointment of a third selector would have altered the decision which was ultimately made".

A majority of the Tribunal, while acknowledging that the two cases are different, were content to follow this pragmatic approach in the present case, principally because they were satisfied that if a new Panel were convened it would in all likelihood be comprised of the existing members and a fourth member and would arrive at the same decision. The dissenting member of the Tribunal in this issue was of the view that the issues raised were jurisdictional in nature and that the failure to appoint the selection panel correctly was a defect that could not be overcome so that the selection decisions were invalid.

The Tribunal in a majority decision dismissed the appeal.

Sara Winther v Yachting New Zealand; Natalia Kosinska v Yachting New Zealand

(ST 04/16 and ST 05/16) Reasons for decision 30 May 2016

Both Sara Winther and Natalia Kosinska appealed against Yachting New Zealand's (YNZ) decision not to nominate them for the Women's Laser Radial and RS:X Windsurfing classes respectively for the 2016 Rio Olympic Games. At the request of the appellants and with the consent of YNZ, the Tribunal Chairperson conducted a binding arbitral exercise rather than a full Tribunal hearing due to exigencies around the need to confirm quota allocation slots with World Sailing. The appeals were heard together given the high level issues were substantially the same.

The appeal was based on the grounds that YNZ had failed to properly follow and / or implement its selection policy in that it failed to apply certain nomination criteria and reasonably exercise its discretion under its selection policy; failed to provide both Ms Winther and Ms Kosinska with a reasonable opportunity to satisfy the eligibility criteria, and the nomination decisions were affected by apparent or actual bias.

The Tribunal Chairperson noted that while YNZ's selection policy conferred a wide discretion to YNZ in making its selections, this did not obviate the need to undertake a careful assessment of individual circumstances relating to the sailors in contention. The selectors' reliance on a technical objective "Funnel" Report which predicted yachting medal chances at Rio based on previous results at key pinnacle events was not unreasonable provided this was not viewed in isolation nor the sole determinant for the nomination. The Tribunal Chairperson was satisfied the selectors had undertaken further inquiries of the appellants' performances and based on the information before the Tribunal there was a clear and adequate foundation for their decision.

The Tribunal Chairperson was concerned about the inadequacy of communication by YNZ to both sailors. However, based on the information presented to the Tribunal, the Chairperson was not satisfied that if the matter was remitted to the selectors, they would have changed their non-nomination decision. Nor did the lack of support to the appellants and YNZ's High Performance funding strategy constitute bias as compared to sailors in other yachting classes in this case. Both appeals were accordingly dismissed.

Kane Radford v Swimming New Zealand

(ST 07/16) Decision 27 June 2016

An appeal was filed by Kane Radford against a decision of Swimming New Zealand (SNZ) not to nominate him for the Men's 10km open water swimming event at the 2016 Rio Olympic Games. The hearing was convened under extreme urgency as a result of an impending deadline to accept the quota allocation slot set by FINA.

Mr Radford appealed on the grounds that SNZ's Nomination Criteria had not been properly followed or implemented, he had not been given a reasonable opportunity to satisfy the Nomination Criteria and there was no material on which a decision not to nominate him could reasonably be made. Mr Radford contended that the selectors had failed to give proper consideration to the impact of interference by another swimmer in the final stages of the Olympic qualification event, his performances at other key events, and the advice from Swimming NZ's high performance development coach that Mr Radford was capable of achieving a top 16 placing at the Olympic Games.

On the Tribunal's assessment of the evidence before it, the appeal was allowed and the matter referred back to the SNZ selectors to consider whether Mr Radford should be nominated having regard to the above factors.



Charlotte Webby v Swimming New Zealand

(ST 08/16) Neutral evaluation 27 June 2016

Charlotte Webby appealed against a decision of Swimming New Zealand (SNZ) not to nominate her for the New Zealand Swimming Team to compete in the Women's 10km Open Water Swimming Event at the 2016 Rio Olympic Games. Due to time constraints imposed by the need to comply with a deadline for acceptance of the quota allocation by FINA, the parties agreed to the Tribunal Chairperson undertaking a neutral evaluation on the papers, rather than a full hearing of the Tribunal to decide the matter.

