

SPORTS TRIBUNAL of New Zealand

ANNUAL REPORT 2007/08



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.

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CHAIRMAN'S FOREWORD

The Tribunal came into existence in 2003 when it was established by the Board of Sport and Recreation New Zealand (SPARC) under section 8(i) of the Sport and Recreation New Zealand Act 2002.

In 2001, the Sport, Fitness & Leisure Ministerial Task Force, "Getting Set for an Active Nation", recommended that the Minister of Justice establish a sports dispute tribunal with a primary focus on national sport to assist National Sport Organisations (NSOs) avoid lengthy and costly legal battles; to ensure quality and consistent decision-making for athletes in New Zealand sport; to add credibility to the operation of elite sport in New Zealand; and to provide for appeals to the Court of Arbitration for Sport.

Prior to the Task Force's report, there had been several appeals by athletes against their non-selection to the New Zealand Olympic team for the Sydney Olympic Games in 2000. Further, there were several doping infractions recorded by the New Zealand Sports Drug Agency (now called Drug Free Sport New Zealand).

SPARC commissioned a review to determine if there was a need for a sports tribunal in New Zealand and, if so, to determine how it could be established. As a result of this review, and after the enactment of the 2002 Act, which made it a function of SPARC to "facilitate the resolution of disputes between persons and organisations involved in physical recreation and sport", SPARC established the Tribunal.

The Sports Anti-Doping Act 2006 ("the Act") provided that the Tribunal, under its present name, "continues under this Act with the functions, powers and duties specified in this Act, but otherwise without any change in its continuity, assets, rights, liabilities, contracts or members".

Since the Tribunal was continued under the Act, it has operated in accordance with a Memorandum of Understanding under which the parties are the Minister for Sport and Recreation, SPARC and the Tribunal. As a provision of this memorandum, the Tribunal is required to provide an annual report on the Tribunal's activities and operations to SPARC and the Minister. This report covers the year ending 30 June 2008.

The jurisdiction conferred on the Tribunal by the Act is set out more particularly later in this report. Prior to the commencement of the Act, the Tribunal's jurisdiction was purely consensual. While in many respects its jurisdiction remains consensual, the Act and the Sports Anti-Doping Rules ("the Doping Rules") made pursuant to the Act have, in some respects, given statutory powers to the Tribunal. It is now possible to issue witness summonses, and non-compliance with such a summons is an offence. The Tribunal is required to function under the Doping Rules when hearing violation proceedings under those Rules. Although the Doping Rules are not binding on an NSO unless it agrees to them, most NSOs have agreed to them. An NSO may appoint its own anti-doping tribunal, but most of the NSOs have appointed the Tribunal to determine anti-doping violation applications involving their members.

Under the Memorandum of Understanding, SPARC is required to employ and accommodate the Tribunal's registrar and provide administrative support to the Tribunal and registrar as required and within the allocated budget. The Tribunal was appropriately accommodated and supported by SPARC during the year.

The Act empowers the Tribunal to determine its own practices and procedures for performing the functions specified in the Act. In doing so, it must comply with and implement the Doping Rules, to the extent that the Rules are applicable. The Rules apply to anti-doping violations heard by the Tribunal.

The Tribunal adopted its own Rules ("the Tribunal Rules") in 2003 and amended these Rules after the Act came into force by adopting a new set of Rules on 2 July 2007. The new Tribunal Rules were necessary partly because of the provisions of the Act and the Doping Rules. After the year under review, it has a new set of Tribunal Rules, which are in substance the Tribunal Rules that came into force on 2 July 2007 but with additional provisions. Two innovations in the recent Tribunal

Rules are a provision that enables the Tribunal to re-hear a matter in limited circumstances and the right to mediate a sports dispute.

The statistics appearing later in this report show that the majority of cases heard by the Tribunal during the year were anti-doping violation cases. The Act introduced a significant change in that, prior to 1 July 2007, anti-doping violation proceedings were instituted by an NSO on receiving information from Drug Free Sport New Zealand ("Drug Free Sport") that a person had or may have committed an anti-doping rule violation. Under the New Zealand Sports Drug Agency Act 1994, a determination by Drug Free Sport under section 14 of that Act that an anti-doping violation had occurred established the violation as a proven fact. There was, in limited circumstances, a right of appeal to the District Court against the determination. It is now up to the Tribunal, in cases brought to it, to determine whether a violation has occurred. Thus, the Tribunal now both determines whether there is a violation and, if so, what the sanction for it is to be.

In most of the anti-doping violation cases that come before the Tribunal, cannabis is the prohibited substance. While there is a debate in some circles as to whether cannabis should be on the prohibited list issued by the World Anti-Doping Agency (WADA), the substance is included on the list and the Tribunal is required to proceed under and enforce the Rules in relation to cannabis.

Cannabis is a specified substance under the Doping Rules (which follow the WADA Code provisions), and if an athlete can satisfy the Tribunal that cannabis was not smoked for a performance-enhancing purpose, the athlete is entitled to a sanction less than the two-year period of ineligibility for a first offence (which applies to most of the substances on the prohibited list). All athletes in the cannabis cases have been able to satisfy the Tribunal that the drug was not taken for performance-enhancing purposes. While each case depends on its own facts, the standard period of ineligibility the Tribunal imposes in cannabis cases is one to two months, depending on aggravating and mitigating factors. Some of the NSOs have asked the Tribunal to take a firm stand on cannabis because they wish to eradicate it from their sport. The position may have been reached where the Tribunal will need to reconsider

the "standard" period of ineligibility in such cases by increasing it. The message has obviously not got through to some sportspeople.

The Tribunal had several Olympic appeals during the period. One of these, the Hunter-Galvan case, attracted considerable publicity. While the Tribunal's preference is to keep matters private until a decision is given, and it is required to do so in anti-doping cases, the Tribunal cannot prevent parties from providing information to the media, which is then entitled to report it. This happened in the Hunter-Galvan case.

There was a change of personnel during the year. Two long-serving members left the Tribunal. Both had served on the Tribunal since its inception. Kit Toogood QC was the Deputy Chair during that time and often stood in for the Chair. He acquitted himself well both as a member of the Tribunal and when exercising the Chairman's functions. Farah Palmer is well known in sporting circles and was a thoughtful and worthy member of the Tribunal. Both members made valuable contributions and, on behalf of the Tribunal, I thank them for their contributions.

Three new members were appointed during the year, namely Dr Lynne Coleman, Alan Galbraith QC, who assumed a role as Deputy Chair, and Anna Richards, who is also well known as a Black Fern rugby player.

I am grateful for the support I have received from the Tribunal members during the year. All members have an interest in sport and faithfully fulfil their tasks in a fair and considerate manner.

Finally, on behalf of the Tribunal, I thank the Registrar, Brent Ellis, the efficient Registrar who has been of considerable help to the Tribunal in its role as adjudicator of sports disputes. He has also been of considerable assistance to me, the Deputy Chairman and other members of the Tribunal in our administrative roles.



Hon B J Paterson QC
Chairman



TYPES OF DISPUTES THE SPORTS TRIBUNAL HEARS AND DECIDES

The types of disputes the Tribunal can hear and decide are set out in s38 of the Sports Anti-Doping Act 2006. These are:

- anti-doping violations, including determining whether an anti-doping violation has been committed and imposing sanctions
- appeals against decisions made by a National Sport Organisation (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 could include:
 - appeals against disciplinary decisions
 - appeals against not being selected or nominated for a New Zealand team or squad
- 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 SPARC.



STATISTICAL ANALYSIS OF CASES DEALT WITH BY THE TRIBUNAL IN 2007/08

Cases decided by the Tribunal in 2007/08

The Tribunal decided 22 cases in 2007/08. This does not include an appeal that was subsequently withdrawn and settled by the parties.

Cases by application type

Of the 22 cases decided by the Tribunal:

- 16 were anti-doping
- 4 were appeals against non-nomination or non-selection for the 2008 Olympics
- 2 were appeals against disciplinary decisions.

