

The cover features a dark blue background with a large, curved, light blue graphic element. At the bottom, there is a photograph of a sports stadium at night, with spectators in the foreground silhouetted against the bright lights of the field and stands. The text is centered and reads:

SPORTS TRIBUNAL
of New Zealand

ANNUAL REPORT
2016/17

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 2016/17 Annual Report of the Sports Tribunal reports on activities and cases decided during the time period 1 July 2016 to 30 June 2017. Cases filed during this time but not decided as at 30 June 2017 will be reported on in the Annual Report for the following year.



CONTENTS

CHAIRMAN'S FOREWORD 2

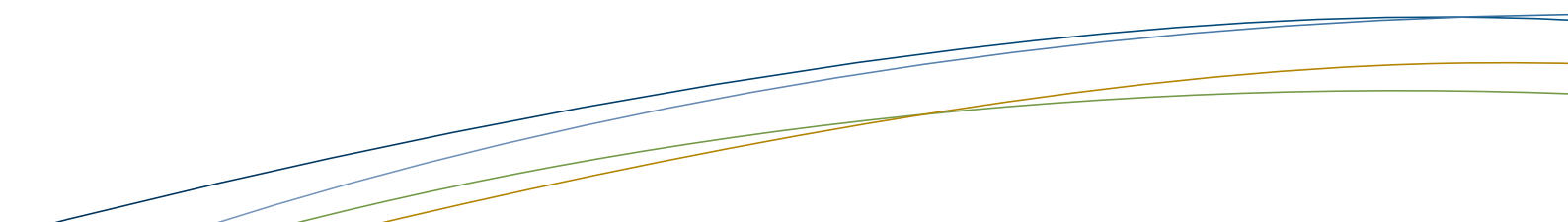
ABOUT THE SPORTS TRIBUNAL 3

CASES DEALT WITH BY THE TRIBUNAL 2016/2017 4

EXPENDITURE 20

SPORTS TRIBUNAL BIOGRAPHIES.....21

CONTACT INFORMATION.....24





CHAIRMAN'S FOREWORD

The year to June 2017 has seen a steady stream of varied and diverse work. As the McKinnon Report which was commissioned by Sport NZ concluded, we fill an important role in the New Zealand sports environment although there remain concerns about time and cost.

We are looking forward to some change of emphasis in our task as recommended in the Report if it can better fit us to meet the expectations of the sporting world.

The area which is most problematic as far as time and cost are concerned is where a matter moves from the Sports Tribunal to CAS. Although called an appeal it does not fall within that concept in New Zealand law. We have raised with Sport NZ the serious problems in the existing statutory arrangements and the need for change if it is appropriate for the Tribunal to continue to deal with anti-doping cases.

Ron Cheatley who has been involved with the Tribunal since its inception is concluding his membership. He has been an outstanding member with the breadth of his sporting prowess and experience coupled with sensible and realistic common sense. We acknowledge his positive contribution.

Until changes to our structure and rules following the McKinnon Review recommendations, contractors have been covering the position of Registrar. Megan Lee-Jo did a great job for the bulk of the year and we were sorry to see her move on. The last few months have been covered by Matt Skinner. Both have been highly motivated, committed and enthusiastic. They have acted as excellent bridges to the sporting community and have carefully attended to the requirements of this demanding role.

The next 12 months with the Commonwealth Games on the Gold Coast will no doubt bring non-selection appeals. With timely decision making within clearly articulated protocols and sensible dialogue between athletes and administrators many potential cases can be avoided. This, if possible, is to the benefit of all involved.

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). It was set up in response to recommendations of a 2001 Taskforce which 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.

CURRENT MEMBERSHIP OF THE TRIBUNAL

DEPUTY CHAIRS:

Dr Jim Farmer QC
Alan Galbraith QC

MEMBERS:

Ruth Aitken ONZM (appointed 22 June 2017)
Chantal Brunner
Ron Cheatley MBE (term expired at the end of the year)
Dr Lynne Coleman MNZM
Georgina Earl ONZM
Robert Hart
Paula Tesoriero MNZM

CASES DEALT WITH BY THE TRIBUNAL 2016/2017

A total of 23 cases were filed with the Tribunal during the year. The Tribunal issued 22 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)	9*	9*
Anti-Doping (Substantive)	9*	8*
Appeals against decisions of NSOs or NZOC	5	5
Sports-related disputes by agreement	0	0
Total	23	22

*includes one case of participating during ineligibility

Overview:

More proceedings were filed with the Tribunal this year (23) as compared with last year (17). The increase was the result of more Anti-Doping proceedings before the Tribunal (nine in 2016/17 as oppose to three in 2015/16).

