



# **Dispute Resolution in the Sport and Recreation Sector and the Role of the Sports Tribunal**

**Final Report**

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## **Preface**

This report has been prepared for SPARC by Nick Davis, Marinka Teague and Sonia Ogier from MartinJenkins (Martin, Jenkins & Associates Limited).

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## Executive summary

New Zealanders are passionate about sport. A large number of Kiwis participate in physical recreation and sport as athletes, volunteers, coaches, officials, administrators and board members. Particularly at the elite level, decisions made within sports organisations and by anti-doping authorities can have a significant impact on people's lives.

Disputes are relatively commonplace in the sport and recreation sector and cover a wide range of subject matters spanning commercial issues, governance and operational issues, discipline and conduct, nomination and selection of athletes and officials for national representation, employment issues and other matters such as discrimination and harassment. A number of features of the sector mean sport and recreation organisations are not always well placed to prevent disputes from emerging or deal effectively with them when they arise. As a result, it is important that safeguards exist, particularly where the issues affect peoples livelihoods.

Sports organisations have generally improved their practices in relation to dispute prevention and resolution over time. The improvements have come in three main areas: increased clarity of rules and policies, thereby reducing the scope for disputes to occur; improved processes within sports organisations for resolving the disputes that do occur; and better communication and stronger relationships both within sports organisations and across them.

Notwithstanding these improvements, weaknesses clearly remain. The quality of constitutions, rules and policies within sports is variable and there remain occasions when the integrity of internal disputes resolution mechanisms fall down. The establishment of the Sports Tribunal in 2003 was a response to weaknesses in dispute resolution practices within the sector and stakeholders are strongly of the view that the same needs for a safeguard, consistency and fairness that led to the establishment of the Tribunal exist today. Indeed, this research suggests that the frequency of disputes requiring external resolution is probably on the rise.

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. At the same time, stakeholders emphasised the need for the Tribunal to stay focussed on the delivery of decisions in a timely and cost effective manner. The confidence that the Tribunal enjoys should not be taken for granted.

Specific findings about the Tribunal can be summarised as follows:

- Awareness – Athletes have grown in their awareness of their rights and the general means by which they can protect those rights. This is a result of clearer communication and education by NSOs, the NZOC, SPARC and Drug Free Sport and because of a number of

high profile cases that have increased overall awareness of the role of the Tribunal. Awareness of the specific steps involved in dispute resolution is limited but sufficient channels exist for making this information available to members of sporting organisations when the need arises.

- **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. Potential barriers to accessibility exist, relating to the ‘non-whinging’ culture of sport and the public nature of Tribunal decisions, although there is no evidence that these issues are material barriers to justice.
- **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. On occasion there have been delays but these are often caused by the parties. In drafting decisions there is sometimes a minor bottleneck caused by the relevant Tribunal member having a conflict (e.g. court appearances).
- **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. For appeals cases, many stakeholders accept that Tribunal cases can be costly reflecting the stakes involved and the perceived need for legal representation. That said affordability is the one area where significant concern has been expressed by some stakeholders. In some cases the financial cost of resolution has been as high as \$50,000 for a single case. Laying responsibility for this at the door of the Tribunal is difficult, since there is little about the Tribunal’s own fees or processes that add significant cost and it is the parties that are responsible for choosing whether or not to have legal representation. Tribunal members have expressed concern that, in a small number of cases, the degree of representation has been excessive. 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, although how widely the lessons have been applied is not known.
- **Leadership** – The Chair of the Tribunal is widely viewed as guiding the Tribunal to the position of credibility it enjoys today. Reflecting this, a number of interviewees have questioned whether succession is being adequately planned for.
- **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.

Possible areas for improvement identified in this research include:

- **Improving affordability** – Short of restricting parties' right to legal representation, which would be an extreme step, the Tribunal has few levers for influencing the costs born by parties who decide to hire legal representation. Options that could be considered include:
  - Encouraging greater use of mediation as an alternative to, or preliminary step before, arbitration
  - Introducing further flexibility into the Tribunal process, for example using a simpler arbitration processes and disallowing legal representation where the stakes are not high or where the parties agree
  - Where appropriate, discouraging parties from using legal representation where such representation would be unnecessary or excessive in the eyes of the Tribunal
  - Advocating for an extension of civil legal aid to Sports Tribunal cases

- A stronger educative role – Interviewees were in general agreement that more should be done to communicate and educate NSOs in relation to good selection, discipline and dispute resolution policies and practice. The stock of Tribunal decisions represents a body of knowledge that contains valuable lessons for NSOs and their members and could be actively disseminated. This educative role is more appropriately a role for SPARC rather than the Tribunal, as the Tribunal’s credibility to independently determine disputes could be compromised if it were seen to be issuing guidance on best practice. Interviewees also considered that the Tribunal itself could play a stronger role in raising awareness about its role, for example through speaking engagements at appropriate sector forums.