Analysis of anti-doping cases

Of the 16 anti-doping cases decided by the Tribunal, there were:

- 11 cases of cannabis
- 3 cases of a failure or refusal to provide a sample
- 1 case of morphine
- 1 case of BZP (benzylpiperazine).

CANNABIS CASES BY SPORT

The sports the athletes were involved in when testing positive in the 11 cannabis cases were:

- | | |
|----------------|---------|
| • rugby league | 6 cases |
| • basketball | 4 cases |
| • touch | 1 case |

Sanctions in anti-doping cases

CANNABIS CASES

Sanctions imposed in the 11 cannabis cases were:

- 10 suspensions
- 1 suspension that was deferred on condition of completion of an education programme.

In the 10 cannabis cases where suspension was imposed, the sanctions were:

- 1 case of 2 months' suspension
- 5 cases of 6 weeks' suspension
- 2 cases of 1 month's suspension
- 2 cases in which players were suspended from the date of the Tribunal decision until the end of March 2008 (because the players' sporting season did not start again until 1 March, the Tribunal effectively imposed a 1-month suspension from when the season started).

ANTI-DOPING CASES INVOLVING OTHER SUBSTANCES

Decisions in anti-doping cases involving substances other than cannabis were:

- 2 years' suspension in a case involving BZP
- no sanction imposed in a case involving morphine (as the Tribunal concluded that the athlete had no fault).

ANTI-DOPING CASES INVOLVING FAILURE OR REFUSAL TO PROVIDE A SAMPLE FOR DRUG TESTING

In all 3 cases, the Tribunal imposed a suspension of 2 years.

Appeals against decisions of National Sport Organisations

APPEALS AGAINST NON-NOMINATION FOR THE 2008 OLYMPICS

The Tribunal heard and decided 4 appeals by athletes against their non-nomination by their respective NSOs to represent New Zealand at the 2008 Olympic Games. The outcomes of the appeals were:

- 1 appeal upheld and remitted back to NSO selectors for reconsideration
- 3 appeals dismissed.

APPEALS AGAINST DECISIONS RELATING TO DISCIPLINARY MATTERS

The Tribunal heard two appeals against disciplinary decisions. Both related to suspensions for alleged misconduct. (One appellant had been suspended from participation as an official in his sport and the other was suspended by an overseas body from taking part in a particular competition.)

- 1 appeal partially upheld (with the suspension period reduced)
- 1 appeal dismissed.

REVIEW OF CASES HEARD DURING THE YEAR

Anti-doping cases

CANNABIS CASES

Once again, anti-doping applications constituted the majority of the cases heard by the Tribunal over the year. And once again, the majority of the anti-doping cases involved violations relating to athletes testing positive for cannabis. As might be expected, athletes testing positive for cannabis took cannabis for recreational purposes in social situations rather than to enhance their sports performance.

While debate may still continue about whether cannabis should be a prohibited substance in sport or not, the fact remains that it is on the prohibited list and has been for a number of years now. Athletes who are subject to the drug-testing regime are well aware now that cannabis is prohibited in sport and that if they deliberately choose to take cannabis, they risk damaging their sporting careers. After several years of hearing cannabis cases, the Tribunal feels entitled to approach with some scepticism the not-infrequent claims of athletes that they were not aware that cannabis was banned and/or their cannabis use leading to the positive test was their first use and a one-off occurrence.

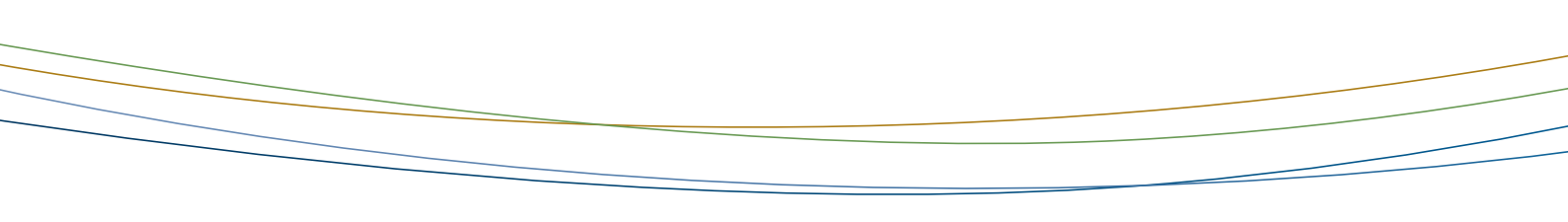
The Tribunal has recently moved from giving warnings to athletes who have committed cannabis violations to imposing sanctions ranging from one to two months' suspension. Given that cases of cannabis violation are still occurring regularly, particularly among athletes in certain sports, this is leading the Tribunal to question whether the message is getting through to athletes in those sports that cannabis violations will be treated seriously. There is a possibility that the Tribunal may need to reconsider the sanctions it imposes in the future and take a tougher stance to deter athletes from deliberately breaching anti-doping rules by taking cannabis.

On a more positive note, there was one cannabis case in which the Tribunal banned the athlete for approximately five weeks but decided to suspend the ban so long as the athlete participated in a drug education programme for not less than a month, where he would present to and educate other athletes on anti-doping matters. The athlete offered his services to help educate other athletes. This type of sanction can only be imposed if Drug Free Sport assesses the athlete as being suitable to participate in an educational programme. The athlete subsequently undertook this programme successfully.

One potential issue of interest in cannabis cases is whether the fact that an athlete has returned a high level reading in the drug test sample should have any relevance to the sanction imposed. While it might be thought that a high reading may indicate heavy, frequent or recent use, the Tribunal is aware of some scientific literature indicating that drug tests are primarily qualitative rather than quantitative in nature, and levels themselves may indicate little other than that the drug has been consumed. In two cases heard this year, the athletes returned what seemed like very high levels in their drug test results. The Tribunal didn't specifically take this into account in those cases, but indicated that it might need evidence of the relevance, if any, of high readings in future cases.

ATHLETE WHO TESTED POSITIVE FOR MORPHINE WAS NOT AT FAULT

The Tribunal dealt with one anti-doping case this year in which it decided that an athlete who tested positive to morphine was not at fault. The athlete potentially faced a two-year suspension unless she could establish she had no fault or no significant fault. The athlete had taken commonly available painkiller tablets for toothache. The tablets did not contain morphine or any other prohibited substance.



The Tribunal accepted expert independent scientific evidence that the codeine in such tablets can, in some individuals, metabolise into morphine, and the scientific evidence around the readings in her test indicated that this was likely to have happened. In this case, the Tribunal also obtained its own independent expert medical advice. The Tribunal found on the balance of probabilities that the codeine in the tablets was the source of the morphine in her system and, in the circumstances, the athlete was not at fault. Therefore, the Tribunal did not impose any sanction.

Olympic nomination/selection appeals

The Tribunal heard and decided four cases in which athletes appealed their non-nomination by their NSOs for selection for the 2008 Olympic Games.

LIZA HUNTER-GALVAN APPEAL UPHeld

The most high-profile of these cases was undoubtedly the appeal by marathon runner Liza Hunter-Galvan, which was upheld by the Tribunal. This case attracted significant media attention, particularly in light of a serious road accident that Ms Hunter-Galvan and her family had suffered in 2007, and much was made in the media of the circumstances of her comeback from the accident and the positive effect that her running in the Olympics would have on her daughter, who was also injured in the accident. However, the Tribunal is required to disregard media coverage and focus only on the principles that were relevant to the appeal. While the Tribunal upheld the appeal, it found that the accident had limited relevance to the appeal. A summary of this case appears later in this report.

OTHER OLYMPIC APPEALS DISMISSED

The Tribunal dismissed the other three appeals against non-nomination for the Olympic Games.