Ms Webby's appeal was based on the grounds that SNZ had not properly followed or implemented its nomination criteria, and that the nomination decision was affected by apparent bias. The Tribunal Chair was not satisfied there was a sufficient evidential basis for the allegation of bias. However, in light of the fact that the SNZ selectors had been directed to reconsider the nomination decision for Kane Radford in the Men's Open Water 10km Event (see above case), the Tribunal Chairperson considered that in the interests of justice, the matter should be referred to the selectors to ensure they had all relevant material available, in particular, Ms Webby's performances in events other than the Olympic qualification event, and the effect of the cold water temperature on her performance at the qualification event.

OTHER APPEALS

Martin Hunt v Target Shooting New Zealand

(ST 09/15) Decision 19 August 2015

Martin Hunt appealed against a decision of Target Shooting New Zealand (TSNZ) over who won the 2015 New Zealand International Shooting Sport Federation (ISSF) Men's 50m prone championship.

On 27 February 2015, Martin Hunt had the top score in the final of the national ISSF men's 50m prone championship and anticipated receiving the winner's medal.

The final involved the top eight shooters from the qualifying rounds. The eight shooters then all went through a number of rounds with the lowest scoring shooter in each round eliminated until there were only two shooters left. Those two shooters then fired two shots each. Mr Hunt had a higher score than the other shooter (R) in that final round.

The ISSF rules stated that *"Qualification scores entitle an athlete to a place in the Finals, but do not carry forward. Finals scoring starts from zero in accordance with these rules"*.

However, the winner's medal was not awarded to Mr Hunt but to the other shooter R on the basis that the TSNZ Trophy Steward Guidelines provided for qualifying round scores to be added to the final score. When R's qualification scores were added to the final scores he had a higher score than Mr Hunt. TSNZ said this approach had been used for a number of years and prevailed over the ISSF Rules on determining a winner.

After an unsuccessful protest and internal appeal to TSNZ, Mr Hunt appealed to the Sports Tribunal. There was a challenge to the processes by TSNZ. The parties accepted the advice of the Chairperson of the Tribunal that there had been breaches of the principles of natural justice and then requested the Tribunal to interpret the Rules.

The Tribunal noted in 2013 the ISSF introduced a new approach to the running of some events and the manner in which the winner was determined and this applied to the 50m Men's prone championships. While it hadn't been possible to run 2013 and 2014 events under the new regime, the 2015 championships were operated substantially in conformity with the new ISSF approach.

The Tribunal stated: *"In our judgment it makes no sense to adopt a new different and quite radical approach to the running of a competition but to continue to award medals on the basis of the discarded approach... We consider that it was a natural and necessary corollary of the new approach to the event that the award of medals would reflect the change."*

Mr Hunt was told the scores had been aggregated because it was in the Constitution and was a TRNZ Rule. The Tribunal found nothing in the Constitution or Guidelines to support this and noted that the Guidelines were not rules but guidelines about the running of a championship and did not proclaim how a determination of a medal winner was to be made.

The Tribunal said: *"We find nothing which was an impediment to the winner's medal being awarded to the winner of the contest as it was conducted in the real world. Common sense, fairness and transparency require no less... Having been requested to do so by TSNZ, we find that the 2015 National ISSF Men's 50m prone champion was Martin Hunt and he is the recipient of the Winner's medal."*

Sports Related Disputes by Agreement

One sports related dispute by agreement was filed with the Tribunal during the year and this was dealt with by way of mediation. The Tribunal issued a decision in relation to another sports related dispute referred by Agreement. This case is discussed below.

New Zealand Rodeo & Cowboys Association v Matiu & Reo Lanigan

(ST10/15) Decision 17 July 2015

This sports-related dispute concerned eligibility for the New Zealand Rodeo and Cowboys Association's "All Round Rookie of the Year" award.

The Tribunal decided that Klay Lanigan, who was Second Division in some rodeo events but had achieved Open status in other rodeo events in a previous season and held an Open card at the start of the season, was not eligible for the All Round Rookie of the Year award.

