

SPORTS TRIBUNAL of New Zealand

ANNUAL REPORT 2008/09



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

During the year under review, the Tribunal considered eight cases under the Anti-Doping Act and four substantive appeals. It also gave a cost ruling in one of those appeals.

Although the percentage of cannabis cases to total doping cases was less than in previous years, four of the eight cases involved cannabis alone. A fifth involved a combination of methamphetamine, amphetamine and cannabis. Two of the other cases involved probenecid, while the final case involved boldenone and testosterone.

One of the cannabis cases involved a second violation by a national athlete. That athlete was given an 18-month suspension. The other three cannabis cases involved a first violation and in each case the athlete was able to demonstrate how the cannabis was taken and that it was not taken for performance-enhancing purposes. Each athlete received an effective two-month suspension. Often a cannabis case comes before the Tribunal during the athlete's off-season. It is, therefore, sometimes necessary to make the suspension greater than two months to give an effective two-month suspension.

The two probenecid cases involved a substance prescribed by the athlete's medical practitioner. The Tribunal determined that in neither case was the purpose of the medication for performance-enhancing purposes. As probenecid is a specified substance, the Tribunal imposed a two-month suspension in one case and the minimum penalty of a reprimand in the other case. In the reprimand case, the athlete had drawn the fact that he is subject to tests under the Anti-Doping Act to the attention of the medical practitioner who, in the Tribunal's view, had given wrong advice when he should have been in a position to give the

correct advice. In the case where the two-month suspension was imposed, the Tribunal took the view that the athlete had not discharged the onus on him to ensure that a prohibited drug did not enter his system and there was thus a degree of fault on him. For this reason, a two-month suspension was imposed.

The athlete who tested positive for methamphetamine, amphetamine and cannabis was unable to advise how the methamphetamine and amphetamine got into his system and, therefore, was subject to the mandatory suspension of two years. The athlete who tested positive for boldenone and testosterone was suspended for two years.

Three of the four cannabis cases arose from testing after the Men's National Softball League Finals. Four athletes were tested and three tested positive for cannabis. The athlete who tested positive for methamphetamine, amphetamine and cannabis was a rugby league player, the two probenecid cases were from a rower and a boxer respectively, while the boldenone and testosterone case was from a powerlifter.

At the end of the year, the Tribunal had provisionally suspended an athlete for taking EPO. The case was resolved against the athlete after the end of the year and details will appear in next year's report.

During the year The Tribunal experienced the changes in the Sports Anti-Doping Rules (based on the 2009 WADA Code). Probenecid is now a specified substance. In respect of specified substance applications, of which cannabis is an example, the athlete must now establish both how the substance got into the athlete's system and that it was not taken for performance-enhancing purposes.

Under the present Sports Anti-Doping Rules, there is invariably an application for provisional suspension before the substantive hearing. The Tribunal considered several of these during the year and is usually able to give a hearing, by conference phone, within a few days of the application being received.

Three of the non anti-doping appeals involved the sport of motorcycling, all three appeals arising from the one family. The fourth appeal arose from allegations of an illegal engine in the New Zealand Saloon Car Championships. Details of these appeals and the anti-doping applications are set out later in this report.

The Tribunal considered an application for costs in one of the appeals and noted its usual practice was to award costs only in exceptional circumstances. It did not consider that there were exceptional circumstances in the case in question.

During the year, SPARC commissioned a report on the role of the Tribunal by Martin Jenkins & Associates Limited. A copy of this report appears on the Tribunal's website. There are quotations later in this report from that review. The review considered whether the original policy intent that led to the establishment of the Tribunal is being met. The overall conclusion was positive in this respect. The Tribunal was seen as being accessible, fair, timely and, for the most part, affordable.

The report also highlighted possible areas for improvement, including affordability and a stronger educative role. The Tribunal, through its members and the Registrar, is taking steps to address the stronger, educative role point. The affordability issue is one more for NSOs than the Tribunal as considerable costs are often incurred by the NSOs on legal representation. The review noted that the Tribunal has few levers for influencing the costs borne by parties who decide to employ legal representation.

During the year, the Tribunal reviewed its rules. It made some minor amendments to ensure

greater efficiency. It included new procedures for hearing provisional suspension applications and anti-doping matters, gave itself the power to assist by mediating rather than adjudicating and made explicit its power to rehear matters in certain circumstances.

The Tribunal has been well served again by its Registrar, Brent Ellis, who is of great assistance to the members in many respects. He is thanked on behalf of the members of the Tribunal.

Finally, I thank the members of the Tribunal for their continued assistance which has enabled the Tribunal to give prompt hearings in almost every case and to move with urgency when required.



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 2008/09

Cases decided by the Tribunal in 2008/09

The Tribunal issued 14 decisions in 2008/09.

- This figure does not include three provisional suspension decisions but does include the substantive decisions in the same matters.
- This figure also does not include another provisional suspension decision issued in 2008/09 nor the substantive decision in the same case which was issued after the 2008/09 period.
- This figure includes a costs decision.
- This figure includes two separate decisions issued in Noel Curr v MNZ (ST 19/07).

Cases by application type

Of the 14 cases decided by the Tribunal:

- eight were anti-doping
- five were appeals against disciplinary decisions
- one was a costs decision.

Analysis of anti-doping cases

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

- four cases of cannabis
- two of probenecid
- one case of methamphetamine, amphetamine and cannabis
- one case of boldenone and testosterone.

In three of these cases, the Tribunal provisionally suspended the athlete.

Anti-doping cases by substance and sport

Below are the sports the athletes were involved in when testing positive arranged by the prohibited substance(s):

CANNABIS (NOT IN CONJUNCTION WITH ANOTHER PROHIBITED SUBSTANCE)

- Softball 3 cases
- Basketball 1 case

PROBENECID

- Boxing 1 case
- Rowing 1 case

METHAMPHETAMINE, AMPHETAMINE AND CANNABIS

- Rugby league 1 case

BOLDENONE AND TESTOSTERONE

- Powerlifting 1 case

Sanctions in anti-doping cases

CANNABIS CASES

Sanctions imposed in all four cannabis only cases were suspensions. These were:

- three cases of two months' suspension (all involving first cannabis violations)
- one case of 18 months' suspension (for second cannabis violation).