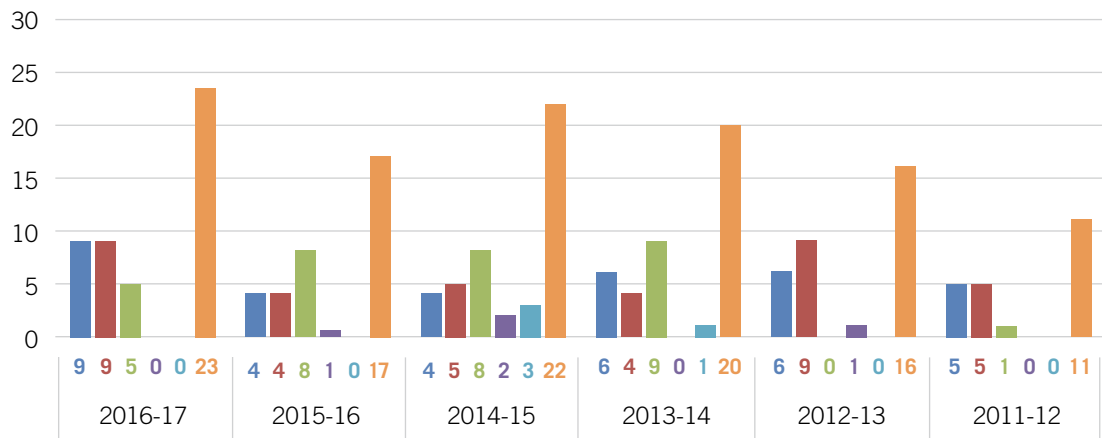
The prohibited threshold of cannabis 'in competition' was increased by WADA in 2012. The current period is the first year since 2012, that an athlete has been found to have contravened the SADR cannabis provisions.

There was a decrease in the number of appeals filed against decisions of NSOs and NZOC (five in 2016/17 as oppose to seven in 2015/16). This was largely due to 2016 Rio Olympic selection appeals. It is likely that the Tribunal will receive more appeals in the upcoming year due to the 2018 Commonwealth Games.

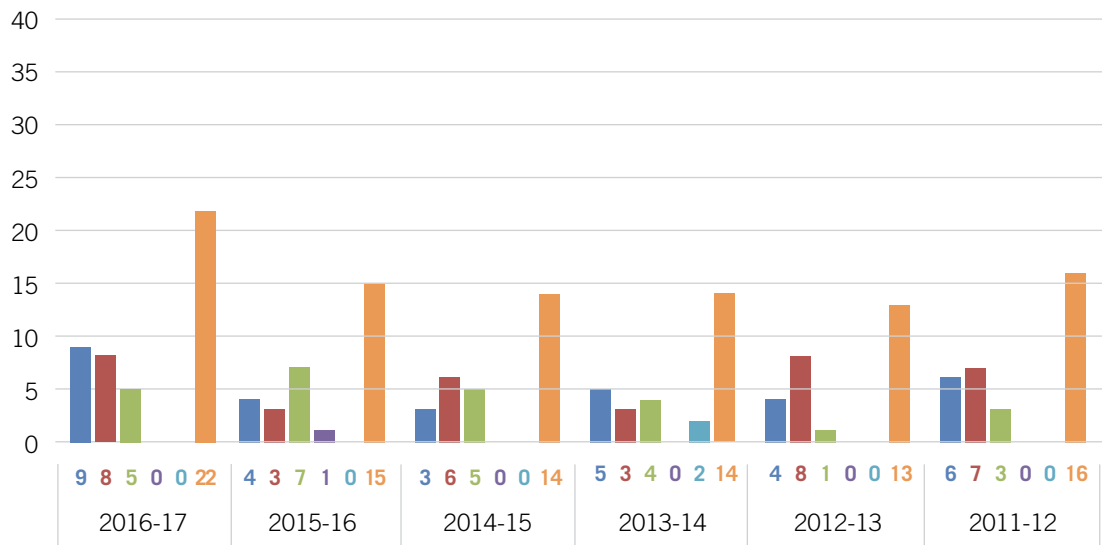
Comparison with previous five years:

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 the each of the previous five years.

Number and type of proceedings filed - yearly comparison



Number of decisions issued - yearly comparison



- Anti-Doping (provisional suspension)
- Anti-Doping (substantive)
- Appeals vs NSO and NZOC decisions
- Sports related disputes by agreement
- Other
- Total

Anti-Doping Cases

The Tribunal hears provisional suspension applications and substantive proceedings for anti-doping rule violations filed by Drug Free Sport New Zealand (DFSNZ), 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 DFSNZ. 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.

2016/2017

This year, eight substantive anti-doping proceedings were heard and decided by the Tribunal. These decisions are summarised in the table below. There has been one proceeding in which a provisional suspension order has been made, but the substantive decision is yet to be made.

The prohibited threshold of cannabis 'in competition' was increased by WADA in 2013 to 150ng/mL. The current period is the first year since 2012, that an athlete has been found to have contravened the SADR provisions in relation to cannabis.