The Association's Rules stated that "The only contestant eligible for this award shall be a Second Division contestant at the start of the season". In 2004, a remit qualifying this was passed and ratified which included a rule stating: "The only contestants eligible for this award shall be Second Division Cardholders at the start of the season". This remit had not been included in the current published Rules (2012). While the Association regretted that this rule hadn't been included in the published Rules, it said that didn't affect the validity of the rule which had been applied in previous years.

The Tribunal stated that in 2004 a valid remit was passed and subsequently ratified which limited participation in the All Round Rookie of the Year award to a contestant holding a Second Division card. The fact that the remit was not accurately published in 2012 did not affect the validity of the rule. It was accordingly a valid and applicable rule that had been applied by the Association over the succeeding years.

The Tribunal therefore concluded that Mr Lanigan, as an Open card holder at the start of the season, did not qualify for the award.

The Tribunal also stated that:

It is to the credit of both parties that they have responsibly agreed to have this question referred to, and determined by, the Sports Tribunal. It is also to the credit of both parties that the issue has been dealt with between the parties and before the Tribunal as an issue of principled interpretation. The Association has readily accepted, throughout the dealings over this issue, the talent and achievements which Mr Klay Lanigan (who is Mr and Mrs Lanigan's son) has brought to the sport of rodeo.



Mediation Assistance and other support

In appropriate cases, the Tribunal can offer mediation assistance to parties to help them settle their disputes by agreement without the Tribunal needing to adjudicate. The Tribunal can conduct mediation at the request of the parties or, in appropriate cases, it can order parties to undertake mediation.

The Tribunal provided formal mediation services and/or other assistance in two cases. One of these involved a non-nomination appeal for the Rio Olympic Games and the other related to a sports related dispute. Both cases were resolved without the need for a formal hearing and decision. Specific details of these cases remain confidential.



OTHER MATTERS INVOLVING TRIBUNAL IN 2015/16

In the latter half of 2015, an independent review of the Tribunal was conducted by Don Mackinnon commissioned by Sport New Zealand. The Tribunal had last been reviewed in 2009 and it was considered timely to review the Tribunal as being fit for purpose given the rapid evolution of the sports sector.

The review noted that the Tribunal continues to provide an excellent service to the sports sector and is meeting its policy objectives in terms of timeliness, efficiency, fairness, credibility and independence. The biggest concern centres on the cost of bringing cases before the Tribunal particularly given an increasingly litigious approach being taken by legal representatives and the higher financial stakes for the parties involved.

One of the key recommendations of the review is a proposal to establish a Sports Mediation Service for the sports sector at a national level. This proposal is currently being investigated. The full review can be found on the Tribunal's website www.sportstribunal.org.nz.

The Tribunal Chairperson participated on a forum panel organised by High Performance Sport New Zealand in February advising on issues related to selections and the Tribunal appeal process.

Three members of the Tribunal also attended the 2015 Australia and New Zealand Sports Law Association Conference in Melbourne, Australia covering a range of issues relevant to the work of the Tribunal.

STATISTICAL ANALYSIS OF CASES DEALT WITH BY THE TRIBUNAL FROM 2003 TO 2016

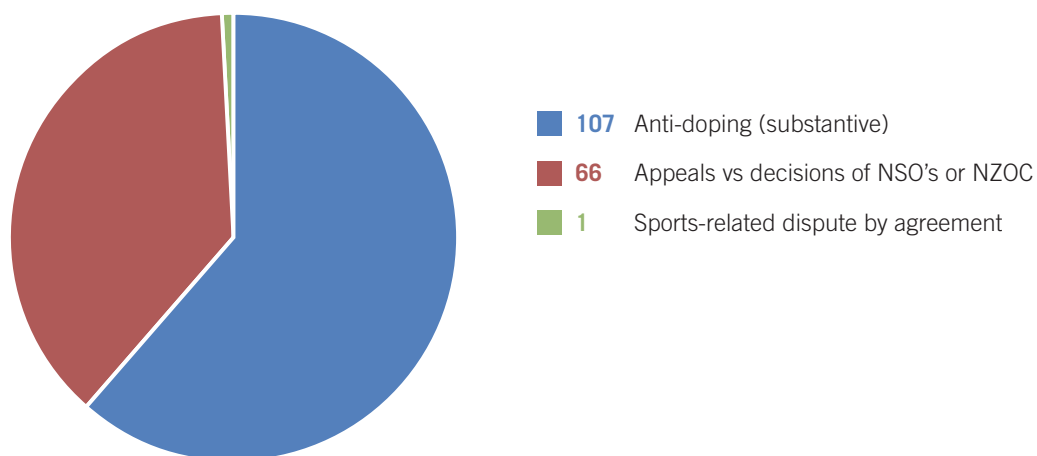
The Tribunal was established in 2003 and dealt with only one case in that year. Over time, the Tribunal has dealt with an increasing number of cases.