NB: in another case, an athlete tested positive for methamphetamine, amphetamine and cannabis. For the cannabis component, the Tribunal imposed a 2-month suspension (concurrent with a two-year suspension for the other substances).

ANTI-DOPING CASES INVOLVING OTHER SUBSTANCES

Decisions in anti-doping cases involving substances other than (or in addition to) cannabis were:

- reprimand - probenecid
- two-month suspension - probenecid
- two-year suspension - boldenone and testosterone
- two-year suspension - methamphetamine, amphetamine and cannabis
 - The two-year suspension was for the methamphetamine and amphetamine violations
 - A concurrent suspension of two months was imposed for the cannabis violation.



Appeals against decisions of National Sport Organisations

APPEALS AGAINST DISCIPLINARY DECISIONS

The Tribunal issued five decisions in four appeals against disciplinary decisions:

- two appeals were upheld
- one was partly upheld
- one was dismissed for lack of jurisdiction.

These were:

- The Tribunal had two hearings and issued two decisions relating to an appeal against a decision of an NSO refusing to approve the appellant as a steward once his suspension on a disciplinary matter was concluded. He had formerly been a steward. The Tribunal ultimately upheld the appeal.
- Appeal against a decision of an NSO suspending a saloon car driver for 12 months for competing with an allegedly illegal carburettor on his car. The Tribunal allowed the appeal and overturned the suspension.
- Appeal against a decision of a NSO suspending a motorcyclist for misconduct during a race. The Tribunal partially upheld an appeal as to penalty.
- Appeal against a decision of an NSO suspending the appellant for misconduct. The appeal was struck out for lack of jurisdiction as it was not filed with the Tribunal within the required time period under the relevant rules.

COSTS DECISION

There was one decision relating to a subsequent costs application brought after an appeal was dismissed:

- NSO sought costs order after an appeal was struck out for being out of time. The Tribunal dismissed the application.

REVIEW OF CASES HEARD DURING THE YEAR

Anti-doping cases

CANNABIS CASES

Anti-doping applications constituted the majority of the cases heard by the Tribunal over the year. Half of the anti-doping cases involved violations relating to athletes testing positive for cannabis. In all but one of these cases, the athletes claimed they took cannabis in social situations such as parties. Several of these players took cannabis only days before, or even the night before, the tournament in which they were tested.

Three of these violations were the result of drug testing at one tournament – the Men's National Softball League final. The Tribunal accepts that Softball New Zealand had gone to great efforts to promote awareness of doping obligations among its players. It was therefore disappointing that three top players in this sport (including New Zealand representatives) had not heeded this advice. It was apparent in these cases that the players were aware that cannabis is a prohibited substance. In one of its decisions, the Tribunal issued a warning directly to softball players that if they were to appear before the Tribunal for a cannabis violation, the Tribunal may well impose harsher penalties on them.

As noted in last year's Annual Report, while some people continue to question whether cannabis should be a prohibited substance in sport or not, the fact remains that it is a prohibited substance and has been prohibited for several years now. Athletes who are subject to the drug-testing regime are educated about this and are well aware that cannabis is prohibited. If they choose to take cannabis, they risk damaging their sporting careers.

SECOND CANNABIS VIOLATION CASE – LAW CHANGES IN 2009 GAVE THE TRIBUNAL A WIDER DISCRETION IN IMPOSING PENALTIES

The WADA Code 2009 has made significant changes to the rules governing anti-doping. These are reflected in the Sports Anti-Doping Rules 2009 which most NSOs have adopted. One significant change is in the regime for imposing sanctions on an athlete who has committed a second anti-doping violation. Previously an athlete who committed a second violation involving cannabis faced a mandatory two-year suspension. Now the new law gives the Tribunal discretion to impose a suspension ranging from a minimum of one year to a maximum of four years.

A New Zealand representative softball player appeared before the Tribunal on his second cannabis violation and the Tribunal had to consider for the first time what the appropriate sanction should be from within the new range of possible sanctions. The Tribunal accepted he had not taken cannabis to enhance sports performance but did not find any mitigating circumstances. The athlete claimed he had taken it to help with sleep and pain relief for an injury but that could not be classed as a mitigating factor. There were severe consequences for the player from even a minimum suspension of one year, such as missing a world cup tournament and losing an overseas playing contract. However, the player was an international player, who was expected to set an example for others, and who took cannabis just days before a national final, despite a strong warning from the Tribunal of the consequence of further cannabis offending at the time of his first cannabis violation three years ago. A minimum sanction was not appropriate in these circumstances and the Tribunal suspended him for 18 months.

FIRST METHAMPHETAMINE CASE

The Tribunal has dealt with a number of cases over the years of athletes who have taken prohibited drugs for “recreational” purposes rather than for performance enhancing purposes. These have so far involved two substances: cannabis and, on the rare occasion, BZP (in the form of a “party pill”). This year the Tribunal dealt with a case involving a third “recreational” drug.

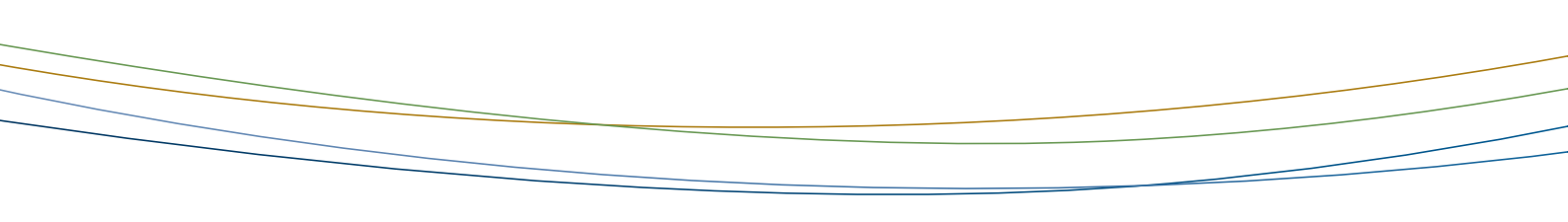
In 2008/09, the Tribunal dealt with its first anti-doping case involving methamphetamine (commonly referred to as “P”) which a rugby league player had tested positive for. He also tested positive for amphetamine and cannabis. The player admitted cannabis use in a social situation but claimed he had not used methamphetamine or amphetamine. He speculated that the positive test may have resulted from passive inhalation of methamphetamine from being around others smoking the substance but gave no further evidence about this. This speculation fell well short of the requirement on the athlete to establish how the substance entered his body, if he is to claim he had no significant fault or negligence. The Tribunal therefore imposed the mandatory sanction of a two-year suspension for the violations involving methamphetamine and amphetamine.