One case, involving shooting, involved the Tribunal interpreting somewhat ambiguous criteria concerning which were the “designated matches” to be taken into account in deciding which shooter had performed better in his particular discipline and should be nominated for a quota position earned in another shooting discipline. The Tribunal decided there were three particular ranking matches that were to be taken into account under the criteria. The athlete nominated for the spare spot by the NSO had higher scores in these three matches than the athlete who was appealing. While having sympathy for the athlete appealing, because of the ambiguity in the criteria about which matches counted, the other athlete had performed better in the matches that did count and the appeal was dismissed.

The two other cases involved swimming. In one, a swimmer appealed against not being selected for a world championship event, which had the result that he could not be nominated for the Olympics. While the selectors considered he had great potential, they formed the view that he was not likely to be world-competitive at this early stage of his career. While some procedural matters may have perhaps been handled better by the NSO, the Tribunal accepted that the selectors had the experience to assess potential world competitors in the one event that was to be the chance for selection and that the selectors acted with best intent and had come to a decision they were entitled to make. The Tribunal held that there were no grounds to overturn this decision.

The second swimming case involved a relay swimmer whose team was not nominated for the Olympics, who appealed her non-nomination. Much of the case revolved around the applicable procedural rules concerning her filing her appeal with the NSO. The Tribunal ruled that the applicable procedures were those set out in the New Zealand Olympic Committee’s agreement with NSOs. These rules required the athlete to give written notice of her appeal to the Chief Executive of the NSO within two days of the nomination date. She did not do this, and so the appeal had to be dismissed. For the benefit of the parties, the Tribunal expressed its views on the substantive merits of her appeal. While having some reservations about their procedures, the Tribunal was of the view that the selection criteria had been followed and implemented by the NSO.

SUMMARIES OF CASES DECIDED BY THE TRIBUNAL IN 2007/08

Appeals against decisions of NSOs

APPEALS AGAINST NON-SELECTION/NON-NOMINATION FOR OLYMPICS

Liza Hunter-Galvan v Athletics New Zealand

(ST 07/08) Decision 20 June 2008

In the most high-profile case of the year, the Tribunal upheld the appeal of marathon runner Liza Hunter-Galvan against a decision by Athletics New Zealand (ANZ) not to nominate her for the women's marathon event at the 2008 Beijing Olympics.

Ms Hunter-Galvan bettered the required Olympic qualifying standard by several minutes in the 2007 Amsterdam Marathon, which was a pointer to nomination. A letter of congratulations on reaching the standard and other communications from ANZ may have led her to expect she would be nominated for the Olympics. However, the ANZ selectors did not nominate her because they thought her past performances were not sufficient to indicate she was at the required standard to be nominated for the Olympics. The Tribunal discussed that there was unfairness to Ms Hunter-Galvan in that if she needed to do more to be nominated, then she did not know what that was.

The Tribunal rejected allegations against the ANZ selectors of bias, but concluded that the selectors had not properly followed or implemented the relevant nomination criteria. This included that the selectors should have made further factual enquiry into the circumstances of the past races in which she was said not to have performed well. Her performances in these events had counted strongly against her nomination, but without it being evident that the circumstances of those performances were fully explored by the selectors. Further, the Tribunal concluded that the suggestion that she may not be able to perform well in hot conditions (such as those expected in Beijing) should have been examined more closely, as there was limited information on which to base that assessment.

Much was made by Ms Hunter-Galvan, and the media, of the circumstances in which her family suffered a serious road accident in 2007. However, the Tribunal thought the accident had limited relevance to the issues in the appeal. While not long after the accident she ran a marathon in which she did not finish, she subsequently ran her fastest-ever time at the Amsterdam Marathon, well within the Olympic qualifying standard, so it could not be said that the accident had ultimately detrimentally affected her performance.

The Tribunal referred the matter back to the ANZ selectors to reconsider her application for nomination in the light of the Tribunal's decision. The Tribunal emphasised that the issue of nomination is ultimately for the selectors, and that the decision to refer the matter back to them was made on considerations of the process adopted by the selectors in coming to their decision. The ANZ selectors subsequently nominated Ms Hunter-Galvan for selection and she was ultimately selected to represent New Zealand at the Olympic Games.



Richard Hearn v New Zealand Shooting Federation

(ST 08/08) Decision 12 June 2008

The Tribunal dismissed Richard Hearn's appeal against a decision by the New Zealand Shooting Federation (NZSF) not to nominate him for the 2008 Beijing Olympics.

Mr Hearn met the qualifying standard for Olympic selection for the men's prone event. However, NZSF held only one quota for that event and another shooter who achieved a higher result than Mr Hearn in that event was nominated instead. Mr Hearn did not challenge that shooter's nomination.

The International Shooting Sports Federation (ISSF) allows a national federation to transfer a quota place held for one event to another event. ISSF allowed NZSF to transfer only one unused quota to another event.

NZSF decided to transfer the unused quota to the men's air pistol event and nominated air pistol competitor Yang Wang for Olympic selection. While Mr Hearn and Mr Wang both qualified to represent New Zealand at the Olympics and NZSF would have liked to have nominated both of them, there was only one quota place available as a result of the ISSF's decision to allow only one unused quota to be transferred. Therefore, only one competitor could be nominated.

Mr Hearn challenged the transfer of the quota to the air pistol event and the nomination of Mr Wang, and appealed that he should have been nominated instead in the prone event.

The ultimate issue came down to interpretation of the NZSF quota reallocation criteria. This included interpreting the meaning of "designated matches" and determining which of a number of shooting events were the "designated" matches to be taken into account in working out which shooter had performed better and therefore should be nominated for the one available quota space.

Mr Hearn argued that the results should be determined on the basis of the shooters' highest match scores over the entire series of qualification events between January 2007 and March 2008. If this was the case, then he had done better than Mr Wang. NZSF disagreed and said the relevant scores should be based on the results of only three ranking events, held in February and March of 2008. If only those results were considered, Mr Wang had performed better.

The Tribunal expressed considerable sympathy for Mr Hearn and noted that there was ambiguity in the criteria. However, the Tribunal decided on an objective interpretation of the criteria (including comparison with criteria for the 2004 Olympics) that the three ranking events were to be considered and not the entire series of events. On the basis of these three events, Mr Wang had the better performance. The Tribunal therefore dismissed the appeal.

Te Rina Taite v Swimming New Zealand Inc

(ST 06/08) Decision 30 May 2008; Reasons for Decision 18 August 2008

After an urgent hearing, the Tribunal dismissed swimmer Te Rina Taite's appeal against a decision of Swimming New Zealand (SNZ) not to nominate her for the Olympics. Her relay swimming team had not been nominated. She was the only one of the team to appeal her non-nomination, which could have had interesting consequences if her appeal had been successful because it appeared some of her fellow team members were no longer available and there was uncertainty if there were any other potential team members who had met the required individual standard.

The ultimate issue, however, revolved around whether she had filed her appeal in time and which rules or agreements applied. SNZ's constitution and rules did not set out a time frame for filing non-nomination appeals. Ms Taite argued that 28 days was the relevant time; this is the time period specified in the Tribunal's Rules for appeals to the Tribunal when the rules of the National Sport Organisation (NSO) do not set out the time period. However, Ms Taite had filled out and was bound by the application form for nomination/selection for Olympic Games, which states that appeals must be exercised in accordance with the Application Nomination and Selection Process agreement between the New Zealand Olympic Committee (NZOC) and the relevant NSO. The NZOC/NSO agreement states that athletes wishing to appeal non-nomination by the NSO must give written notice of the appeal to the Chief Executive of the NSO within two days of the nomination date. The Tribunal therefore held that she had to appeal her non-nomination to SNZ within two days. While Ms Taite had initial correspondence with SNZ, she did not file a letter constituting her notice of appeal with SNZ until after the two-day period had expired, and her appeal was therefore out of time. As a result, the Tribunal had to dismiss her appeal.

For the benefit of the parties, the Tribunal also set out its views on the substantive appeal arguments involving the selection criteria and opportunity to meet selection criteria. While the Tribunal expressed some reservations, the Tribunal accepted that selection criteria were followed and implemented by SNZ. However, the Tribunal considered there were aspects of the process that SNZ could improve upon, including ensuring athletes understood well in advance the requirements to qualify and better coordination as to the best prospects of athletes achieving that.