ANTI-DOPING VIOLATION	PENALTY	SPORT
Presence of prohibited substance – Higenamine	9 months' ineligibility	Rugby league
Use and possession of prohibited substances – Nadrolone, Testosterone, Tamoxifen and Anastro	2 years' ineligibility	Cricket
Presence of prohibited substance in higher concentration than permitted – Cannabis metabolite	6 months' ineligibility	Rugby league
Presence of prohibited substance in higher concentration than permitted – Cannabis metabolite	6 months' ineligibility	Rugby league
Presence of prohibited substance – Methylhexanamine (Aka, 1,3 Dimethylpentylamine)	12 months' ineligibility	Powerlifting
Presence of prohibited substance in concentration higher than permitted – Salbutamol	1 month ineligibility	Football
Presence of prohibited substance in concentration higher than permitted – Salbutamol	1 month ineligibility	Softball
Participation during ineligibility	Not proven	Cycling

¹ Although the threshold is 150ng/ml, the decision limit is 180ng/ml. This means that an Adverse Analytical Finding will only be acted upon if the test results in a finding of >180ng/ml in the sample.

The eight cases are summarised below.

PRESENCE OF PROHIBITED SUBSTANCE – HIGENAMINE

Drug Free Sport New Zealand v Michael Butson

The Sports Tribunal suspended rugby league player Michael Butson for nine months for the presence of a prohibited substance higenamine. Higenamine is a type of Beta-2 Agonist, all of which are prohibited at all times in and out of competition.

Mr Butson played rugby league at provincial level for the Canterbury Bulls. He tested positive for higenamine in a sample he provided following a rugby league training session on 22 September 2016. Mr Butson was provisionally suspended without opposition on 19 December 2016.

On 27 April, a joint memorandum was provided to the Tribunal on behalf of Drug Free Sport New Zealand (DFSNZ) and Mr Butson. In the memorandum Mr Butson admitted the violation but asked factors to be considered as to appropriate sanction. The presumptive period of ineligibility for the unintentional presence of a specified substance (such as higenamine) is two years but this period may be reduced if the athlete can show no significant fault or negligence in relation to the violation. DFSNZ did not contend that the violation was intentional

It was established that the source of higenamine in Mr Butson's sample was due to his consumption of "The One 2.0", a pre-workout supplement manufactured by BPM Laboratories. Mr Butson was able to satisfy the Tribunal that this product was a "Contaminated Product" under the Sports Anti-Doping Rules as the product did not list that it contained higenamine on its packaging.

The assessment as to whether an athlete has no significant fault in relation to a violation is a fact specific exercise. Having considered all the evidence, the Tribunal was satisfied that Mr Butson had shown he was not at significant fault in testing positive for higenamine. In making this decision the Tribunal considered, among other things, the following:

- that Mr Butson disclosed the "The One 2.0" supplement and dose taken on his Doping Control Form.
- the supplement was purchased from a retail store in Melbourne as opposed to online.
- That Mr Butson's trust in supplements may have in part resulted from his previous experience of having a nutritional and supplement regime in a professional environment having played for the Melbourne Storm.
- At the time of taking the supplement Mr Butson's personal life was at a low ebb and this may have contributed to his failure to take proper precautions.

Given Mr Butson's immediate acknowledgment of the breach, his period of suspension from participating in sport was backdated to 22 September 2016. The period of suspension ended on 8 June 2017.

POSSESSION AND USE OF PROHIBITED SUBSTANCE – NANDROLONE, TESTOSTERONE, TAMOXIFEN AND ANASTROL

Drug Free Sport New Zealand v Adam King

The Sports Tribunal suspended cricket player Adam King for two years for the use and possession of prohibited substances in 2014 and 2015.

In February 2016, Medsafe provided Drug Free Sport New Zealand (DFSNZ) with information as part of its investigation into the illegal drug supply website, NZ Clenbuterol, which led to proceedings being brought against Mr King under the Sports Anti-Doping Rules (SADR). Mr King admitted ordering the anabolic steroids Nandrolone Decanoate and Testosterone Propionate, on two occasions in August and October 2014, and using these prohibited substances between August and December 2014. He also admitted purchasing the hormones Tamoxifen (brandname Nolvadex) and Anastazole (brandname Arimidex) in January 2015 and using these prohibited substances between January and April / May 2015.

Mr King was provisionally suspended without opposition on 20 December 2016. He asked to address the Tribunal regarding the appropriate sanction, and the commencement date of this sanction. The SADR provides that where proceedings involve multiple violations, the sanction imposed is based on the violation which carries the most severe sanction. The SADR was amended in 2015 in line with changes made to the WADA Code and increased the penalty for intentional breaches from a period of ineligibility of two years to four years. Therefore, while Mr King's conduct in 2014 was clearly of relevance, the determination of the sanction was based on the 2015 violations.