TWO CASES OF ATHLETES PRESCRIBED PROHIBITED SUBSTANCE PROBENECID BY DOCTOR – ATHLETES HAVE RESPONSIBILITIES TO CHECK WHETHER SUBSTANCES ARE PROHIBITED

The Tribunal heard two cases this year where athletes (a rower and a boxer) had tested positive for the prohibited substance probenecid. Although the cases were unrelated, they had similar circumstances in that both athletes had been prescribed probenecid by doctors as part of a medical treatment. In both cases, the respective doctors had not realised that probenecid was a prohibited substance. It was accepted in both cases that the prescribed probenecid was the source of the positive test.

While the Tribunal had considerable sympathy for both athletes, the cases highlight that it is athletes who have the ultimate responsibility to ensure they do not take prohibited substances and that they are under a number of duties to comply with before they can successfully claim they were not at fault. Drug Free Sport New Zealand provides considerable drug education and educational material to athletes, including a wallet card which gives clear instructions on the steps athletes need to undertake when being prescribed medication. Neither of the athletes in these cases undertook all the required steps.

In the rowing case, the athlete did not tell the doctor he was an athlete subject to drug testing nor did he ask the doctor to check the status of the medication he was planning to prescribe. The athlete had an onus on him to do these things and as a result he received a sanction of a short suspension. The athlete in the boxing case had also not carried out all the instructions in the wallet card. However, a lesser sanction of a reprimand was justified in his case as, unlike the rower, he had informed the doctor that he was an athlete subject to drug testing and asked whether the treatment would cause him any problems in relation to drug testing. While not absolving him of his obligations, he had relied upon the doctor’s incorrect assurances that probenecid would not cause him any problems in terms of drug testing and this was a factor the Tribunal could take into account in determining the appropriate sanction.



Due to changes in the WADA Code and the Sports Anti-Doping Rules 2009, probenecid has been reclassified as a specified substance from 1 January 2009. Before this, the mandatory penalty was a suspension of two years as opposed to the lesser range of sanctions available for a specified substance. As the anti-doping violations in these two cases took place before January 2009, the athletes potentially faced a mandatory two-year suspension. However, under the anti-doping rules, the Tribunal was able to apply the “lex mitior” legal principle which allowed for the imposition of the lesser sanctions for a specified substance if the Tribunal thought this appropriate, which it did in both these cases.

APPEALS AGAINST DECISIONS OF NSOs

Unlike the previous year, which covered the period leading up to the Olympics, this year there were no appeals by athletes against not being nominated or selected for a New Zealand team or squad.

The appeals against decisions of NSOs dealt with by the Tribunal this year related to appeals against disciplinary decisions. Interestingly, these appeals all involved some form of motor racing. The sports involved were motorcycling and speedway.

While the number of appeal cases was fewer this year than last year, several of the cases dealt with this year were among the most complex and time consuming that the Tribunal has had to deal with.

In particular, there were a number of appeals against disciplinary decisions of Motorcycling New Zealand, some involving the same person appealing different decisions relating to different events. These appeals involved difficult and complex issues. One case was made more difficult in that it ultimately required the interpretation of relevant rules of the sport that had been overlooked by the parties and not brought to the attention of the Tribunal. The Tribunal upheld or partly upheld some of these appeals but struck one appeal out for being filed out of time. These cases are summarised later in this report.

The Tribunal also upheld the appeal of a saloon car racer who had been suspended by Speedway New Zealand for having an allegedly illegal carburettor in his engine at a race meeting. The Tribunal found some breaches of natural justice in the way the matter had been dealt with and therefore reheard the matter. There was conflicting evidence whether the carburettor produced before the Tribunal (which was accepted by the parties as being a “legal” carburettor) was the same carburettor in the car. The Tribunal found that the evidence fell short of establishing that the carburettor presented to it was not the same carburettor in the car at the relevant time and allowed the appeal.

SUMMARIES OF CASES DECIDED BY THE TRIBUNAL IN 2008/09

Anti-Doping Cases

CANNABIS (WHEN NOT USED IN CONJUNCTION WITH ANOTHER PROHIBITED SUBSTANCE)

Drug Free Sport New Zealand v Aaron Neemia

(ST 02/09) – Provisional Suspension Decision 30 March 2009, Decision 12 June 2009.

The Tribunal suspended New Zealand representative softball player Aaron Neemia from participating in sport for 18 months for his second anti-doping violation. Mr Neemia tested positive to cannabis after competing in the Men's National Softball League Finals. This was Mr Neemia's second doping violation involving cannabis.

On 7 April 2006, the Tribunal warned and reprimanded Mr Neemia for testing positive for cannabis after a softball national final and warned him that if he were to offend again he would face an automatic suspension of two years (according to the law in force at that time).

However, the law changed in 2009 as a result of changes to the World Anti-Doping Code and the Sports Anti-Doping Rules. If an athlete, who is facing a second cannabis violation, can establish that he or she did not take the cannabis to enhance their sports performance, the Tribunal has the discretion to impose a period of suspension between one and four years.

Mr Neemia admitted the violation. The Tribunal accepted evidence that the cannabis was taken at the suggestion of a friend to help with sleep and pain relief for a knee injury and was not used with the intention of enhancing his sports performance.

The Tribunal did not consider that there were any mitigating factors. Taking cannabis for pain relief, or to help sleep, is not a mitigating factor. There will be consequences for Mr Neemia from even a minimum suspension of one year in that he has had to withdraw from the New Zealand Black Sox squad and will miss the World Cup and will be unable to take up a playing contract in the USA. However, the issue for the Tribunal was the degree of fault of Mr Neemia and not the consequences of this violation on him.

There were aggravating factors in that Mr Neemia is an international player who is expected to set an example to other players, particularly younger players. Despite a strong warning from the Tribunal less than three years ago, he was prepared to smoke cannabis again just two or three days before a national final.

In these circumstances, the Tribunal did not consider that the minimum suspension of one year was appropriate. The Tribunal imposed an 18-month suspension commencing from the date of provisional suspension.

Drug Free Sport New Zealand v Steven Manson

(ST 04/09) - Provisional Suspension Decision 30 March 2009, Decision 21 May 2009.