Kane Radford v Swimming New Zealand Inc

(ST 02/08) Decision 20 March 2008; Reasons for Decision 8 April 2008

After an urgent hearing, the Tribunal dismissed an appeal by swimmer Kane Radford against a decision of Swimming New Zealand (SNZ) not to select him for the 2008 World Open Water Championships in Spain and, as a consequence, the decision not to nominate him for the 2008 Olympics.

In order to qualify for Olympic selection for the 10 kilometre open water marathon, New Zealand swimmers had to compete, and perform highly, in the 2008 World Championship event in Spain. To qualify for selection to compete at the World Championships, SNZ's 2007 selection criteria originally referred to performance at the 2007 Australian Swimming Championships in December 2007. However, before that event, Swimming Australia changed its entry policy and restricted entry only to swimmers who were eligible to represent Australia. As a result, SNZ changed its selection criteria and switched the primary qualifying event for the World Championships from the Australian Championships to the February 2008 Oceania Championships. Swimmers were informed that selection for the World Championships would be "at the sole discretion of SNZ selectors who will take into consideration the overall standard and depth of the Oceania Championship field and the potential world competitiveness of New Zealand swimmers under consideration".

After the Oceania event, in which Mr Radford placed second (to an Australian swimmer who was not selected to represent his country), the SNZ selectors decided that none of the New Zealand swimmers were at this stage potentially world-competitive and decided not to select any swimmers to compete at the World Championships. The Tribunal decided that, in the particular circumstances of this case, the decision not to select Mr Radford for the World Championships was essentially a decision not to nominate him for Olympic selection, and the Tribunal was able to hear his appeal against not being nominated for Olympic selection.

Mr Radford appealed on various grounds, including: that selection criteria were not properly implemented and followed; that there was no material on which the selection decision could be reasonably based; and that there were breaches of procedural fairness and natural justice. Specific complaints were made about SNZ not consulting swimmers about the changes in selection criteria and qualifying events, and the lack of objective criteria by selectors having "sole discretion" in making their selection decisions.

However, the Tribunal rejected these grounds of complaint. While there were some matters that SNZ may have handled better, with hindsight, the Tribunal found that there were no breaches of procedural fairness or natural justice. The Tribunal disagreed that the selection criteria had not been properly implemented or followed, and disagreed that there was no material on which the selection decision could be reasonably based.

While the selectors considered Mr Radford had great potential, they formed the view that he was not likely to be world-competitive at this early stage of his career (he was 17). The selectors made a discretionary decision based in part on objective factors, but in doing so they applied subjective judgment and were obliged to use their knowledge and experience in making the decision. The Tribunal accepted that the selectors acted with best intent and came to a decision they were entitled to make. They had the experience to assess potential world competitors in the one event that was to offer the chance for selection. There were no grounds for the Tribunal to determine that this was a decision no properly qualified panel could make. There were no grounds based on procedural fairness or breach of natural justice to set aside the selectors' decision. Therefore, the appeal was dismissed.

DISCIPLINARY/OTHER APPEALS

Noel Curr v Motorcycling New Zealand Inc

(ST 19/07) Decision 11 April 2008

The Tribunal partially upheld an appeal by Noel Curr, a member of Motorcycling New Zealand (MNZ), against a decision of the MNZ Board to suspend him for three years and fine him \$500. This penalty was imposed for a course of conduct, including making references in emails about senior officers of MNZ, which allegedly brought the sport of motorcycling into disrepute.

On appeal before the Tribunal, Mr Curr challenged the process by which the MNZ Board had suspended him. Mr Curr also alleged that he had been punished twice for the same offence; however, the Tribunal found that was not the case.

The Tribunal was critical of the process adopted by MNZ. The matter was first raised publicly in front of delegates during an Annual General Meeting (AGM), which Mr Curr was also attending as a delegate, and the Board adjourned the meeting to conduct a “disciplinary process”. Following this, Mr Curr was told he was immediately suspended for 28 days (during which time he could prepare a response to the Board, and then a decision would be made about his future affiliation with MNZ) and told to leave the AGM. After a subsequent disciplinary process a few months later, the MNZ Board decided to suspend him for three years.

The Tribunal found that there had been breaches of natural justice in the manner in which Mr Curr was treated at the AGM, including having no notice of the disciplinary process, not being given a proper opportunity to be heard, and an inappropriate mixed Board and AGM process. However, these breaches were cured by the Tribunal conducting a rehearing on the facts.

The Tribunal considered the allegations about Mr Curr’s conduct. It agreed with MNZ that the conduct complained of in the email correspondence did undermine the position of the Chief Executive, in that it appeared to imply improper conduct when there was no foundation for that whatsoever. However, while the Tribunal concluded that Mr Curr’s conduct was in breach of MNZ’s Rules, the Tribunal reached a different conclusion from that of MNZ as to the appropriate sanction.

The Tribunal concluded that a sanction of approximately nine months’ suspension was appropriate in all the circumstances, including the seriousness of the conduct and taking into account the public manner in which the allegations against him were raised. In an interim decision of 5 March 2008, the Tribunal decided that Mr Curr’s suspension was to end on that date. The fine was also set aside. The Tribunal made a modest costs award to Mr Curr to recognise that he had been partly successful in his appeal.

Glen Williams v Triathlon New Zealand Inc

(ST 06/07) Order of Tribunal 9 November 2007

The Tribunal dismissed an appeal by triathlon runner Glen Williams against a decision of Triathlon New Zealand (Tri NZ). Mr Williams complained about a decision made by an overseas organisation, the World Triathlon Corporation (WTC), affecting his eligibility to compete in Iron Man events. Mr Williams asked Tri NZ to censure the WTC and use its influence to get the WTC’s decision changed. When Tri NZ refused to do so, he brought an appeal against Tri NZ. The Tribunal questioned the jurisdictional basis for such an appeal and the appellant subsequently accepted that there did not appear to be such a right of appeal under the constitution of Tri NZ. The Tribunal therefore made an order striking out the appeal proceedings.

Anti-doping cases

CANNABIS

Drug Free Sport New Zealand v Ted Hunia

(ST 03/08) Decision 21 May 2008

The Tribunal suspended touch player Ted Hunia from participating in sport for six weeks because of an anti-doping violation relating to cannabis. Mr Hunia tested positive to cannabis while playing in the Touch New Zealand National Championships.

Mr Hunia admitted the violation and explained that he had taken the cannabis to relieve pain from his injured back. The Tribunal accepted that, although it was used to relieve pain, it was not used for performance-enhancing purposes.

The Tribunal considered aggravating factors were: that Mr Hunia was an experienced player; that he was fully aware that cannabis was banned and admitted players had been told so by the coach and manager; that he had signed a participation agreement pledging drug-free participation; and that he used cannabis the night before the tournament. Mitigating factors were Mr Hunia's frankness with the Tribunal and his significant contribution to the sport, particularly with young people. Taking these factors into account, the Tribunal decided that a suspension of six weeks was appropriate.

Drug Free Sport New Zealand v Steven Robinson

(ST 05/08) Decision 20 May 2008

The Tribunal suspended Otago Nuggets National Basketball League (NBL) player Steven Robinson from participating in sport for an effective period of six weeks (taking into account the period he was provisionally suspended) for an anti-doping violation relating to cannabis. He tested positive to cannabis after an NBL match. The Tribunal provisionally suspended him after the positive test result as the result of an application by Basketball New Zealand. Mr Robinson admitted the violation at the hearing and stated that his use of cannabis had been recreational.

Aggravating factors included the experience of the player and that he used cannabis a few days before the match. His remorse and the impact of the provisional suspension on him (including adverse media publicity he had been subject to as a result of the violation) were taken into account by the Tribunal in determining the appropriate sanction.