## Introduction

### Purpose

The Board of SPARC has sought an assessment of current dispute resolution needs in the sport and recreation sector, including the role of the Sports Tribunal of New Zealand (the Tribunal). The questions to be addressed by the project required an investigation into:

- The current dispute resolution needs of the sport and recreation sector, including the frequency and types of disputes and the preferred mechanisms for resolving them
- The extent to which athletes and other persons are informed about disputes resolution rights and procedures within the sector, including the role of the Tribunal
- Whether adequate use is being made of the Tribunal and whether it is meeting its original policy intent, especially in relation to credibility, accessibility, affordability, appropriateness of jurisdiction, and effectiveness of the pro-bono legal scheme

The project did not inquire into:

- The substance of Tribunal decisions
- The actual decision-making process employed by the Tribunal
- The performance of individual Tribunal members
- Management of the Tribunal and other operational matters that are the responsibility of the Chairperson of the Tribunal

The key questions considered in this research are listed in full in Appendix 1.

### Approach

Our approach comprised:

#### Stakeholder Consultation

We conduct in-depth semi-structured interviews with relevant stakeholders including:

- The Registrar of the Sports Disputes Tribunal of New Zealand
- The Chairperson and three other Members of the Sports Tribunal
- The Chairperson, Chief Executive and Stakeholder Relationship Manager of Sport and Recreation New Zealand
- The Secretary-General of the New Zealand Olympic Committee (NZOC) and a representative of the NZOC's Athletes Commission
- The President of the Australia New Zealand Sports Law Association



- Interviews with parties involved in a small number of recent Sports Tribunal cases (i.e., athletes, officials and representatives of National Sporting Organisations, the New Zealand Olympic Committee and Drug Free Sport NZ)
- Three lawyers on the Tribunal's *pro bono* lawyers list
- A small number of other stakeholders identified as experts in the area of sports dispute resolution in New Zealand and internationally

A full list of persons interviewed is included in Appendix 2.

### International comparison

A targeted review of the following sport dispute resolution bodies in other jurisdictions:

- Canada: Sport Dispute Resolution Centre of Canada
- United Kingdom: Sports Resolutions UK
- Ireland: Just Sport Ireland
- Australia: The State Sport Dispute Centre, South Australia

For each body we described:

- How they are set up (e.g. quasi-judicial bodies established by statute, executive bodies established by statute or other means, legal status and relationships with other bodies, other governance arrangements including membership etc)
- The ways in which they make themselves accessible (including through provision of information, access to pro bono or similar schemes etc) to sport and recreation organisations and potential parties to disputes in sports and recreation
- Their jurisdictional scope (i.e. the nature of disputes the entities deal with), eligibility, and geographical coverage
- To the extent possible, the nature and number of disputes the entities deal with

The international comparison is attached as Appendix 4. In all cases the country summaries have been reviewed by personnel in the relevant countries.

### Document Review

In order to develop an understanding of the policy intent for establishing the Tribunal and developments over time, we reviewed:

- An initial report into the need for the Tribunal by Maria Clarke in 2001
- SPARC Board papers relating to the establishment of the Tribunal in late 2002
- An internal SPARC review of the Tribunal in February 2005

- Cabinet papers from 2005 setting out the policy rationale underpinning the introduction of the Sports Anti-Doping Bill and the Sports Anti-Doping Act 2006
- Memoranda of Understanding established between SPARC and the Tribunal covering the periods 2007/08 and 2008/09
- A guide to the Tribunal and other information available on the Tribunal's website ([www.sportstribunal.org.nz](http://www.sportstribunal.org.nz))
- Tribunal decisions and media releases associated with the small sample of cases whose parties and legal counsel were interviewed as part of this research

### Limitations of the approach

The main challenge for this research related to obtaining a balanced sample of stakeholders to be interviewed given there is a very large number of participants in the sport and physical recreation sector and only a limited number of interviews were possible. While we are confident in our findings because of the high degree of consistency of stakeholder views, there remain a very large number of organisations, not to mention the athletes, administrators and volunteers, whose views were not able to be incorporated in our research. A public consultation process could be considered if greater validation of our findings is required.