Having considered the evidence in its totality, the Tribunal observed the competing arguments as to whether Mr King's conduct in purchasing and using the steroids was intentional, as defined in SADR, was finely balanced. The term "intentional" requires an athlete to engage in conduct which he or she knew constituted an Anti-Doping Rule Violation, or knew there was a significant risk of this and manifestly disregarded that risk.

However, the Tribunal found no evidential basis to show Mr King's conduct in purchasing and using the hormones in 2015 was intentional under SADR. Accordingly, a period of ineligibility of two years was imposed. The Tribunal backdated the commencement date of the sanction to 1 May 2016 given delays not attributable to Mr King, and also for his prompt admission and co-operation once the allegations were made by DFSNZ in November 2016.

PRESENCE OF PROHIBITED SUBSTANCE IN HIGHER CONCENTRATION THAN PERMITTED – CANNABIS METABOLITE

Drug Free Sport New Zealand v Stacey Mikara

The Sports Tribunal suspended rugby league player Stacey Mikara for six months for the presence of a metabolite of cannabis in a concentration higher than that permitted under WADA's Prohibited List, in a sample taken from him in competition.

Mr Mikara played rugby league at provincial level for the Southland Rams. He tested positive for cannabis in a concentration of 269ng/ml in a sample he provided following a New Zealand Rugby League National Championship game on 17 September 2016. The limit for cannabis was increased by WADA in 2012 to 180ng/ml.

Mr Mikara was provisionally suspended without opposition on 18 January 2017. He admitted the violation but asked to be heard as to the appropriate sanction. DFSNZ did not assert that Mr Mikara's cannabis use was taken to enhance his sporting performance and accepted that Mr Mikara could establish no significant fault on his part for the presence of the drug during competition that resulted from the recreational use of cannabis. Accordingly, the Tribunal was asked to assess Mr Mikara's degree of fault in deciding on a period of ineligibility between a reprimand and two years.

In line with its recent decision in *Drug Free Sport New Zealand v Travell Ngatoko* (ST17/17, 3 February 2017) which involved very similar circumstances, the Tribunal decided that six months' suspension was appropriate. The Tribunal exercised its discretion to backdate the start of the ineligibility period to the date of provisional suspension. Mr Mikara was ineligible to participate in any competitive sport until 17 July 2017.

The Tribunal was encouraged by Mr Mikara's remarks that he would be "putting league ahead of marijuana", and is hopeful that this "will provide a good example for other athletes who may be of the view that sport can accommodate the recreational use of cannabis."

PRESENCE OF PROHIBITED SUBSTANCE IN HIGHER CONCENTRATION THAN PERMITTED – CANNABIS METABOLITE

Drug Free Sport New Zealand v Travell Ngatoko

The Sports Tribunal suspended rugby league player Travell Ngatoko for six months for the presence of a metabolite of cannabis in a concentration higher than that permitted under WADA's Prohibited List, in a sample taken from him in competition.

Mr Ngatoko played rugby league at provincial level for the Taranaki Sharks. He tested positive for cannabis in a concentration of 189ng/ml in a sample he provided following a New Zealand Rugby League National Championship game on 17 September 2016. The limit for cannabis was increased by WADA in 2012 to 180ng/ml. This was the first charge that had come before the Tribunal for cannabis use since the level was increased.

Mr Ngatoko was provisionally suspended without opposition on 13 December 2016. He admitted the violation but asked to be heard as to the appropriate sanction. DFSNZ did not assert that Mr Ngatoko's cannabis use was taken to enhance his sporting performance and accepted that Mr Ngatoko could establish no significant fault on his part for the recreational use of cannabis. Accordingly, the Tribunal was asked to assess Mr Ngatoko's degree of fault in deciding on a period of ineligibility between a reprimand and two years.

The Tribunal decided that six months suspension was appropriate having regard to the relevant facts. The Tribunal took into account the mitigating factors of a low cannabis reading, Mr Ngatoko had smoked cannabis for his recreational use rather than any performance enhancing reasons, his declaration on his doping control form that he had smoked cannabis, and his co-operation after being advised of the positive test. Conversely, the Tribunal re-iterated that the onus under the Sports Anti-Doping Rules fell squarely on the athlete to avoid a breach, regardless of whether he or she had attended specific anti-doping education. A reasonable athlete should have known that smoking cannabis risked breaching the sports rules. Experienced players, such as Mr Ngatoko, had a responsibility to act as role models for others within their sport, including the message that sport and cannabis do not mix.

Mr Ngatoko's six-month suspension from participating in sport, was backdated to 3 November 2016 given his immediate acknowledgment of the breach, and cooperation throughout the proceedings. The period of suspension ended on 2 May 2017.