Drug Free Sport New Zealand v Nat Connell

(ST 04/08) Decision 20 May 2008

The Tribunal suspended Otago Nuggets National Basketball League (NBL) basketball player Nat Connell from participating in sport for an effective period of six weeks (taking into account the period he was provisionally suspended) for an anti-doping violation relating to cannabis. He tested positive to cannabis after an NBL match. The Tribunal provisionally suspended him after the positive test result as the result of an application by Basketball New Zealand. At the substantive hearing, Mr Connell admitted the violation, which he stated had been due to recreational use of cannabis.

The Tribunal considered that aggravating factors included the player's experience (he was a professional athlete) and that he used cannabis a few days before the match. The Tribunal took into account his remorse and the impact of provisional suspension on him, including adverse publicity. The Tribunal commented on arguments raised about the harsh consequences of a suspension on Mr Connell due to him being a fully professional athlete. The Tribunal found little favour in the argument that any sanction should be reduced because of the greater financial penalty suffered by a professional athlete not being able to compete due to suspension.

New Zealand Rugby League Inc v Timoti Broughton

(ST 14/07) Decision 20 December 2007

The Tribunal suspended Central Falcons rugby league player Timoti Broughton for one month for an anti-doping violation relating to cannabis. Mr Broughton tested positive for cannabis after competing in a Bartercard Cup League match. Mr Broughton admitted the violation and stated that he used cannabis while at a party. The Tribunal accepted that Mr Broughton did not use cannabis with the intention of enhancing his sports performance.

The Tribunal noted that in recent cases of cannabis violations, it had imposed penalties of suspension ranging from one to two months. In this case, there were mitigating factors that made a sanction at the bottom of this range appropriate. Mr Broughton had already been severely penalised as the result of the provisional suspension imposed on him by New Zealand Rugby League (NZRL) and had missed a number of matches and possible selection for the Māori Rugby League team. The match for which Mr Broughton was drug tested was his first Bartercard Cup match and, despite signing a participation agreement a few days before the match acknowledging that he was aware of NZRL's banned substances policy, he had not received the usual pre-season education on NZRL's banned substances policy that other, more experienced, players had received.

Given these factors, the Tribunal considered that a suspension of one month was appropriate. The Tribunal warned that although it had given consideration to the lack of education Mr Broughton had received about NZRL's banned substances policy, it did not follow that any players testing positive in the future would receive the same consideration.

Basketball New Zealand Inc v Kareem Johnson

(ST 16/07) Decision 6 December 2007

The Tribunal banned Hawks National Basketball League (NBL) basketball player Kareem Johnson from competing in any competitions or events conducted by Basketball New Zealand between 15 February 2008 and 21 March 2008 (which covered the pre-season matches and the first three games of the NBL season). However, the Tribunal further stipulated that the ban was to be suspended if Mr Johnson participated in conducting a suitable drug education programme designed to educate other athletes about doping in sports.

Mr Johnson is a professional basketball player from the United States who has competed in New Zealand for two seasons. He tested positive for cannabis while competing in the semi-final of the national league competition. He admitted the violation and explained that he had used cannabis a week before the match during a momentary lapse on a night out.

The Tribunal stated that it had recently banned athletes for between one and two months for cannabis violations and noted that, in this case, such a ban would have harsh consequences for Mr Johnson because the basketball season only lasts for three months and is shorter than for many other sports. Such a ban would effectively ban him for the season and could affect whether he would be offered a future contract with the Hawks.

Mr Johnson offered to help other athletes under a drug education programme. While the Tribunal considered that a ban was appropriate, it was prepared in the particular circumstances of this case to suspend the ban, so long as Mr Johnson participated in a suitable drug education programme for not less than one month. To have the ban suspended, Mr Johnson was required to satisfy Drug Free Sport of his suitability and commitment to such a programme and that the programme would be of benefit to Drug Free Sport. The Tribunal understands that Mr Johnson did subsequently successfully participate in conducting a drug education programme to educate others.

Drug Free Sport New Zealand v Joseph Flint

(ST 18/07) Decision 20 November 2007

The Tribunal suspended Wellington Orcas rugby league player Joseph Flint from participating in sport until 28 March 2008 for an anti-doping violation relating to cannabis. Mr Flint tested positive for cannabis after competing in a Bartercard Cup League match. Mr Flint admitted the violation and stated that he had used cannabis while drinking with friends.

The Tribunal considered that aggravating factors were Mr Flint using cannabis two days before the match and that he had previously signed a participation agreement acknowledging that he was aware of the banned substances policy of New Zealand Rugby League. Mitigating factors included his young age (he was 18) and that he missed out on being considered for selection for under-18 New Zealand and New Zealand Māori teams as a result of the positive test.

The Tribunal considered that a suspension of approximately one month was appropriate in the circumstances. However, the rugby league season had ended at the date of the decision (20 November 2007) and did not start again until around 1 March 2008. Therefore, in order for the sanction to be effective, the period of suspension ran from the date of the decision until 28 March 2008.

Drug Free Sport New Zealand v Jason Morehu

(ST 17/07) Decision 13 November 2007

The Tribunal suspended Counties Manukau Jets rugby league player Jason Morehu from participating in sport until 31 March 2008 for an anti-doping violation relating to cannabis. Mr Morehu tested positive for cannabis after competing in a Bartercard Cup League match. Mr Morehu admitted the violation and explained that he had used cannabis on a social occasion. He acknowledged that he knew it was a prohibited substance.

The Tribunal considered that a one-month suspension would ordinarily be an appropriate sanction in the circumstances of this case. However, the rugby league season had ended and did not start again until around 1 March 2008. In the present case, the Sports Anti-Doping Rules (2007) required the period of ineligibility to commence from the date of the Tribunal's decision. Therefore, in order for the sanction to be effective, the period of suspension ran from the date of the decision (13 November 2007) until 31 March 2008.

Basketball New Zealand Inc v Clifton Bush Junior

(ST 15/07) Decision 10 October 2007

The Tribunal suspended Hawks National Basketball League basketball player Clifton Bush Junior for two months for committing an anti-doping violation involving cannabis. Mr Bush tested positive for cannabis after competing in the semi-final of the national league competition on 24 June 2007. Mr Bush admitted the violation and explained that he had used cannabis when feeling depressed on the anniversary of his father's death. The Tribunal accepted that Mr Bush did not use cannabis with the intention of enhancing his sports performance.

Mr Bush stated that he has subsequently retired from competitive basketball. Notwithstanding Mr Bush's retirement, the Tribunal considered it appropriate in the circumstances to impose a suspension on Mr Bush from competing in any events and competitions conducted by Basketball New Zealand for a period of two months. Such a sanction would give other basketballers notice of the Tribunal's position on such matters.

New Zealand Rugby League Inc v Jacob Croot

(ST 13/07) Decision 14 September 2007

After an urgent hearing, the Tribunal suspended rugby league player Jacob Croot for 31 days for an anti-doping violation involving cannabis.

The Tribunal considered that there were mitigating circumstances, including the young age of Mr Croot (he was 16) and that, despite signing a participation agreement stating that he was aware of the anti-doping policy, he apparently had not been provided with all the relevant anti-doping information, including the policy. However, there were aggravating circumstances justifying suspension. Mr Croot originally claimed the positive drug test result was solely due to him two weeks earlier ingesting cake that, unknown to him, contained cannabis. However, he withdrew this claim when presented with evidence that the test result potentially indicated more recent cannabis use. The Tribunal noted that a period of suspension was harsh for this player because he would be missing important matches that could impact on his selection for a national junior team, and it considered a period of 31 days' suspension was appropriate in all the circumstances.

New Zealand Rugby League Inc v Sonny Cavanagh (ST 11/07) and New Zealand Rugby League Inc v Joe Vaifale (ST 12/07)

Decision 8 September 2007

The Tribunal heard both of these cases together, by consent of the parties, under urgency. Both players were in the same team and had tested positive for cannabis after a match. Both had been provisionally suspended by New Zealand Rugby League (NZRL) and had missed an important semi-final as a result. Because the players' team was in the final, both cases were heard together under urgency.