The Sports Tribunal suspended softball player Steven Manson from participating in sport because of an anti-doping violation relating to cannabis. He tested positive to cannabis after competing in the Men's National Softball League Finals. Upon receiving an application for provisional suspension from Softball New Zealand, the Tribunal provisionally suspended Mr Manson. At the substantive hearing, Mr Manson admitted the violation. The Tribunal accepted evidence that the cannabis was taken in a social setting at a party and was not used for sports performance enhancing purposes.

The Tribunal did not consider that there were any mitigating factors. There were aggravating factors in that Mr Manson was an experienced athlete who knew he was taking a prohibited substance which he took the night before the tournament. The Tribunal decided a suspension of two months was appropriate in the circumstances. The Tribunal is required to take the provisional suspension period into account and credit this period against whatever total period of ineligibility (suspension) is imposed by the Tribunal. The Tribunal questioned whether the provisional suspension period had much impact as the New Zealand softball season had finished during this time. However the provisional suspension disturbed Mr Manson's plans to play softball either in Denmark or the United States and he has now put his softball career on hold for a year as a result. Therefore, the provisional suspension has had an impact. The Tribunal imposed a penalty where the overall effect is of a two-month suspension.

The Tribunal was satisfied Mr Manson was sincere when he stated that the incident was a turning point in his life and he wanted something positive to come out of the situation and, if asked, he will convey the message to softballers that drug use in sport is a serious issue, with real consequences. The Tribunal further commented that despite Softball New Zealand's great efforts to promote awareness of doping obligations amongst its players, this was the second recent cannabis case before the Tribunal involving a softball player. The Tribunal issued a warning directed specifically to softball players that if they should appear before the Tribunal for a cannabis violation, the Tribunal may well impose tougher penalties on them.

Drug Free Sport New Zealand v Thomas Cameron

(ST 03/09) - Provisional Suspension Decision 30 March 2009, Decision 20 April 2009.

The Sports Tribunal suspended softball player Thomas Cameron from participating in sport because of an anti-doping violation relating to cannabis. Mr Cameron tested positive to cannabis after competing in the Men's National Softball League Finals. Upon receiving an application for provisional suspension from Softball New Zealand, the Tribunal provisionally suspended Mr Cameron. Mr Cameron admitted the violation at the substantive hearing. The Tribunal accepted evidence that the cannabis was taken for recreational purposes at a party and was not used for sports performance enhancing purposes. The Tribunal did not consider that there were any mitigating factors. Mr Cameron acknowledged he had received the necessary anti-doping education and knew that he was taking a prohibited substance.

The Tribunal decided a suspension of two months was appropriate. The Tribunal took the provisional suspension into account in reaching its decision and imposed a penalty where the overall effect is of a two-month suspension. The Tribunal considered whether it needed to extend the suspension period as the New Zealand softball season was now over. However, Mr Cameron had been intending to immediately play softball overseas in countries where the season was starting or had started. The two-month suspension will prevent him from playing overseas before 30 May 2009. It will therefore be an effective penalty.

Drug Free Sport New Zealand v Stacey Lambert

(ST 10/08) – Decision 16 July 2008.

The Sports Tribunal suspended Manawatu Jets basketball player Stacey Lambert for two months from participating in sport because of an anti-doping violation relating to cannabis. Mr Lambert tested positive to cannabis after playing in a national league (NBL) basketball match. Mr Lambert agreed to stand down for the last match of the season and a provisional suspension was not imposed. Mr Lambert admitted the violation. The Tribunal accepted that the cannabis was taken for recreational purposes and not used for performance enhancing purposes.

Although the NBL basketball season was now over, and Mr Lambert stated he did not intend to play in the NBL season next year, he was participating in basketball in other ways such as coaching. The Tribunal decided that a suspension of two months beginning from the date of the decision was an effective sanction as it will prevent him participating in sport in any capacity over that time period (including playing, refereeing, coaching or administering).

PROBENECID

Drug Free Sport New Zealand v Tom (Zig Zag) Wallace

(ST 15/08) – Decision 5 March 2009.

The Tribunal reprimanded Tom (Zig Zag) Wallace for an anti-doping violation involving the prohibited substance probenecid. Mr Wallace tested positive for probenecid in an out-of-competition drug test. He admitted the violation and gave evidence that it was inadvertent. A doctor, at an accident and emergency clinic, prescribed and administered him probenecid tablets as part of treatment for cellulitis in his knee. Neither the doctor nor he realised probenecid was a prohibited substance in sport. Mr Wallace had the balance of the prescribed probenecid administered when he later visited his own doctor. The Tribunal concluded the prescribed probenecid caused the positive test. The Tribunal accepted evidence from Mr Wallace, and the emergency clinic doctor, that Mr Wallace had informed the doctor that he was a competitive boxer subject to drug testing and had asked if the suggested treatment would cause any problems if he was later drug tested. He accepted the doctor's assurance it would not. However, the doctor did not check whether probenecid was a prohibited substance in sport and had wrongly assumed it would not be.

The Tribunal had considerable sympathy for Mr Wallace and accepted there was no significant fault on his part but regretted it could not accept his defence that he had no fault at all. He had received drug education and educational material, including a wallet card and athletes' handbook, containing instructions on steps athletes need to take when being prescribed medication. While he complied with the step of advising the doctor that he was an athlete subject to drug testing, there were two other steps clearly set out in the wallet card that he needed to follow but did not do. He did not request the doctor to check the MIMS New Ethics Catalogue to clarify the status of probenecid (which clearly states probenecid is prohibited) as advised to do in the wallet card. This would have then led to the second step of making an application for therapeutic use exemption if no other treatment alternatives were available (requiring filling out a form and treatment can begin immediately – such exemptions can be made retrospectively in emergency situations). Other relevant factors included that probenecid is included as an example of a prohibited drug in the athletes' handbook and that Mr Wallace did not raise the issue of whether probenecid was prohibited when subsequently visiting his own doctor who also administered it to him.