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

Drug Free Sport New Zealand v Mendrado Catoto

The Sports Tribunal suspended powerlifter, Mendrado Catoto, for a period of 12 months for the presence of a prohibited substance, methylhexanamine, in a sample taken from him at the New Zealand Powerlifting Championships on 6 August 2016. Mr Catoto had won a gold medal in the under 74kg division, and this was forfeited accordingly.

Mr Catoto was provisionally suspended without opposition on 30 August 2016. He admitted the violation but asked to be heard as to the appropriate sanction. The presumptive period of ineligibility for the unintentional presence of a specified substance (such as methylhexanamine) is two years but this period may be reduced if the athlete can show no significant fault or negligence in relation to the violation. Drug Free Sport New Zealand (DFSNZ) did not contend that the violation was intentional.

To show no significant fault, Mr Catoto first needed to establish how the prohibited substance entered his system. Through further analysis undertaken by the WADA accredited laboratory, Mr Catoto confirmed to the Tribunal's satisfaction that the source of the prohibited substance was a contaminated pre-workout supplement "Dust v2" which he had purchased from a supplements retailer near a gym he attended.

The assessment, as to whether an athlete has no significant fault in relation to a violation, is a fact specific exercise. Having considered all the evidence, the Tribunal was satisfied Mr Catoto was not at significant fault, in testing positive for methylhexanamine.

The Tribunal assessed that a 12 month period of ineligibility was the appropriate sanction considering Mr Catoto's degree of fault, and the following factors:

- the supplement was a contaminated product, and the prohibited substance was not disclosed on the product label.
- the product was purchased from a reputable New Zealand based supplier, rather than online from an overseas supplier.
- Mr Catoto sought reassurance from the retailer when purchasing the product that it was safe to use in competition. However, he should have gone further by discussing the product with his coach and others on his team, and it would have been prudent to speak with DFSNZ particularly given the accompanying marketing of the product around enhancing sports performance, and the risky nature of supplements.
- Mr Catoto disclosed the Dust v2 supplement and the quantity taken on his Doping Control Form. He had previously been tested in competition and not received a positive test when he was using another pre-workout supplement. That previous testing ought to have been a salient reminder of the anti-doping regime which applied to him. Mr Catoto asserted that he only had a general awareness of the anti-doping regime and had not attended a DFSNZ seminar before nor was aware of the service provided by DFSNZ to check products.

The Tribunal noted that formal anti-doping education is not essential to make athletes aware of the clear obligations under the Sports Anti-Doping Rules. Mr Catoto's suspension from participating in sport was backdated to the date of testing, 6 August 2016, given his timely admission of the violation and co-operation throughout.

PRESENCE OF PROHIBITED SUBSTANCE IN CONCENTRATION HIGHER THAN PERMITTED – SALBUTAMOL

Drug Free Sport New Zealand v Clayton Lewis

The Sports Tribunal suspended All Whites football player, Clayton Lewis, for one month for the presence of a prohibited substance, Salbutamol in a concentration higher than that permitted. The positive test resulted from a sample taken from him in competition for his Auckland City Football Club on 18 February 2016. Salbutamol (commonly known as Ventolin) is listed as a specified substance on the Prohibited List, but in the case where it is administered by inhaler, it is only prohibited above a specified concentration.

Mr Lewis was provisionally suspended without opposition on 8 July 2016. Mr Lewis admitted the violation but asked to be heard as to the appropriate sanction. The case involved the unintentional over-use of Salbutamol, for which the standard period of ineligibility is two years under the Sports Anti-Doping Rules 2015 (SADR).

The Tribunal accepted this was a case where it could consider a reduction of the two-year period of ineligibility on the basis that there was no significant fault or negligence in relation to the violation. The Tribunal assessed the appropriate sanction having regard to Mr Lewis's degree of fault in a context where athletes have strict obligations under SADR to exercise utmost caution and understand what constitutes a violation. The Tribunal considered that a period of ineligibility of one month was appropriate taking into account:

- the genuine therapeutic use of Salbutamol by Mr Lewis to alleviate his asthmatic symptoms which had been exacerbated by the cold night air during the game;
- no previous violations despite being tested on two other occasions;
- his youth;
- the co-operation and contrition shown by Mr Lewis following the positive test including voluntarily withdrawing part way through an All Whites international tour;
- the evidence that at none of the three DFS anti-doping seminars Mr Lewis attended, was he told of the specific risks associated with taking Salbutamol above a certain level; and
- Mr Lewis's failure to make specific inquiry of DFS about the medication he was taking.

Mr Lewis's suspension of one month from participating in sport was backdated to his provisional suspension.

PRESENCE OF PROHIBITED SUBSTANCE IN CONCENTRATION HIGHER THAN PERMITTED – SALBUTAMOL

Drug Free Sport New Zealand v Craig Wallace

The Sports Tribunal suspended former representative softball player, Craig Wallace, for one month for the presence of a prohibited substance, Salbutamol in a concentration higher than that permitted under WADA's Prohibited List, in a sample taken from him in competition on 21 February 2016.