The players admitted using cannabis variously for recreational use and for pain relief. They stated that they were unaware that cannabis was on the prohibited list. The Tribunal considered that athletes are responsible for complying with anti-doping rules. Here there were aggravating circumstances of both players signing a participation agreement stating that they were aware of NZRL's anti-doping policy. The Tribunal discussed its revised approach to sanctions for cannabis violations as set out in a Minute of the Tribunal dated 15 December 2006, which was publicly released to National Sport Organisations and athletes. In light of the Minute and the approach in previous cases, six weeks' suspension was considered appropriate in the circumstances and was imposed on each player.

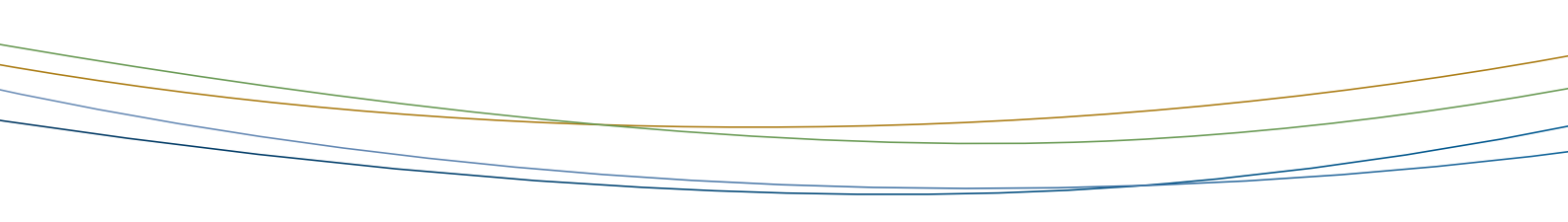
OTHER SUBSTANCES (MORPHINE, BZP)

Softball New Zealand Inc v Cindy Potae

(ST 04/07) Decision 27 February 2008

In one of the most significant anti-doping cases decided to date by the Tribunal, the Tribunal found New Zealand Softball representative Cindy Potae to be not at fault for testing positive to morphine and therefore did not impose any sanction on her.

Cindy Potae tested positive for morphine while competing for the New Zealand White Sox team at the International Softball World Championships in Beijing. Ms Potae suffered severe toothache before and during the tournament. The Tribunal accepted evidence that Ms Potae's room-mate at the tournament supplied Ms Potae with two Nurofen Plus tablets to help alleviate her toothache. These tablets are a widely used and commonly available painkiller, which the room-mate had purchased "over the counter" in New Zealand prior to the tournament.



The Tribunal heard and accepted expert scientific evidence that codeine (an active ingredient in these tablets) metabolises into morphine in a person's system (at different rates and levels, depending on the individual). Ms Potae's drug test result returned readings for both codeine and morphine. The Tribunal accepted further expert scientific evidence that Ms Potae's morphine reading in the drug test was consistent with her having taken the two codeine-based tablets (based upon codeine/morphine ratios commonly accepted in the scientific literature). The tablets do not contain morphine or any other prohibited substance. They do contain codeine, which is not on the prohibited list of the World Anti-Doping Authority (WADA) and is not a prohibited substance.

After hearing evidence, the Tribunal was satisfied, on the balance of probabilities, that the tablets were the source of the morphine in Ms Potae's test (as a result of the codeine metabolising into morphine in Ms Potae's system).

The Tribunal was satisfied that Ms Potae had established, on the balance of probabilities, that she was not at fault in taking the tablets. The Tribunal stated that "an athlete cannot be held to be at fault or to be negligent if he or she takes a recognised remedy, the contents of which are not on the prohibited list and which an athlete could not be expected to know, may lead in the case of some athletes to morphine being in the athlete's system".

As the Tribunal concluded that there was no fault or negligence on the part of Ms Potae, and pursuant to Article 10.5.1 of the WADA Code, no sanction was imposed.

New Zealand Federation of Body Builders Inc v Ann Holt

(ST 08/07) Decision 28 September 2007

The Tribunal suspended body builder Ann Holt for two years for committing an anti-doping violation involving the prohibited substance benzylpiperazine (BZP). Ms Holt tested positive for BZP while competing at the Wellington Body Building Championships. While BZP has had a lot of media attention for being the active ingredient in certain party pills (which are now banned in New Zealand), this was not the source of the BZP in this case.

Ms Holt admitted the violation and stated that the positive result was due to her using a product she purchased at a local health store. She used the product to elevate her mood, energy and well-being rather than to enhance sports performance. She stated that she knew the product contained BZP (which was stated on the product label), but did not realise that BZP was a prohibited stimulant.

The Tribunal had considerable sympathy for Ms Holt in the circumstances of the case. However, the Tribunal noted previous cases showing that there is a strict duty on athletes to ensure they do not take prohibited substances and it will only be in truly exceptional cases that an athlete can show no significant fault or negligence. The Tribunal found it impossible to disregard that at the time she bought the product, the presence of BZP in it was clearly visible and known by her. The Tribunal concluded that the use of a product in which BZP was labelled as an ingredient represented a degree of carelessness, and that she could not rely on a defence of no significant fault or negligence. The Tribunal therefore suspended Ms Holt from participating in sport for the mandatory two-year period.

REFUSAL/FAILURE TO PROVIDE SAMPLE

New Zealand Federation of Body Builders Inc v Niko Toluono

(ST 10/07) Decision 20 September 2007

The Tribunal suspended body builder Niko Toluono for two years for committing an anti-doping violation by refusing to supply a sample for drug testing at the Auckland Body Building Championships. Despite being given the opportunity to participate in the hearing, Mr Toluono failed to do so and provided no information to the Tribunal. The Tribunal concluded that Mr Toluono committed an anti-doping violation by failing, without reasonable cause, to comply with a request to provide a sample. The Tribunal therefore suspended him from participating in sport for the mandatory two-year period.

Boxing New Zealand Inc v Mark Robertson

(ST 07/07) Decision 5 September 2007

The Tribunal suspended boxer Mark Robertson for two years for committing an anti-doping violation by refusing to supply a sample for drug testing when approached at his home for an out-of-competition test.

Mr Robertson admitted the anti-doping violation, but stated that he refused to provide a sample because he had not been boxing for more than a year and therefore thought he would not have to provide a sample. However, the Tribunal concluded that he was wrong. Although Mr Robertson said he was not boxing at the time of the refusal, he had never formally retired from the sport and, in fact, gave evidence to the Tribunal that “he was taking a break” and thought he may at some stage return to boxing. As he had not advised Boxing New Zealand that he had retired, nor gone through the formal processes required to retire, he remained a national-level athlete who was clearly eligible for out-of-competition testing and was properly required to provide a sample.

The Tribunal concluded that Mr Robertson had made no attempt to determine what his obligations were and could not show that he had no significant fault in wrongly refusing to provide a sample. The Tribunal therefore suspended him for the mandatory two-year period. The Tribunal emphasised that it was not enough for an athlete to plead ignorance of the rules relating to their sport. It is important that sporting bodies and athletes are clearly aware of what the formal processes are for retiring from their sports, and that an athlete continues to have obligations if they do not formally retire. The Tribunal observed that a standard retirement form setting out what retirement entails is clearly of advantage.

New Zealand Federation of Body Builders Inc v Mike Pearson

(ST 09/07) Decision 30 August 2007

The Tribunal suspended body builder Mike Pearson for two years for committing an anti-doping violation by refusing to supply a sample for drug testing at the Auckland Body Building Championships. Mr Pearson advised the Tribunal that he admitted the anti-doping violation and did not want to participate in the hearing. He acknowledged that the Tribunal may impose a sanction on him without holding a hearing of the parties. Mr Pearson did not participate in the hearing and provided no information other than admitting the violation. Therefore, the Tribunal suspended him from participating in sport for the mandatory sanction of two years.