Before 1 January 2009, the mandatory penalty for a violation involving probenecid was a two-year suspension. If an athlete succeeded on a defence of “no significant fault” (as opposed to “no fault”) the minimum penalty under the Sports Anti-Doping Rules was a suspension of one year. However, the Tribunal did not need to consider penalties under the no significant fault defence further as under the new Sports Anti-Doping Rules 2009, probenecid has been reclassified as a “specified substance” with a range of lesser penalties that can be imposed. These penalties range from a minimum of a reprimand and no suspension to a maximum of two years' suspension. Although the violation happened before 1 January 2009, the new rules allowed the Tribunal to impose these lesser penalties if the Tribunal considered it appropriate.

The Tribunal noted a recent case where it had suspended an athlete for two months who had committed a violation also due to taking prescribed probenecid. A lesser penalty was appropriate in the present case. Unlike the athlete in the other case, Mr Wallace informed the doctor that he was an athlete subject to drug testing and asked whether the treatment would cause any problems for drug testing. He relied upon the doctor's assurances and although this did not absolve him of all his obligations, it was a factor to be taken into account in determining an appropriate penalty. He also had voluntarily withdrawn from competing when advised of the positive test.

Taking all the circumstances into account, the Tribunal thought Mr Wallace's degree of fault was “nearer the trivial rather than the grave extremes of the measure of fault” and that the appropriate penalty was the minimum penalty of a reprimand only.

Drug Free Sport New Zealand v Dane Boswell

(ST 01/09) – Decision 12 February 2009; Reasons for Decision 24 February 2009.

The Tribunal suspended rower Dane Boswell from participating in sport for two months because of an anti-doping violation involving probenecid. Mr Boswell underwent an out-of-competition drug test and tested positive for probenecid. Mr Boswell admitted the violation and gave evidence that the violation was inadvertent. He gave evidence that he had been prescribed probenecid by a doctor as treatment for an infected hand and that neither he, nor the doctor, had realised probenecid was a prohibited substance. The Tribunal concluded that the probenecid prescribed by the doctor, and taken by Mr Boswell, was the cause of the positive test results.

The Tribunal accepted that Mr Boswell did not deliberately take a prohibited substance and was not a “drug cheat”. However, Mr Boswell did not discharge his responsibilities as an athlete subject to the Sports Anti-Doping Rules. The Tribunal was satisfied he had previously received appropriate drug education, and been supplied with educational material, on these matters by Drug Free Sport New Zealand as an athlete in the registered drug testing pool. The onus was on him to advise the doctor that he was an athlete subject to sports drug testing and he did not do this. He did not request the doctor to check and clarify the status of the substance the doctor intended to prescribe, as advised for the athlete to do in the anti-doping wallet card provided to athletes. Nor did he use a phone text service allowing athletes to check whether substances they are unsure of are prohibited. The Tribunal therefore concluded Mr Boswell could not succeed on a defence that he had no significant fault.

Before 1 January 2009, the mandatory penalty for a violation involving probenecid was a two-year suspension. However, under the new Sports Anti-Doping Rules 2009, probenecid has been reclassified as a “specified substance” with a range of lesser penalties that can be imposed. Although the violation happened before 1 January 2009, the new rules allowed the Tribunal to impose the lesser penalties available for a specified substance if the Tribunal considered it appropriate. Taking into account all the circumstances of this particular case, the Tribunal imposed a suspension of two months.

METHAMPHETAMINE, AMPHETAMINE AND CANNABIS

Drug Free Sport New Zealand v Duane Wineti

(ST 14/08) – Decision 19 December 2008.

The Tribunal suspended rugby league player Duane Wineti from participating in sport for two years because of anti-doping violations relating to the prohibited substances D-Methamphetamine, D-Amphetamine and Cannabis. Mr Wineti tested positive after playing in the Bartercard Premiership Final. He admitted using cannabis in a social setting two days before the final but was unable to explain how the methamphetamine and amphetamine came to be in his system, and denied knowing use. He speculated that the positive test may have resulted from passive inhalation, but he gave no further evidence on this point.

A suspension of two years is mandatory for methamphetamine and amphetamine violations unless the athlete can establish no fault or negligence or no significant fault or negligence under the Sports Anti-Doping Rules. The athlete must first establish how the prohibited substances entered the bodily system. Mr Wineti’s speculation fell far short of this. The mandatory penalty of a two-year suspension was imposed for violations involving methamphetamine and amphetamine, and for the cannabis violation the Tribunal imposed a concurrent two-month suspension.

BOLDENONE AND TESTOSTERONE

Drug Free Sport New Zealand v Rodney Newman

(ST 13/08) – Decision 5 November 2008.

The Tribunal suspended power-lifter Rodney Newman from participating in sport for two years because of an anti-doping violation relating to Boldenone and Testosterone. Mr Newman tested positive to these substances at the North Island Powerlifting Championships. He admitted the violation which he indicated must have been the result of a variety of supplements he had been taking. Mr Newman voluntarily withdrew from further competition upon being notified of the positive test.

Mr Newman accepted that the mandatory penalty for his violation was a two-year suspension but submitted that the suspension should not commence from the date of the Tribunal hearing but should start earlier, from the date he was notified of the positive test as he had voluntarily not competed since then. Drug Free Sport submitted that the suspension could not be backdated, before the date of the Tribunal hearing under the relevant rules, as Mr Newman had not been provisionally suspended by his sport and he had merely voluntarily withdrawn from competition.

The Tribunal concluded that suspensions can be backdated earlier than the hearing date, despite the athlete not being formally provisionally suspended, on its interpretation of the relevant rules and also following the approach of the Tribunal in previous cases. In those cases, the Tribunal accepted that in certain situations, voluntary withdrawal from competition may be akin to a voluntarily accepted provisional suspension and may justify starting the suspension earlier than the Tribunal hearing date. However, the Tribunal emphasised that voluntary withdrawal from competition does not require the Tribunal to backdate the suspension and whether it is appropriate to do so will depend on the circumstances of the particular case.

The Tribunal decided in the circumstances of this case that it was appropriate that the two year suspension start from the date of notification of the positive test. The Tribunal particularly referred to evidence of the President of New Zealand Powerlifting who had advised Mr Newman, upon the positive test notification, to withdraw from future competition. Mr Newman explicitly accepted this advice during their conversation, and subsequently did not compete. It could be inferred that therefore Powerlifting had considered it unnecessary to formally apply to have Mr Newman provisionally suspended as he had explicitly accepted their advice not to compete.

APPEALS AGAINST DECISIONS OF NSOS

Noel Curr v Motorcycling New Zealand Inc

(ST 19/07) – Decisions 28 July 2008 and 26 November 2008.