As at 30 June 2016, there were 174 decisions (or records of settled cases) of the Sports Tribunal.

However, the Tribunal has been involved in more disputes than this, some of which were settled by the parties with the Tribunal's assistance.

This figure does not include provisional suspension decisions. In anti-doping cases, the Tribunal is usually asked by DFS to make a provisional suspension order prior to consideration of the substantive anti-doping rule violation proceedings. In 2015/16, the Tribunal made four provisional suspension orders (all without opposition).

Tribunal decisions by type 2003 - 2016

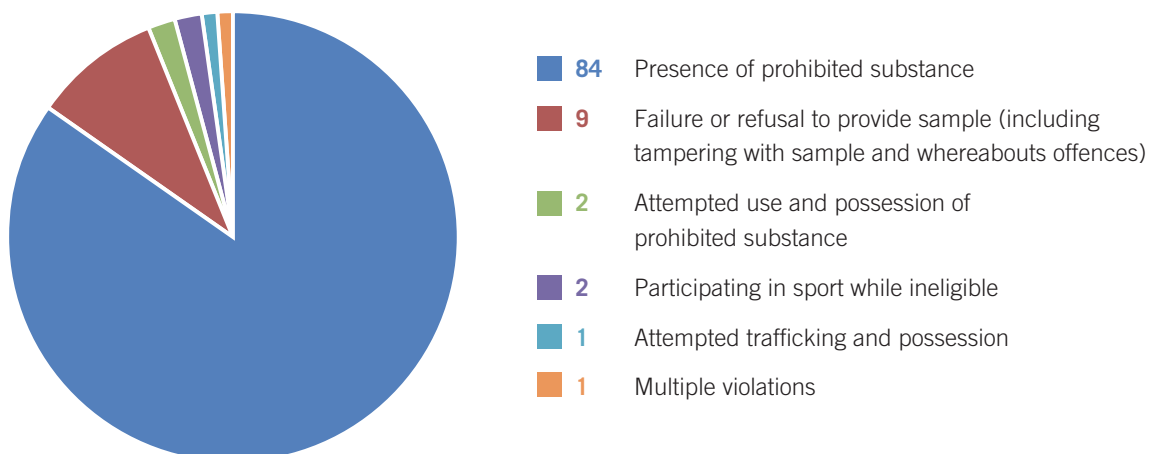


Anti-doping cases have comprised approximately two thirds of the Tribunal's cases to date. Of the 174 substantive decisions on the website, 107 (approximately 61%) are anti-doping cases.

The remaining cases have been appeals against decisions of NSOs and, on occasion, the NZOC with one published decision in a 'sports-related' dispute referred by agreement.

ANTI-DOPING CASES HEARD BY THE TRIBUNAL

Anti-Doping Tribunal Decisions 2003 - 2016
by Anti-Doping Rule Violation Type



The types and frequency of Prohibited Substances which have been present in athlete samples in relation to anti-doping cases before the Tribunal to 30 June 2016 are:

PROHIBITED SUBSTANCE	NO. OF CASES
Cannabis	44 (none since prohibited threshold increased in 2013)
Dimethylpentylamine 1 - 3, also known as Methylhexanamine	7
Probenecid	4
Methamphetamine/Amphetamine	3
Terbutaline	3
BZP (Benzylpiperazine)	2
Clenbuterol	2
Ephedrine	2
Furosemide	2
Morphine	2
Prednisone	2
Boldenone and Testosterone	1
Canrenone	1
EPO (erythropoietin)	1
Methamphetamine/Amphetamine/Cannabis	1
Nandrolone	1
1-Phenylbutan-2-amine (PBA) and N, alpha-diethyl-benzeneethanamine (DEBEA)	1
Stanozol/ Hydrochlorothiazide/ Amiloride	1
Stanozol/Nandrolone/Furosemide	1
Synthetic Cannabis (JWH-08)	1
Tamoxifen (3-Hydroxy-4-Methoxy-Tamoxifen)	1
T/E ratio > 4:1; Oxymesterone; Metabolites of Methandienone; Metabolites of Methyltestosterone; Metabolites of Oxymetholone; 19-norandrosterone)	1

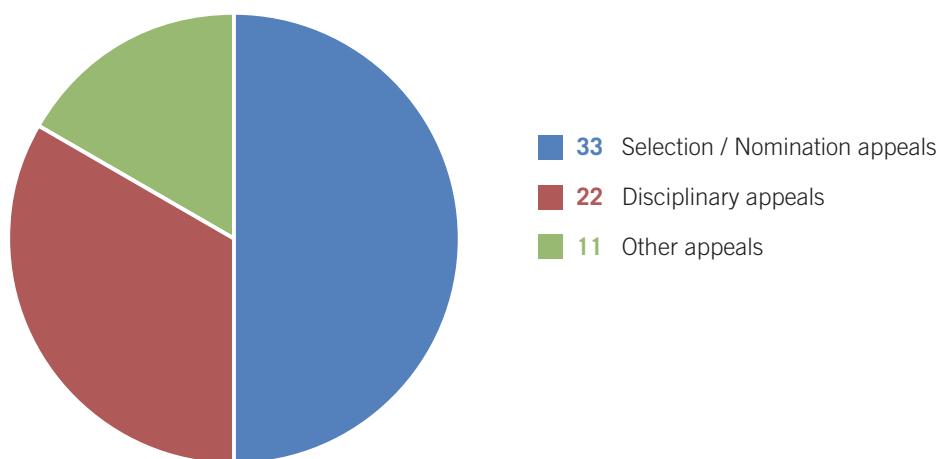
Type of anti-doping cases by sport

SPORT	NO. OF CASES
Rugby League	23
Basketball	12
Powerlifting	10
Touch	10
Body Building	9
Softball	9
Boxing	6
Cycling	4
Athletics	3
Wrestling	3
Triathlon	2
Weightlifting	2
Cricket	1
Football	1
Hockey	1
Rowing	1
Swimming	1

APPEAL CASES HEARD BY THE TRIBUNAL

APPEAL CASES BY APPLICATION TYPE

Anti-Doping Tribunal Decisions 2003 - 2016
by Anti-Doping Rule Violation Type



There are 66 decisions listed on the Tribunal website as at 30 June 2016 involving appeals against decisions of NSOs and/or the NZOC. These include two costs decisions. The appeal cases can be categorised as follows:

- 33 Tribunal decisions relating to athletes appealing their non-nomination or non-selection for a New Zealand team or squad
- 22 Tribunal decisions relating to athletes or other members of NSOs appealing disciplinary decisions (includes separate costs decisions in two cases)
- 11 Tribunal decisions relating to appeals of other decisions (that is cases that were not appeals against non-nomination/non-selection or were not appeals against disciplinary decisions).

These are broken down in more detail in the next sections.

APPEALS AGAINST NON-SELECTION/NON-NOMINATION FOR A NEW ZEALAND TEAM OR SQUAD

There have been 33 cases relating to athletes or coaches appealing their non-nomination or non-selection for a New Zealand team or squad:

- 10 appeals against not being selected for a New Zealand team
- 11 appeals against non-nomination or non-selection for the Olympic Games
- 6 appeals against non-nomination or non-selection for the Commonwealth Games
- 2 appeals by a coach against non-nomination or non-selection for the Youth Olympic Games
- 3 decisions relating to jurisdiction to appeal non-nomination for the Commonwealth Games
- 1 decision relating to jurisdiction to appeal non-selection for a New Zealand team.