CASES DEALT WITH BY THE TRIBUNAL FROM 2003 TO 2008

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 and there have been no appeals against any of its decisions since 2004. Through its decisions, the Tribunal believes it has built up a significant body of accessible and understandable sports law that helps provide athletes and sports organisations with certainty and guidance around sports disputes.

Statistical analysis of cases dealt with by the Tribunal from 2003 to 2008

As at the end of the 2007/08 year, on 30 June 2008, there were 70 decisions (or records of settled cases) on the Sports Tribunal website, representing cases the Tribunal has decided or otherwise helped parties formally resolve since its inception.

However, it should be noted that the Tribunal has been involved in a few more disputes than this, which were subsequently withdrawn or otherwise settled by parties (sometimes with the Tribunal's assistance).

Of the 70 cases on the website, 47 (two-thirds) relate to anti-doping cases. The remaining cases relate to appeals against decisions of National Sport Organisations (NSOs), and, on occasion, the New Zealand Olympic Committee (NZOC) has been joined as a party. Although some appeals against a decision by an NSO have been referred to the Tribunal by agreement between the parties when no jurisdiction has been provided in the relevant NSO's constitution or rules, the Tribunal has yet to receive any other "sports-related" disputes referred by agreement that are not essentially appeals against decisions of NSOs.

ANTI-DOPING CASES HEARD BY THE TRIBUNAL

Since its inception, the Tribunal has decided 46 anti-doping cases. This figure does not include a 2003 case that appears on the website, for which the Tribunal released a decision ruling it had no jurisdiction due to the rules of the NSO being incompatible with referring the matter to the Tribunal.

The Tribunal has also ruled it did not have jurisdiction to hear two other anti-doping cases, due to the rules of the NSOs not providing for jurisdiction to the Tribunal, but the Tribunal did not publicly release the rulings in these cases.

ANALYSIS OF ANTI-DOPING CASES HEARD BY THE TRIBUNAL

Of the 46 anti-doping cases decided by the Tribunal, there were:

- 28 cases of cannabis (that is, 61 per cent of anti-doping violations were for cannabis)
- 5 cases of a failure or refusal to provide a sample
- 2 cases of BZP (Benzylpiperazine), which is the active ingredient in certain "party pills" that are now banned in New Zealand but at the time were available to people aged over 18
- 2 cases of Ephedrine
- 2 cases of Terbutaline
- 2 cases of Clenbuterol
- 1 case of morphine
- 1 case of Nandrolone

- 1 case of Furosemide
- 1 case of Stanozol/Hydrochlorothiazide/Amiloride
- 1 case of Stanozol/Nandrolone/Furosemide.

CANNABIS CASES BY SPORT

The sports that the athletes were playing when tested in each of the 28 cannabis cases were:

- | | |
|----------------|----------|
| • rugby league | 10 cases |
| • touch | 6 cases |
| • basketball | 5 cases |
| • softball | 4 cases |
| • boxing | 2 cases |
| • wrestling | 1 case |

SANCTIONS IN CANNABIS CASES

Sanctions imposed in the 28 cannabis cases were:

- | | |
|---|----------|
| • suspensions | 16 cases |
| • deferred suspension (education programme) | 1 case |
| • warnings and reprimands | 9 cases |
| • fines and warnings | 2 cases |

Suspensions imposed for cannabis are generally in the range of 1 to 2 months. There were 2 cases of athletes committing their second anti-doping violation involving cannabis. Both received the mandatory suspension of 2 years for a second offence.

APPEAL CASES

Appeal cases by application type

There are 23 cases listed on the Tribunal website at the end of the 2007/08 year involving appeals against decisions of NSOs and/or the NZOC. These appeal cases can be categorised as follows:

- 11 cases relating to athletes appealing their non-nomination or non-selection for a New Zealand team or squad
- 7 cases relating to athletes appealing disciplinary decisions
- 5 cases 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).

Appeals against non-selection/non-nomination for a New Zealand team or squad

There have been 11 cases relating to athletes appealing their non-nomination or non-selection for a New Zealand team or squad:

- 4 appeals against non-nomination or non-selection for the 2008 Olympic Games
- 2 appeals against non-nomination or non-selection for the 2004 Olympic Games (one involving several appellants but treated here as one appeal)
- 1 appeal against non-nomination or non-selection for the 2006 Commonwealth Games
- 4 appeals against not being selected for a New Zealand team, not involving the Olympic or Commonwealth Games.



DISCIPLINARY APPEALS

There have been 7 cases in which athletes and/or members of an NSO have appealed disciplinary decisions imposed upon them:

- 5 appeals related to athletes/members being suspended from competition or other participation in their sport for alleged misconduct
- 1 appeal related to a competitor being disqualified from a race
- details of the other appeal are confidential (this matter was settled with mediation assistance).

OTHER APPEALS

There were 5 cases relating to appeals of “other” decisions (that is, appeals other than non-nomination/non-selection or disciplinary appeals):

- 3 appeals were by athletes against not being nominated by their NSO for a Prime Minister's scholarship (an academic scholarship)
- 1 appeal was by a referee against not being nominated by her NSO for an international referees' clinic
- 1 appeal was against a decision of an NSO not to grant approval for a roll bar on a racing car.

APPEAL CASES UPHELD OR DISMISSED

The Tribunal has upheld, or partially upheld, approximately a quarter (26 per cent) of the appeals it has heard. Of the 23 appeals:

- 5 were upheld
- 1 was partially upheld
- 15 were dismissed
- 2 disciplinary appeals were settled with some assistance from the Tribunal. One was settled as a result of mediation conducted by the Tribunal.

APPEAL CASES UPHELD

Of the 6 appeals upheld by the Tribunal:

- 2 appeals related to non-nomination/non-selection for the Olympic Games
- 2 disciplinary appeals were upheld
- 1 disciplinary appeal was partially upheld
- 1 appeal related to non-approval of a roll bar on a car.



POSITIVE MEDIA REACTION

A positive reaction to the Tribunal's work over the years was recognised in an article appearing in the *Sunday Star Times* in 2007. The author of the article independently interviewed parties who had appeared before the Tribunal and reported consistently positive comments.

One athlete commented:

We found the right help and the tribunal quashed all charges because we were denied our right to natural justice. It was a pretty good feeling. I would recommend it to any sportsperson who feels they are getting a raw deal.

The article referred to another athlete who “lost but the entire process took less than a fortnight and left him satisfied”. He was quoted as saying:

And it was good to have an independent body not bogged down in sporting politics hear it. That gave me confidence in the process. Legal fights can be expensive and intimidating. The process could not have been easier. It was formal but not too formal. I was also pleased the details were made public. I don't want to be painted as a whinger because it's not the done thing in sport. This way all the decision and details could be read by anyone interested.

The article referred to an anti-doping case heard by the Tribunal where “the wheels of justice had turned in less than half an hour and the entire process didn't cost her a cent and she didn't need legal representation”.

A “leading” sports lawyer was quoted as saying:

It's one of the reasons the tribunal is now one of the jewels in the New Zealand sporting crown. We are lucky to have it. The calibre of personnel involved is top-notch and without it sportspeople would be at the mercy of the courts. The tribunal has established the credibility to make good decisions on difficult matters.



PRO BONO LAWYER SCHEME

It is not necessary for a party to have a representative to appear in a case before the Tribunal. The Tribunal endeavours to ensure that all parties have the opportunity to put their case in a fair, accessible and non-threatening environment.

However, parties in proceedings before the Tribunal have the right to be represented by a person of their choice at any stage of the proceedings. The Tribunal has found that some parties have wished to have lawyers to assist them, but have not known where to find a suitable sports lawyer or have been unable to afford to hire such lawyers.

In response to this situation, the Tribunal established a “pro bono” lawyer scheme to help ensure parties have access to high-quality, affordable legal representation if needed. The Tribunal has sought skilled and experienced sports lawyers who have agreed to help athletes and sports organisations involved in cases before the Tribunal on a low-cost, or possibly free, basis. The Tribunal offers a list of the contact details of such lawyers to parties involved in a case.