On 11 April 2008, the Tribunal issued its first decision in this matter (final decision except as to stewardship). In 2008/09 the Tribunal released two further decisions in relation to further issues arising in this matter:

- Decision regarding stewardship 28 July 2008
- Further decision and observations regarding stewardship and relationship with membership 26 November 2008.

Motorcycling New Zealand (MNZ) suspended Noel Curr's membership of MNZ and also terminated his status as a steward as the result of disciplinary proceedings. In its decision of 11 April 2008, the Tribunal upheld the findings against Mr Curr but reduced the suspension imposed and expressly reserved its jurisdiction to review the matter of stewardship if that was required by either party.

The issue subsequently arose whether Mr Curr automatically resumed his status as a steward at the conclusion of his suspension of membership (he had been a steward member) or whether separate approval of his suitability as a steward by MNZ was also required. MNZ refused to approve his position as a steward for a race meeting after his suspension as a member had concluded.

On the basis of arguments presented to it, the Tribunal ruled on 28 July 2008 that Mr Curr was not automatically reinstated as a steward but was entitled to apply for membership in whatever category he thought appropriate. However, it subsequently arose that a relevant rule was not brought to the Tribunal's attention by either party or argued before it. In the interests of natural justice, the Tribunal considered whether new grounds, including this rule, should cause the Tribunal to reach a different conclusion.

After hearing new arguments, the Tribunal concluded in its decision of 26 November 2008 that Mr Curr resumed his membership status as a steward by virtue of a rule of MNZ which stated that upon expiry of suspension, the member will be entitled to exercise the rights and privileges of membership of that class in which he or she was entered before the suspension. The Tribunal rejected contentions that this rule does not apply to situations out of competition (Mr Curr's original breach was for conduct out of competition).

The Tribunal noted that stewardship is an office for which suitability and qualifications were required. Under the rules applicable at the time, the MNZ Board had the right to review status as a steward but not as an element of sanction under a disciplinary decision but by a separate decision. Mr Curr's stewardship had been terminated without separate reasons for that and therefore he had been technically reinstated as a steward member at the conclusion of his suspension, although only for a brief period as he lost that status on 16 May when the MNZ Board further suspended Mr Curr's membership in disciplinary proceedings relating to a separate incident not before the Tribunal and unable to be considered by the Tribunal.

The Tribunal made observations that under the new rules and constitution of MNZ it appeared the power to terminate stewardship was now available as part of a disciplinary process.

Tim Curr v Motorcycling New Zealand Inc

(ST 01/08) – Decision 21 November 2008.

The Tribunal upheld findings that a motorcyclist breached the rules of his sport during a race but allowed his appeal against penalties imposed. Tim Curr appealed against decisions of the Motorcycling New Zealand (MNZ) Board which found that he breached MNZ rules during a motorcross meeting, and imposed suspensions and a fine.

There was a collision involving several riders. Mr Curr's father and a race steward went to assist the downed riders, and a heated situation developed. The steward purported to disqualify Mr Curr but he kept racing. The MNZ Board found Mr Curr rode dangerously close to the steward, ignored his directions and rode dangerously in the pits. The MNZ Board suspended him for two years and imposed a further one year's partial suspension of his competition licence for riding dangerously close to the steward. The MNZ Board also suspended him for one year (to be served concurrently with the other suspension) for disobeying the steward and imposed a \$150 fine for riding dangerously in the pits.

Mr Curr appealed on a number of grounds mostly relating to how MNZ had dealt with his case. These included alleged breaches of natural justice, bias, predetermination and conflict of interest involving a decision maker. While the Tribunal expressed significant concerns in relation to some of these grounds, it concluded that none were sufficiently made out to warrant quashing the decisions outright or referring the matter back to MNZ. After a review of the evidence, and taking into account frank acknowledgments of Mr Curr in relation to his conduct, the Sports Tribunal upheld the findings against Mr Curr.

The Tribunal partly allowed the appeal against the penalties imposed and reduced the sanction by a significant margin. The Tribunal questioned whether MNZ had the power to impose the additional partial suspension under their rules in force at the time but did not need to decide that as it considered a lesser penalty was appropriate. In considering the appropriate penalty, the Tribunal took into account Mr Curr's acknowledgments and recognition of conduct at the hearing, his youth, his otherwise good record, and the severe impact of sanction on him. It also took into account other penalties imposed in other MNZ cases. In relation to the offence of riding dangerously close to the steward, the Tribunal quashed the two-year suspension and further one-year partial suspension imposed by MNZ, and instead substituted a period of 15 months' suspension. The other penalties remained the same.

Noel Curr v Motorcycling New Zealand Inc

(ST 09/08) – Decision 30 October 2008.

The Tribunal dismissed an appeal against a decision of Motorcycling New Zealand (MNZ) on jurisdictional grounds as it decided the appeal had been filed out of time. Mr Curr appealed against a disciplinary decision of MNZ suspending him. Appeals to the Tribunal against a decision of a national sport organisation (NSO) have to be filed within the time period set out in the NSO's rules or if those rules don't specify a time period, then within the time periods set out in the Tribunal's Rules.

There was disagreement between the parties over which rules applied, when the time period started and whether the appeal was filed within the required time period. Mr Curr argued MNZ's rules did not apply to him since he had been previously suspended by MNZ (over a different matter) and was not a member of MNZ at the relevant time. However, if he was not a member of MNZ then the Tribunal would not have been able to hear his appeal as his only right of appeal to the Tribunal would have been through MNZ's rules.

On the evidence, and its interpretation of the applicable rules (the MNZ rules), the Tribunal ruled that Mr Curr did not file his appeal within the required 15 working days and was out of time. Although the Tribunal has the power to extend certain time periods in its own rules for filing certain documents, the Tribunal has no jurisdiction to extend time periods for filing appeals when they are set out in the NSO's rules.

Tony Heuvel v Speedway New Zealand

(ST 12/08) – Decision 24 September 2008.

The Tribunal allowed an appeal by a saloon car driver against a decision of Speedway New Zealand (Speedway) suspending him for having an allegedly illegal engine.

Mr Heuvel entered his car in the New Zealand Saloon Car Championships and qualified for the final. Before the final, his car was inspected by Speedway officials who determined the carburettor was illegally modified and issued an infringement notice suspending him. Speedway's Board of Directors subsequently suspended him for 12 months for having an illegal engine. Mr Heuvel appealed to Speedway's Appeal Committee that his carburettor was legal. The Appeal Committee upheld the Directors' decision. Mr Heuvel appealed to the Sports Tribunal on various grounds, some of which were successful.