DISCIPLINARY APPEALS

In relation to disciplinary appeals there have been 22 decisions or records of settlement (relating to 21 cases):

- 15 appeals by athletes or officials against being suspended by NSO for misconduct
- 3 appeals against being disqualified from a race
- 1 appeal against finding of breaching rules during a race and being fined
- 1 appeal against final results in a race
- 2 decisions relating to costs in disciplinary appeals.

OTHER APPEALS

There have been 11 cases relating to appeals of 'other' decisions (that is, appeals other than non-nomination/non-selection or disciplinary appeals):

- 3 appeals against not being nominated for an academic scholarship
- 1 appeal by a referee against not being nominated for an international referees' clinic
- 1 appeal against a decision not to grant approval for a roll bar on a racing car
- 1 appeal by an NSO against a decision of NZOC to suspend its membership
- 1 appeal against a decision not to allow a kart racer to compete in a race class due to restrictions on the type of fuel that can be used (and whether there was jurisdiction to hear the appeal)
- 1 appeal against a decision that a bowler had exhausted his appeal rights against a decision not upholding his protest about a match official (and whether there was jurisdiction to hear the appeal)
- 1 appeal against a decision declaring a player transfer null and void
- 1 appeal against a decision of an NSO overturning an earlier decision of an internal committee to deduct competition points due to player ineligibility
- 1 appeal against a decision of an NSO determining the winner of an event run under new competition rules.

APPEAL CASES UPHELD

The Tribunal has upheld, or partially upheld, approximately 30% of the appeals it has heard (if jurisdictional and costs decisions and appeals settled with mediation or other assistance from the Tribunal are discounted).

The Tribunal has upheld, or partially upheld, appeals in 20 cases:

- 5 disciplinary appeals were upheld
- 2 disciplinary appeals were partially upheld
- 4 appeals relating to non-nomination/non-selection for the Olympic Games
- 2 appeals by coaches relating to non-nomination/non-selection for the Youth Olympic Games
- 2 appeals against not being selected for a New Zealand team to compete in a world championship
- 1 appeal relating to non-approval of a roll bar on a car
- 1 appeal against a decision that a bowler had exhausted his appeal rights against a decision not upholding his protest about a match official
- 1 appeal against a decision declaring a player transfer null and void
- 1 appeal against a decision of an NSO overturning an earlier decision of an internal committee to deduct competition points due to player ineligibility
- 1 appeal against a decision of an NSO determining the winner of an event run under new competition rules.

CASES SETTLED WITH MEDIATION OR OTHER ASSISTANCE BY TRIBUNAL

17 cases have been settled with assistance from the Tribunal:

- 5 disciplinary appeals have been settled as a result of formal mediation proceedings conducted by the Tribunal
- 4 other disciplinary appeals were settled with assistance from the Tribunal but did not involve formal mediation
- 8 other non-disciplinary sports disputes were settled with mediation or other assistance from the Tribunal.

COSTS DECISIONS

There have been two decisions specifically devoted to deciding costs applications. In both these cases, costs were sought by an NSO:

- one related to a disciplinary appeal that was struck out for lack of jurisdiction
- the other related to a disciplinary appeal partially upheld.

The costs application was dismissed in both cases and costs were not awarded.

EXPENDITURE

Under the Memorandum of Understanding between the Minister for Sport and Recreation, Sport NZ and the Tribunal, Sport NZ employs the Registrar of the Tribunal, provides accommodation for the Tribunal office and funds support and information technology costs.

Sport NZ also funds the other operating costs of the Tribunal, which includes costs associated with hearing and deciding cases (such as the remuneration paid to Tribunal members, travel, hiring of hearing venues and teleconferencing costs) and producing information resources. In 2015/16 these other operating costs were \$102,770.

SPORTS TRIBUNAL BIOGRAPHIES

Current members of the Sports Tribunal



CHAIR: HON SIR BRUCE ROBERTSON KNZM

Sir Bruce became a High Court Judge in 1987, later was President of the Law Commission and retired as a Court of Appeal Judge in 2010. He was Chair of the Rugby World Cup Authority in 2010/11 and is a member of the Judicial Control Authority for Racing. Bruce sits on some Pacific Courts of Appeal and the Qatar International and Civil Court in Doha. He was a member of the Legislation Advisory Committee for 20 years and sits on various public legal and community boards.