Mr Wallace was provisionally suspended without opposition on 29 June 2016. Mr Wallace admitted the violation but asked to be heard as to the appropriate sanction. The case involved the unintentional over-use of Salbutamol (commonly known as Ventolin), for which the standard period of ineligibility is two years under the Sports Anti-Doping Rules 2015 (SADR).

The Tribunal accepted this was a case where it could consider a reduction of the two-year period of ineligibility on the basis that there was no significant fault or negligence in relation to the violation. The Tribunal assessed the appropriate sanction having regard to Mr Wallace's degree of fault in a context where athletes have strict obligations under SADR to exercise utmost caution and understand what constitutes a violation. The Tribunal considered that a period of ineligibility of one month was appropriate taking into account:

- the clear evidence that Mr Wallace took Ventolin as prescribed for therapeutic use and the exacerbation of his asthmatic symptoms due to stress and his physical condition at the time of the violation;
- the evidence that the elevated level of Salbutamol in Mr Wallace's system was due to his incorrect technique in using his inhaler and consequently taking more puffs;
- Mr Wallace's immediate acceptance of the violation and working constructively with DFS; and
- the fact Mr Wallace had played softball at the highest level and knew about the work of DFS, yet took no steps to check the status of his medication, instead relying on the fact it was prescribed by his doctor.

Mr Wallace's suspension of one month from participating in sport was backdated to his provisional suspension.

PARTICIPATION DURING INELIGIBILITY

Drug Free Sport New Zealand v Karl Murray

The Tribunal heard and dismissed all claims brought by DFSNZ against Karl Murray in relation to allegations that Mr Murray committed two violations of the SADR. The violations alleged that Mr Murray had:

- participated during a period of ineligibility (SADR 10.12.1); and
- tampered or attempted to tamper with doping control by providing “fraudulent information” during an interview with DFSNZ on 30 March 2016 (SADR 2.5).

In early 2016, DFSNZ commenced an investigation into whether Mr Murray had violated SADR 10.12.1 based on information which had been volunteered to DFSNZ. The ineligibility provisions in SADR 10.12.1 applied to Mr Murray as he had been previously sanctioned to a period of ineligibility from 31 March 2015 until 7 April 2016 due to a previous doping offence.

Mr Murray, without opposition, was provisionally suspended by order of the Tribunal on 28 April 2016.

As the parties were unable to provide an agreed statement of facts for the Tribunal, a full hearing day on 2 December 2016 was utilised for cross examination of a number of witnesses for both DFSNZ and Mr Murray. The hearing was adjourned to 12 December to allow counsel time to present closing submissions on the factual position.

The main allegation was that Mr Murray had written training programmes for two competitive New Zealand cyclists during his period of ineligibility in contravention of SADR 10.12.1. The allegation of Mr Murray contravening SADR 2.5 related to an interview on 30 March 2016 in which it was alleged that Mr Murray provided false, misleading and/or incorrect information to DFSNZ.

The Tribunal particularly noted its concern that DFSNZ did not call witnesses who could have potentially closed an “obvious gap in the evidence”. The Tribunal was not satisfied that DFSNZ had proven that Mr Murray participated during a period of ineligibility to the requisite standard of comfortable satisfaction. The consequential allegations of tampering under SADR 2.5 also failed.

DFSNZ has appealed these findings of fact to the Court of Arbitration for Sport which has not issued a decision by the end of June.

APPEALS AGAINST DECISIONS OF NSOS OR NZOC

The Tribunal heard and decided three appeals against decisions of NSOs this year.

The 2016/2017 appeal decisions issued by the Tribunal are summarised below:

NOMINATION / SELECTION APPEALS

Scott Columb v Motorcycling New Zealand

The Sports Tribunal dismissed an appeal by Scott Columb against a decision of Motorcycling New Zealand (MNZ) not to select him for the New Zealand Motocross of Nations (MXoN) team to be held in Italy on 24 and 25 September 2016.

Mr Columb appealed on the grounds that MNZ's Selection Criteria was not properly followed or implemented and because there was no material on which the selection decision could reasonably be based. MNZ's selection criteria referred to specific criteria for the MXoN event and general criteria which listed a number of discretionary factors that the MNZ selectors could consider.

Based on results at certain selection events and his greater experience, Mr Columb believed he should have been selected ahead of another selected rider. The MNZ selectors acknowledged that it was a very difficult decision between four riders whom to select for two remaining spots on the team. The selectors undertook a considered selection process including interviewing all of the potential candidates, a detailed analysis of each rider's performances at selection events and other international events since the end of the New Zealand season, and obtaining feedback from MNZ team managers for recent MXoN campaigns.