## Background

### Establishment of the Tribunal

The Sports Tribunal was established in 2003 by the Board of Sport and Recreation New Zealand under s 8(i) of the Sport and Recreation New Zealand Act 2002. It was continued under section 29 of the Sports Anti-Doping Act 2006 (the Act).

### Jurisdiction

The types of disputes the Tribunal can hear and decide are set out in section 38 of the Act:

- Anti-doping violations in the first instance
- Appeals against decisions made by a National Sporting Organisation (NSO) or the New Zealand Olympic Committee (NZOC) provided the rules of the relevant body specifically allow for an appeal to the Tribunal in relation to that issue. Such appeals could relate to:
  - non-nomination or non-selection for a New Zealand team or squad
  - disciplinary decisions
- Other *sports-related* disputes that all the parties to the dispute agree to refer to the Tribunal and the Tribunal agrees to hear
- Matters referred to the Tribunal by the board of SPARC

### Tribunal Membership

Under section 30 (10) of the Act, the Tribunal may have between five and nine members. The Tribunal's chairperson must be either a retired judge or a senior barrister or solicitor. The current composition of the Tribunal is summarised in Table 1 and shows the mix of people with backgrounds in law and the judiciary, sports administration and coaching, sports medicine and elite athletes.

**Table 1: Current Tribunal Membership**

Member	Position on Tribunal	Bio
Hon Barry Paterson CNZM, OBE, QC	Chairperson	Retired High Court Judge; former sports administrator.
Nick Davidson	Deputy Chairperson	Queens Counsel; involved in sports judicial committees.
Alan Galbraith	Deputy Chairperson	Queens Counsel; athlete.

Member	Position on Tribunal	Bio
Carol Quirk	Member	Sports administration, coaching and former elite athlete.
Ron Cheatley	Member	Sports administration and coaching.
Tim Castle	Member	Barrister, sports administration.
Adrienne Greenwood	Member	Sports administration.
Anna Richards	Member	Elite athlete.
Lynne Melissa Coleman	Member	Sports doctor.

Source: <http://www.sporttribunal.org.nz/about/tribunal-members.html>

## Rules and Procedures

The Tribunal has flexible rules and procedures that enable it to tailor its process to the specific circumstances of the cases it hears. While the exact process varies from case to case, a typical process for an appeal would be:

- The Registrar of the Tribunal receives an initial enquiry by telephone or email. It is rare for applicants to lodge a formal application without first making enquiries as to the jurisdiction of the Tribunal and the process to be followed. The majority of enquiries do not proceed to the Tribunal for a variety of reasons (e.g. the facts don't suit the Tribunal's jurisdiction; the party concerned decides that they are not prepared to have their dispute made public). Where the matter is significant but unable to be heard by the Tribunal, the Registrar may refer the person concerned to other parties for assistance if appropriate.
- The formal process begins with an application to the Tribunal to hear a case and the filing of associated documents. In the case of appeals against decisions by an NSO or the NZOC, an initial notice of appeal is followed within 10 days by a detailed Appeal Brief. Depending on what the brief says, pre-hearing proceedings may begin at that point or this may follow a formal submission of a defence brief within 14 days by the NSO.
- During the pre-hearing stage, the chair of the panel convenes a meeting of the parties to deal with preliminary matters, such as which documents are to be exchanged, the identification of witnesses and the scheduling of the hearing. Pre-hearing proceedings usually involve a single teleconference call but for complex cases may involve a number of exchanges. For simple matters, the chair usually deals with this step without the involvement of other panel members. The Tribunal may suggest that the parties refer a dispute to an alternative form of dispute resolution such as mediation and the Tribunal will offer mediation assistance if appropriate.