The Sports Tribunal found there had been a breach of natural justice in some aspects of the manner in which Speedway dealt with the matter. These included:

- The Directors had determined the engine was illegal without hearing from Mr Heuvel.
- There had been a lack of information provided to Mr Heuvel before both the Directors' meeting and the Appeal Committee hearing.
- Adequate details of the alleged infringement were not provided to Mr Heuvel.
- The manner in which the Appeal Hearing was conducted was flawed including the committee talking to officials (including some who inspected the carburettor) over the phone with the result that Mr Heuvel could not directly hear their replies or ask them questions, and the officials trying to identify the alleged illegal carburettor over the phone without having the carburettor in front of them.

The Tribunal concluded the Appeal Committee decision could not stand and therefore the Tribunal reheard the matter. There was conflicting evidence as to whether the carburettor produced to the Appeal Committee and to the Tribunal was the same carburettor as on Mr Heuvel's car at the time of the championships. It was accepted by all the parties that the carburettor produced to the Tribunal at the hearing was not illegal. Mr Heuvel gave credible evidence that this "legal" carburettor was the same carburettor on his car. The Tribunal decided that Speedway's evidence fell short of the required standard of countering that it was not the carburettor on his car at the time of the championships. The appeal was therefore allowed and the suspension was set aside.

COSTS DECISION

Noel Curr v Motorcycling New Zealand Inc

(ST 09/08) – Costs decision 26 February 2009.

Motorcycling New Zealand (MNZ) sought a costs order against Mr Curr after the Tribunal struck out Mr Curr's appeal for being filed out of time. Costs were sought on the basis of a costs scale that applied under the High Court costs rules, as if the case had been heard in the High Court. However, the Tribunal does not operate under the High Court rules but under its own rules. The Tribunal noted its usual practice had been to award costs only in exceptional cases. The Tribunal considered that this was not an appropriate case to award costs and dismissed the costs application.



CASES DEALT WITH BY THE TRIBUNAL FROM 2003 TO 2009

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 2009

As at the end of the 2008/09 year, on 30 June 2009, there were 84 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. This figure does not include provisional suspension decisions.

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 84 cases on the website, 55 (approximately two-thirds) relate to anti-doping cases. The remaining cases relate to appeals against decisions of national sports 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 54 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, because the rules of the NSOs did not provide 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 54 anti-doping cases decided by the Tribunal, there were:

- 32 cases of Cannabis, when not used in conjunction with another prohibited substance (that is, 59 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
- 2 cases of Probenecid
- 1 case of Morphine
- 1 case of Nandrolone
- 1 case of Furosemide
- 1 case of Stanozol/Hydrochlorothiazide/Amiloride
- 1 case of Stanozol/Nandrolone/Furosemide
- 1 case of methamphetamine/amphetamine/cannabis
- 1 case of boldenone and testosterone.

CANNABIS CASES BY SPORT

The sports that the athletes were playing when tested in each of the 33 cases involving cannabis (either by itself or with other substances) were:

- | | |
|----------------|----------|
| • rugby league | 11 cases |
| • softball | 7 cases |
| • touch | 6 cases |
| • basketball | 6 cases |
| • boxing | 2 cases |
| • wrestling | 1 case |

SANCTIONS IN CANNABIS CASES

Sanctions imposed in the 33 cases involving cannabis were:

- | | |
|---|----------|
| • suspensions | 21 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 one to two months. There were three cases of athletes committing their second anti-doping violation involving cannabis. Two received the then mandatory suspension of two years for a second offence. In the third case, a suspension of 18 months was imposed.

APPEAL CASES

APPEAL CASES BY APPLICATION TYPE

There are 28 decisions listed on the Tribunal website at the end of the 2008/09 year involving appeals against decisions of NSOs and/or the NZOC. These appeal cases can be categorised as follows:

- 12 Tribunal decisions relating to athletes or other members of NSOs appealing disciplinary decisions
- 11 Tribunal decisions relating to athletes appealing their non-nomination or non-selection for a New Zealand team or squad
- 5 Tribunal decisions relating to appeals of other decisions (that is cases that were not appeals against non-nomination/non-selection or were not appeals against disciplinary decisions).

DISCIPLINARY APPEALS

There have been 13 Tribunal decisions relating to 11 cases involving athletes and/or members of an NSO appealing disciplinary decisions imposed upon them:

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

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.

OTHER APPEALS

There were five 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, 9 of the appeals it has heard. Of the 27 appeals (two appeal decisions related to the one matter and have been counted as one and a costs application relating to an appeal has not been included):

- 7 were upheld
- 2 were partially upheld
- 16 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.

If the 2 cases that settled are not counted, this means that the Tribunal has upheld or partially upheld 9 out of the 25 cases, or 36% of the cases, it has decided.

APPEAL CASES UPHELD

Of the 9 appeals upheld or partially upheld by the Tribunal:

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

COSTS DECISION

There has been 1 decision specifically devoted to deciding a costs application relating to a disciplinary appeal that was struck out for lack of jurisdiction. The costs application was dismissed and costs were not awarded.



RESULTS OF THE INDEPENDENT REPORT ON DISPUTE RESOLUTION IN THE SPORT AND RECREATION SECTOR AND THE ROLE OF THE SPORTS TRIBUNAL

In 2008/09, Sport and Recreation New Zealand (SPARC) contracted research firm Martin Jenkins to undertake an independent assessment of current dispute resolution needs in the sport and recreation sector, including the role of the Sports Tribunal of New Zealand. Martin Jenkins consulted with and interviewed a variety of relevant stakeholders in relation to the Tribunal including athletes, representatives of NSOs and lawyers who had been involved in proceedings before the Tribunal. In May 2009, Martin Jenkins presented its final report to SPARC who have given permission to the Tribunal to quote from the report.

The report overall drew very positive conclusions about the Tribunal, its role and how it is operating.

The following extracts are from the executive summary of the report:

It is therefore important to consider whether the original policy intent that led to the establishment of the Tribunal is being met. The overall conclusion of this research is positive in that regard. Stakeholders consider the Tribunal to be accessible, fair, timely and, for the most part, affordable. The Tribunal is seen as delivering outcomes that are significantly better than those associated with the pre-Tribunal landscape. The Tribunal has a strong level of support amongst the parties we spoke to...