The Tribunal continued to successfully operate its pro bono lawyer scheme this year. Lawyers referred through this scheme represented parties in some of the doping and Olympic selection cases heard during the year. The Tribunal has received a number of positive comments from parties about the high-quality assistance they received from these lawyers.

The Sports Tribunal welcomes and encourages applications from suitably qualified and experienced lawyers who are prepared to offer free or low-cost assistance to parties appearing before the Tribunal. Inquiries and applications are to be made in the first instance to the Registrar of the Tribunal.

MEDIATION

In some cases, the Tribunal has offered assistance to parties that has helped them agree to settle their disputes without the Tribunal needing to adjudicate them. The first case in which the Tribunal conducted a formal mediation process with the parties at their request occurred in June 2007. The Chair of the Tribunal acted as mediator in this matter. This mediation resulted in the parties successfully reaching agreement and resolving their dispute.

Given the success of this process, the Tribunal hopes that offering such mediation assistance to parties may prove to be an increasingly effective means of settling disputes in future. The Tribunal has added provisions to its Rules clarifying that it has the right to mediate sports disputes and setting out the circumstances in which mediation can occur.

NEW TRIBUNAL RULES, INFORMATION GUIDE AND WEBSITE RESOURCES

The Sports Anti-Doping Act reinforces the Tribunal's power to regulate its own procedures and functions. The Tribunal has adopted a new set of Rules of the Sports Tribunal of New Zealand. These Rules reflect the changes brought about by the new legislation and clearly set out how matters are to be referred to the Tribunal and how the Tribunal will process, hear and determine those matters. The Rules include new Forms, which parties use to file their applications and other relevant documents with the Tribunal.

In order to help parties better understand the changes and new procedures, the Tribunal issued a comprehensive but simply written new "Information Guide to the Sports Tribunal".

As with the Rules, the information guide is available on the Tribunal's website, which itself has been comprehensively updated and provides new information to reflect the changes and new procedures.

Decisions of the Tribunal, media releases, case summaries and other related information are available on the Tribunal website at www.sportstribunal.org.nz.

EXPENDITURE

Under the Memorandum of Understanding between the Minister for Sport and Recreation, SPARC and the Tribunal, SPARC employs the Registrar of the Tribunal and provides accommodation for the Tribunal office. SPARC also funds the other operating costs of the Tribunal, which for 2006/07 and 2007/08 were as follows:

2006/07 Year			2007/08 Year		
Other Operating Costs	Number of Cases decided	Average Cost per Case	Other Operating Costs	Number of Cases decided	Average Cost per Case
\$69,830	14	\$4,987	\$91,345	22	\$4,152

The above figures show the average costs per case for the Tribunal for 2006/07 and 2007/08.

These figures comprise costs associated with the Tribunal hearing and deciding cases, such as the aggregate fees paid to Tribunal members, and costs of travel and hiring of hearing venues.

The total other operating costs were higher in 2007/08 than 2006/07, primarily due to the Tribunal dealing with more cases in 2007/08 than in 2006/07.

However, the average cost per case fell to \$4,152 in 2007/08 (\$4,987 in 2006/07). This is pleasing, especially given the complex nature of some of the cases that the Tribunal decided in 2007/08, including some of the Olympic appeal cases.

SPORTS TRIBUNAL BIOGRAPHIES

Members of the Sports Tribunal



CHAIR: HON BARRY PATERSON CNZM, OBE, QC

Barry Paterson is a retired High Court Judge who, prior to his appointment to the Bench, practised as a solicitor and then as a barrister in Hamilton. He currently undertakes arbitrations and mediations. In addition to chairing the Sports Tribunal, Barry chairs the New Zealand Press Council, the Independent Oversight Group supervising Telecom's separation, and Electronic Transaction Services Limited. He is a Fellow (both arbitration and mediation) of the Arbitrators' and Mediators' Institute of New Zealand (AMINZ) and sits on Courts of Appeal in several Pacific Islands. He is also a member of the Court of Arbitration for Sport. He served as a Board member of New Zealand Cricket for 25 years and has had lengthy involvement in administration and legal matters in several sports.



DEPUTY CHAIR: NICHOLAS DAVIDSON QC

A commercial litigator who practises as an arbitrator and mediator, Nicholas Davidson is currently the New Zealand National Cricket Commissioner, hearing disciplinary matters and appeals by players and administrators. Nicholas is also a member of judicial committees for the New Zealand Rugby Football Union (NZRFU) and the South African, New Zealand and Australian rugby partnership organisation SANZAR, and is an International Rugby Board (IRB) judicial officer. He was a member of the inquiry investigating the allegation of corruption for New Zealand Cricket.



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 Racing Industry 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).



TIM CASTLE

A practising barrister, Tim Castle has 30 years' experience in litigation, representative sport, and national and international sports administration and management. A former First Vice President of the New Zealand Olympic Committee, Tim is a judge/arbitrator of the International Court of Arbitration for Sport based in Switzerland, presiding over disputes arising from the Kuala Lumpur and Manchester Commonwealth Games and the Sydney 2000 Olympics. Tim was also New Zealand's first international appointee to the International Cricket Council's Conduct/Corruption Commission and Appeals Commission. In 2008, he was appointed a member of the Waitangi Tribunal.



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

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 is now Medical Director for Basketball NZ, Swimming NZ and the New Zealand women's rugby team (Black Ferns). She also travels as a doctor for the Tall Ferns and Black Ferns teams. 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 led the Health Team at the 2008 Beijing Olympics. She is a supervisory "doping" doctor to the international basketball organisation FIBA for Oceania events. Lynne has also been an elected member of the Waitemata District Health Board since 2001.



ADRIENNE GREENWOOD

After graduating from Auckland University, Adrienne entered the field of sports administration and served as Chief Executive of Yachting New Zealand between 1986 and 2000. Her areas of interest and expertise are in the fields of high performance sport and selection. In 2008, she was awarded an International Sailing Federation Gold Medal, becoming one of only four New Zealanders to be recognised in this way, and a Yachting New Zealand Honour Award, both for services to the sport. Adrienne is currently an independent director of the Northern Mystics Netball franchise and a member of the World Youth Sailing Trust.



CAROL QUIRK

Carol Quirk has 40 years' experience in sport as an elite competitor, official, coach and administrator, including experience as Manager, Sport Development at the Hillary Commission. Carol has a strong understanding of the issues facing volunteers and was a member of the Ministerial Taskforce for the International Year of the Volunteer. She is also on the Sport Bay of Plenty Board, is a former president of Surf Life Saving New Zealand, and still competes and examines in surf lifesaving.



ANNA RICHARDS MNZM

Anna Richards is New Zealand's most capped female rugby player, having played for New Zealand in the Black Ferns since 1990. She has a legal background and has worked as a tax consultant for KPMG Peat Marwick, and is currently Programme Manager for the Alan Duff Charitable Foundation (Books in Homes). Anna was made a Member of the New Zealand Order of Merit in 2005 for services to rugby.

Registrar of the Sports Tribunal



BRENT ELLIS

Brent has degrees in anthropology, psychology and law, and is enrolled as a barrister and solicitor of the High Court of New Zealand. He previously worked for a number of years at the Office of Film and Literature Classification. He also spent several years as a legal advisor and Judges' Clerk at the Court of Appeal and the Employment Court. Brent has published in employment law and sports law, including the chapter "Legal Liability in Sport and Recreation" in the sports law book *Winning the Red Tape Game*. He was appointed Registrar of the Sports Tribunal in November 2004.



CONTACT INFORMATION

The Sports Tribunal's office is in Wellington. Enquiries should be directed to Brent Ellis, Registrar of the Sports Tribunal. All documents that are to be filed with the Tribunal should be sent to:

The Registrar
Sports Tribunal of New Zealand
PO Box 3338
Wellington 6140

Phone: 0800 55 66 80

Fax: 0800 55 66 81

Email: info@sportstribunal.org.nz

Website: www.sportstribunal.org.nz