DEPUTY CHAIR: ALAN GALBRAITH QC

Alan Galbraith QC is an eminent barrister and former Rhodes Scholar, who was appointed a Queen's Counsel in 1987 and has also acted as a member of the Public and Administrative Law Reform Committee (1985–87), the Legislation Advisory Committee (1987–96), the Broadcasting Commission (1989–93) and the New Zealand Racing Board (1992–96). Alan has a long career in athletics, winning several New Zealand and Australian age-group track titles and, more recently, winning World Masters age-group titles in the 1500 metre (2001) and 10 kilometre road race (2004).



DEPUTY CHAIR: DR JIM FARMER QC

Jim Farmer QC is a barrister and former lecturer in law at Auckland and Cambridge Universities, with a PhD from Cambridge, and Blues awarded by both universities in track and cross country running. He was at one time holder of the New Zealand Universities three mile record and winner of the Auckland six mile track title. In recent years, he has steered his "Georgia keelboats" to New Zealand Championships and last year was the outright winner of the Geelong Race Week in Australia. He was, until recently, a director of Team New Zealand. He took part in the Targa Motor Rally in October 2013 and remains an active runner.



CHANTAL BRUNNER

Chantal has more than 25 years of sporting experience. She represented New Zealand in the long jump at two Olympic Games, four World Championships and four Commonwealth Games. She is a member of the New Zealand Olympic Committee and is the convenor of the New Zealand Olympic Committee Athletes' Commission. She works as legal counsel for Les Mills in Auckland.



RON CHEATLEY MBE

A company managing director, Ron is well known for his many years' experience in sport administration and particularly for his involvement with cycling as a competitor, coach and administrator. He has been a cycling coach for four Olympic Games, four Commonwealth Games, seven World Championships and five Oceania Championships, and his cyclists have won a total of 48 international medals for New Zealand. His achievements have been recognised with the Halberg Awards "Sportsman of the Year" Coach Award in 1989/90 and 1998, and his naming as a Life Member of Cycling New Zealand.



DR LYNNE COLEMAN MNZM

Lynne is a general practitioner and sports doctor who has been involved with elite sport for more than a decade. Initially with North Harbour rugby and netball teams, Lynne was also Medical Director for Basketball NZ, Swimming NZ, and the New Zealand women's rugby team (Black Ferns). Lynne was a doctor for the New Zealand Olympic Health Team at Athens in 2004, co-led the Health Team for the Melbourne Commonwealth Games in 2006 and has led the Health Team at the 2010 Commonwealth Games and for the past three Olympics. Lynne also served as an elected member of the Waitemata District Health Board for a number of years.



GEORGINA EARL ONZM (FORMERLY GEORGINA EVERS-SWINDELL)

Georgina is a former New Zealand rower. She competed in the double sculls with her sister, Caroline Meyer. Among her many achievements, she is a double Olympic gold medallist, having won at Athens in 2004 and Beijing in 2008. In 2016, both Georgina and Caroline were awarded the prestigious FISA Thomas Keller Medal.



ROB HART

Rob played cricket for Northern Districts from 1992 to 2004 and for the Black Caps from 2002 and 2004. He has been a board member of the New Zealand Cricket Players Association and of New Zealand Cricket. Rob is on the board of the Balloons Over Waikato Charitable Trust. He is director at Ellice Tanner Hart lawyers in Hamilton.



PAULA TESORIERO MNZM

Paula was a New Zealand Paralympics racing cyclist. Among her many achievements, her world record-breaking time in the women's 500m time trial secured New Zealand's first gold medal at the 2008 Summer Paralympics and she then went on to win bronze in both the individual pursuit and the women's individual road time trial. Paula is also a trustee of the Halberg Disability Sport Foundation, and serves on the Boards of Sport Wellington and the New Zealand Artificial Limb Service.



CONTACT INFORMATION

The Sports Tribunal's office is in Wellington.

Enquiries should be directed to the Registrar of the Sports Tribunal.

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