Specific findings about the Tribunal can be summarised as follows:

- *Accessibility – There has been improvement over time in the quality and accessibility of information about sports policies and practices, and about the dispute resolution mechanisms that operate within and outside of sports. The Tribunal takes a relatively passive approach to promoting its role but has a very informative and user friendly website and the Registrar can be easily contacted by email and phone...*
- *Fairness – The Tribunal is widely seen as determining disputes in a fair manner and in accordance with principles of natural justice. The Tribunal has on occasion adopted a policy of leniency towards parties rather than strict adherence to rules (e.g. in relation to deadlines for submitting documents) particularly when they are unrepresented. This is widely viewed as an appropriate stance although we have also heard criticism from one party of excessive leniency. Overall, the Tribunal has a very strong reputation for hearing and determining disputes in a fair manner.*
- *Timeliness – The Tribunal's processes are typically swift and uncomplicated and where urgency is required the Tribunal process can move at considerable speed. Indeed, the responsiveness of the Tribunal is seen as a major strength and is remarkable given the part-time membership comprised of very busy people...*
- *Affordability – The Tribunal is generally perceived as affordable. Anti-doping cases, which represent the majority of cases, are usually handled without financial cost to athletes. The introduction of the pro-bono scheme is generally seen as a positive development...It should be noted that the Tribunal is considered to be a cheaper alternative than the courts or the International Court of Arbitration for Sport.*

- *Credibility – The Tribunal currently enjoys a high degree of support amongst the sports organisations we interviewed. This is an important achievement, particularly as the Tribunal has at times been critical of NSOs' constitutions, policies and practices. While the Tribunal had its fair share of sceptics amongst those we interviewed when first established, the general feeling now is that the Tribunal has become an important part of the landscape in the sport and recreation sector.*

The main factors underpinning the Tribunal's effectiveness include:

- *Membership – The high calibre and mixed membership of the Tribunal, comprising people with legal and sports administration backgrounds and former athletes, is seen as a major reason for the success of the Tribunal.*
- *Process – A major asset of the Tribunal is its ability to tailor its processes to the wide range of disputes it hears. Such flexibility directly contributes to the timeliness and efficiency of the Tribunal and has been achieved without compromising the integrity of decision making.*
- *Transparency – The Tribunal is highly transparent and its decisions are readily accessible by sports organisations, athletes and the general public. This has contributed to improvements in the policies and dispute resolution practices of organisations in the sector...*
- *Leadership – The Chair of the Tribunal is widely viewed as guiding the Tribunal to the position of credibility it enjoys today...*
- *Registry function – Interviewees consider that the administration of the Tribunal is extremely efficient and have commented that they find the Registrar approachable, responsive and helpful to Tribunal Members and parties alike.*

The full report is available on the website of the Sports Tribunal (www.sportstribunal.org.nz).



LEGAL ASSISTANCE PANEL

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 Legal Assistance Panel (formerly known as the “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. Since establishing the scheme, 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. This mediation assistance has resulted in parties successfully reaching agreement and resolving their disputes.

The Tribunal hopes that offering 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 its powers around mediating sports disputes and setting out the circumstances in which mediation can occur. The Tribunal now has the power to order that parties undertake mediation if it considers this is appropriate.

NEW TRIBUNAL RULES

The Sports Anti-Doping Act allows the Tribunal to regulate its own procedures and functions. The Tribunal makes, and operates under, the Rules of the Sports Tribunal of New Zealand. These Rules 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 Forms, which parties use to file their applications and other relevant documents with the Tribunal.

The Tribunal amended its Rules in April 2009. These amendments included:

- A new process and Form created specifically for NSOs to refer provisional suspension applications to the Tribunal.
- Rules clarifying that the Tribunal is able to offer mediation assistance and in addition allowing the Tribunal to formally order that mediation will take place.
- A rule making express the situations in which the Tribunal may order a rehearing of a matter it has previously heard. The Tribunal may order a rehearing if, in its opinion, there has been a miscarriage of justice that justifies a rehearing. Another rule makes express that the Tribunal may correct a Tribunal decision containing a clerical mistake or an error arising from any accidental slip or omission.
- A rule making clear that parties filing documents with the Tribunal have the responsibility to serve those documents on all other parties in the proceeding and that this now includes interested parties.
- A rule automatically joining the relevant NSO as an “interested party” in an anti-doping case.
- Various other amendments to rules concerning:
 - privacy in anti-doping cases
 - the definition of working day
 - time rules
 - proof of facts.

The Tribunal has also subsequently made further amendments to the rules which came into effect in September 2009, which is after the time period covered by this Annual Report.

The current Rules are available from the Tribunal’s website at www.sportstribunal.org.nz. Printed copies of the current Rules are also available by contacting the Registrar (see contact information).

The Tribunal’s website contains further information about amendments to the Rules. An Information Guide to the Tribunal, decisions of the Tribunal, media releases, case summaries and other related information are also available on the Tribunal website.

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 2007/08 and 2008/09 were as follows:

2007/08 Year			2008/09 Year		
Other operating costs	Number of cases decided	Average cost per case	Other operating costs	Number of cases decided	Average cost per case
\$91,345	22	\$4,152	\$113,526	12	\$9,461

The above figures show the average costs per case for the Tribunal for 2007/08 and 2008/09.

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.

In 2008/09, the operating costs were higher although the number of cases decided was lower compared with the previous year.

However, this demonstrates the very complex nature of some of the cases dealt with by the Tribunal. As noted earlier in this report, several of the appeal cases dealt with this year were among the most complex and time consuming the Tribunal has yet had to deal with. As also noted earlier, more than one decision was required in some 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 Paymark 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

Adrienne has extensive experience in sports administration including serving as CEO of Yachting New Zealand in the years 1986-2000. She has chaired the International Sailing Federations Women's Committee and been a member of that organisation's Events Committee responsible for Olympic and World Championship events. Currently she is a member of the World Youth Sailing Trust, an independent Board member of the Northern Mystics Netball Franchise and a Board member of Auckland Golf Inc. Adrienne has a special interest in high performance sport and is an active golfer.



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. Anna has also represented New Zealand in Touch and played Netball and tennis at provincial levels. 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