The Tribunal concluded that "although Mr Columb had a strong case for selection it could not be concluded that the selection of Mr Harwood ahead of him was not an available option when the selection process was properly carried out. The selectors clearly considered what had happened up to the end of the New Zealand season including the history of the potential participants and not unreasonably also looked at the most recent six months during which Mr Harwood has been competing regularly on an Australian circuit with success and which the selectors considered indicated he would be race ready for the Event."

The appeal was accordingly dismissed.

Paul Martelletti v Athletics New Zealand

The Tribunal heard and dismissed an appeal by Paul Martelletti against a decision by Athletics New Zealand not to nominate him for the Men's Marathon event at the 2016 Rio Olympic Games.

Mr Martelletti appealed that his non-nomination was due to his hindered performance in two IAAF Gold Label Marathon Events which were taken into consideration by Athletics NZ. Mr Martelletti submitted that the two marathon events that he participated in for the purpose of his Olympic nomination consideration did not truly reflect his ability because he:

- was suffering from the common cold during the London Marathon, and a common cold and chest infection at the Gold Coast Marathon; and
- did not start in the elite running group at the marathon races (and therefore the effect of congestion, lack of access to pacemakers, and having to carry his own supplies).

Mr Martelletti also submitted that he was on track for the Athletics NZ Olympic marathon qualifying time based on fitness and form as indicated by a personal best time run over 10km (road), and half marathon distances in the lead up to the London Marathon, and in a 10k (track) race in the week following the London Marathon.

It was suggested to the Tribunal, on behalf of Mr Martelletti, that if adjustments are quantified and deducted Mr Martelletti's time for the 2016 London Marathon for his illness and effects of not starting the elite group, this would show that he was capable of achieving the Athletics NZ 'B' standard of 2 hours 14 minutes.

The Tribunal stated it was inappropriate to make a theoretical extrapolation as to what time Mr Martelletti could have run if he was not sick during these two events. The Tribunal decided that Athletics NZ selectors had the discretion to consider extenuating factors such as illness in the Olympic Nomination Criteria, and concluded there was a rational basis for Athletics NZ's decision not to nominate Mr Martelletti.

Accordingly, the appeal was dismissed.

Andrea Miller v Olympic Weightlifting New Zealand

The Tribunal heard and dismissed an appeal by Andrea Miller against Olympic Weightlifting New Zealand's (OWNZ) decision not to nominate Ms Miller in the New Zealand weighting team to compete at the 2016 Rio Olympic games (the Games).

OWNZ was allocated one quota spot for a female athlete at the Games by the International Weightlifting Federation (IWF). On or about 18 June 2016, OWNZ nominated Tracey Lambrechts for this spot and this was confirmed by NZOC on 28 June.

Ms Miller's asserted that the selectors had failed to give sufficient weight to the following three factors and therefore wrongly exercised their discretion to nominate Ms Lambrechts instead of Ms Miller:

- the relevance and utility of the Sinclair Co-efficient in comparing the results of two lifters in different weight divisions;
- Ms Miller's recent performances and Sinclair scores at events other than Key Events; and
- Extenuating circumstances (hospitalisation) that affected Ms Miller's performance and ability to compete at one of the Key Events, the 2016 Oceania Championships.

Ms Miller's second ground of appeal was that the non-nomination decision was affected by apparent bias. This allegation stemmed from the fact that Mr Moss, one of the OWNZ board that voted in favour of Ms Lambrechts' nomination, was the President of the North Sport City Weightlifting Club which Ms Lambrechts was a member of. Mr Moss was also the father of Ms Lambrechts' training partner.

It was the Applicant's submission that where a comparison was required to be drawn between two athletes competing in different weight divisions for a sole weightlifting spot in the New Zealand Olympic team, then the Sinclair co-efficient should be a decisive factor in the assessment of the respective standing (Ms Miller's highest Sinclair co-efficient was 265.157 whereas Ms Lambrechts' was 249.54). The Tribunal disagreed.

Evidence from OWNZ was provided to show that the selectors took into account a compilation of the athletes' results in the four Key events as well as "other events" between 6 July 2015 and 20 June 2016, and information provided by both Ms Miller and Ms Lambrechts at the request of a selector to support their respective nominations.

The selectors considered this information and concluded that Ms Lambrechts was the better candidate for nomination based on her performances at the Key Events, had a stronger track record overall, a significantly better IWF ranking than Ms Miller, and better hypothetical placing at the last two Olympics.

The Tribunal found that there was no evidence to suggest that the selectors did not properly consider and assess Ms Miller's extenuating circumstances, that there was a clear basis to nominate Ms Lambrechts, and that a fair minded lay observer would not attribute bias to the involvements of Mr Moss.

Accordingly, the appeal was dismissed.

OTHER APPEALS

Mangere United Football Club v New Zealand Football

The Mangere United Football Club (MUFC) brought two appeals to the Tribunal against two decisions of the New Zealand Football Appeals Committee (NZFAC) which affirmed:

- the forfeiture by MUFC of a Chatham Cup tie match and imposition of a fine; and
- the forfeiture by MUFC of seven matches and the imposition of fines in the Northern Regional Football League Division One competition.

The matches were ordered to be forfeited under Rule 31.1 of the NZF Disciplinary Code because MUFC fielded a player who had not been appropriately registered and transferred under the NZF Regulations and hence was ineligible to play for MUFC in both competitions.

MUFC did not dispute the fact that the player was not appropriately registered. Instead, MUFC appealed on the following grounds:

- that there was no complaint within the five-day period mandated in Rule 77.23 and accordingly there was no jurisdiction to proceed with the charges;
- that the competition rules for both the Chatham Cup and the NRFL competition were ambiguous or not significantly clear to impose a mandatory penalty of forfeiture in the circumstance of the case; and
- that the principles of proportionality was applicable to the interpretation of either or both the competition rules and the Disciplinary Code so that mandatory forfeiture was an inappropriate penalty in the circumstances of this case.

The Tribunal found that the five-day time period within Rule 77.23 only applied to situations where potential breaches of the rules were not known within that period or to disciplinary process not initiated by third party complaints but by the internal processes of NZF. The Tribunal was satisfied that the sanctioning rules governing the Chatham Cup and NRFL competition were clear and unambiguous. The Tribunal was not persuaded it was required to apply the principles of proportionality in this context because the sanctioning rules did not expressly include proportionality as a consideration to the sanction.

Accordingly, the appeals were dismissed.

Sloan Frost v Motorcycling New Zealand

The Tribunal heard and allowed the appeal made by Sloan Frost.

Mr Frost appealed against two decisions of the Motorcycling New Zealand Judiciary Committee in relation to appeals brought by Tony and Mitchell Rees. The outcome of the appeals brought by Tony and Mitchell Rees changed the corrected results of Rounds Three and Four of the New Zealand Superbike Championship resulting in Mr Frost to no longer be declared the New Zealand Superbike Champion.

Mr Frost appealed on the basis that he, being an interested party, was not afforded natural justice as he was not invited to present submissions in the two appeals by Tony and Mitchell Rees.

The respondent accepted that Mr Frost had not been afforded natural justice. By consent the Tribunal made orders that the decisions of the appeals brought by Tony and Mitchell Rees be quashed and set aside. The Tribunal also made orders, including others, that the appeals are to be reconsidered by the Judiciary Committee under the MNZ rules, and all parties, including Mr Frost, shall be entitled to appear and present submissions on any questions under the appeals at the hearing of the appeals.

Accordingly, the appeal was allowed.

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 offered to provide mediation services in one case this year. However, upon receiving further information from the parties it was decided that mediation was not necessary and the issue was resolved without formal mediation occurring.

OTHER MATTERS INVOLVING TRIBUNAL IN 2016/17

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.

The Sports Tribunal continues to be conscious about the associated costs involved in bringing matter before the Tribunal. The Tribunal has been offering informal assistance to in certain circumstances and has been involved, as a stakeholder, in the proposal to establish a Sports Mediation Service for the wider sports sector at a national level. This proposal is currently being considered by the Sport New Zealand Board. The full review can be found on the Tribunal's website: www.sportstribunal.org.nz.

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 2016/17 these other operating costs were \$83,729.

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. 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.



RUTH AITKEN ONZM

Ruth Aitken was the Silver Ferns coach from 2002-2011 leading the team to two Commonwealth Gold Medals (2006 and 2010) and the 2003 World Netball Championship title. Named Halberg Coach of the Year in 2003 and awarded the ONZM in 2011 for services to netball, she retired as the most capped international netball coach in the world with 112 test matches to her credit.

After her Silver Ferns retirement, Ruth spent three years in Singapore, helping the national team to Asian Champs and SEA Games success. At the end of 2016, Ruth returned to her hometown of Paeroa and is currently in the role of Performance Manager with Netball Waikato Bay of Plenty.



CONTACT INFORMATION

The Sports Tribunal's office is in Wellington.
Enquiries should be directed to the Registrar of the Sports Tribunal.

CONTACT DETAILS:

Registrar of the Sports Tribunal of New Zealand

Phone: 0800 55 66 80

Fax: 0800 55 66 81

Email: info@sportstribunal.org.nz

Website: www.sportstribunal.org.nz

POSTAL ADDRESS FOR FILING DOCUMENTS:

Registrar

Sports Tribunal of New Zealand

PO Box 3338

Wellington 6140

PHYSICAL ADDRESS FOR FILING DOCUMENTS BY COURIER:

Registrar

Sports Tribunal of New Zealand

C/- Ground Floor

86 Customhouse Quay

Wellington 6011