- Hearings typically involve a panel of 3 Tribunal members, chaired by the Chairperson or one of the two Deputy Chairpersons. Panels generally comprise at least one legally qualified member and at least one member from a sporting background. Other factors that influence panel composition include availability of members and the nature of the matter to be heard. Hearings are generally held in person in a neutral location that suits the parties but may be heard by teleconference where appropriate (e.g. highly urgent matters, where travel is unavoidable and would be inconvenient and/or expensive). The proceedings follow a court-like process but without the strict formality of the courts. Parties are entitled to legal representation. Appeals hearings generally last between a few hours and a full day. The timing of hearings can be varied to suit the parties and the availability of Tribunal members. Hearings have occasionally been held during the weekend and into the evening (e.g. where there is great urgency, where a party is located in a different time zone).
- Following a hearing, the Tribunal will adjourn to reach its decision. Oral decisions are rare however written decisions are issued promptly where timing is critical. Sometimes, where a matter is complex but an urgent decision is required, the reasons for a decision will be issued subsequent to the decision itself. In practice, most of the burden of drafting the decisions of the Tribunal falls on the member(s) of the panel with legal expertise, although all members of the panel are actively involved in reaching the decision and commenting on the draft decision. With few exceptions, Tribunal decisions are published on the website and distributed to media organisations and other interested parties with an accompanying media release. The timing of decisions varies, with some taking just a few days through to a number of weeks. In a small number of cases Tribunal decisions have taken a number of months, although this involves particular circumstances that are discussed later in this report.

The process for doping cases is similar in many respects. The key difference is that the time limits for filing documents are generally shorter. Also, a single party – Drug Free Sport NZ – is responsible for bringing cases against athletes. For straightforward cases where the athlete admits the violation, doping cases can be heard within a few days of the notice of application being filed, and hearings may last less than one hour by teleconference.

The Tribunal may receive as evidence any information that it considers relevant, irrespective of whether that evidence would be admissible in a court of law. The Tribunal may use expert advisers, issue witness summons, undertake its own investigations and generally take any step necessary to perform its functions. Under the Act, the Tribunal determines its own rules and procedures.

Amendments to the rules of the Sports Tribunal recently came into force.<sup>1</sup> A key change was to introduce a rule allowing the Tribunal to formally order parties to undergo mediation<sup>2</sup> by a Tribunal Member or independent mediator. This rule extends the Tribunal's previous policy of offering mediation assistance to parties if appropriate.

## Caseload

Table 2 contains a breakdown of cases heard by the Tribunal since its establishment. Approximately two-thirds of cases involve alleged anti-doping infringements. Of the remainder, 11 matters relate to non-nomination or selection for games (Commonwealth and Olympics) and 16 matters relate to disciplinary-related decisions by NSOs (e.g. rules infractions, misconduct). The Tribunal Chair conducted one formal mediation in 2007.

**Table 2: Tribunal Caseload**

Year	Anti-doping	Appeals against NSO/NZOC Decisions - Selection/ Nomination	NSO/NZOC Appeals Decision (Discipline/ Ruling/Other)	Formal Mediations	Total
2009 (ytd)	3	-	1	0	4
2008 (OG)	7	4	5	0	16
2007	12	-	4	1	17
2006 (CG)	14	4	4	0	22
2005	12	1	2	0	15
2004 (OG)	4	2	-	0	6
2003	1	-	-	0	1
<b>Total</b>	<b>53</b>	<b>11</b>	<b>16</b>	<b>1</b>	<b>81</b>

Source: Decisions listed at <http://www.sportstribunal.org.nz/>

Notes: Of the 81 cases, 72 were decided on the substantive issues and nine were dismissed for jurisdictional reasons. Of the anti-doping cases, the majority (57%) are for recreational cannabis use.

<sup>1</sup> The amended rules came into force on 17 April 2009 between the draft and final versions of this report.

<sup>2</sup> Mediation is a process by which parties to a dispute are assisted by an independent person to explore whether they can reach agreement and settle their dispute.

## Expanded Anti-Doping Jurisdiction

Significant changes were made to the Tribunal's jurisdiction following passage of the Sports Anti-Doping Act 2006. The main changes worth noting are:

- Prior to the Act, the Tribunal was essentially established as an adjunct to the SPARC Board in accordance with SPARC's statutory role to facilitate the resolution of disputes between persons or organisations involved in physical recreation and sport. The passage of the Sports Anti-Doping Act 2006 put the Tribunal on a much firmer statutory footing and enabled a clearer distinction to be made between the role of the Tribunal and that of SPARC. The current relationship between SPARC and the Tribunal is governed by a Memorandum of Understanding between the Minister for Sport and Recreation and the Tribunal. In short, SPARC oversees the Tribunal's funding and provides administrative support to the Tribunal, including employing the Tribunal's Registrar, but otherwise the Tribunal operates independently. This is not dissimilar to the arrangements between the Ministry of Justice and other statutory tribunals.
- The Sports Anti-Doping Act 2006 significantly changed how anti-doping cases are brought before the Tribunal:
  - Prior to the Act, the role of Drug Free Sport New Zealand was to administer the testing regime and determine whether a violation had occurred. NSOs were then responsible for bringing anti-doping cases against athletes to the Tribunal, and the role of the Tribunal related solely to determining the appropriate sanction. If an athlete wanted to challenge whether a violation had occurred, their right of appeal was to the District Court.
  - Following passage of the Act, Drug Free Sport New Zealand became primarily responsible for bringing anti-doping proceedings against athletes before the Tribunal. The Tribunal's jurisdiction was extended to include determining whether a violation had occurred as well as deciding the appropriate penalty for such a violation. NSOs became interested parties, although they retain responsibility for applying to the Tribunal for provisional suspensions.

Recent changes to the Tribunal's rules introduced a clearer process for NSOs to make provisional suspension applications and mean that relevant NSOs will be automatically joined as interested parties in anti-doping cases.

## Findings

### What are the dispute resolution needs of the sector and how have these changed over time?

#### Pre-Tribunal Landscape

Prior to the establishment of the Sports Tribunal, the characteristics of dispute resolution within the sport and physical recreation sector were as follows:

- In relation to anti-doping matters, NSOs struggled to enforce the rules, bring cases before the Tribunal, and defend appeals to the District Court when an alleged violation was challenged. Such matters stressed sports administrators and consumed valuable time and resource. NSOs were constrained in their ability to support athletes facing allegations and potential bans because of their 'prosecutorial' role.
- In relation to other matters, sports rules and constitutions were often ambiguous and inconsistently administered. Internal dispute resolution processes frequently fell short of meeting the principles natural justice, for example:
  - Decision-making bodies within sports, including appeals bodies, were sometimes conflicted or ran poor processes
  - Athletes were sometimes not given a fair opportunity to argue their case
  - Decision-making within and across sports was inconsistent, for example in relation to the determination of appropriate sanctions for the same or similar offence
  - Often there were delays in getting matters heard both within sports organisations

In addition, the narrow grounds for appeal and high costs associated with judicial review of NSO decision-making in the courts often prevented justice from being done.<sup>3</sup> Courts were generally unwilling to second guess the decision-making of sports organisations unless there had been a significant miscarriage of justice. There were usually delays in getting matters heard in the courts.

The above factors provided the rationale for establishing the Sports Tribunal, which was intended to be an independent, fair, and efficient body for resolving sports disputes. The Tribunal was not intended to substitute for the need for sports to put in place sound disputes prevention and resolution mechanisms within their organisations, but was intended to be a safeguard when sports processes fell short or where it was not possible to obtain a neutral review of a decision within an NSO.

<sup>3</sup> Some examples of judicial review cases involving sports organisations include *Blackler v New Zealand Rugby Football League* [1968] NZLR 547; *Finnigan v NZ Rugby Football Union Inc* [1985] 2 NZLR 159; and *Cropp v A Judicial Committee and ANOR SC 68/2007*.



## Nature of disputes

New Zealanders are passionate about sport. A large number of Kiwis participate in physical recreation and sport as athletes, volunteers, coaches, officials, administrators and board members. A small minority of sports are significant commercial operations in their own right, are professionally managed and have significant financial and human resources. However, most sports are small scale, rely heavily on volunteers, and have scarce financial and human resources to deploy in relation to dispute resolution and legal matters in general.

The above ingredients mean there is significant scope for disputes within sports and our research suggests disputes are very common. Disputes in the sport and recreation sector cover a wide range of subject matters, including but not limited to:

- Commercial matters, such as player contracts, sponsorship conflicts, athlete and administrator remuneration, the distribution of financial resources between national, regional and club level etc
- Governance and operational matters, such as disputes about the fair election of officials, proposed constitutional change, and about the way the sport is run
- Disciplinary and conduct matters, both on and off the field of play
- Nomination and selection of athletes for national and regional representation
- Other matters such as employment and discrimination within sports organisations

In many ways, sports organisations are not unlike other private and public organisations in their scope for disputes. However there are some unique aspects that are particular to sports:

- Sports organisations are typically structured as Incorporated Societies and are therefore subject to particular governance, accountability and other requirements
- The highly competitive culture of sport creates inherent tensions between the various parties involved, particularly at the high performance end of the spectrum. This tension manifests in different ways, for example:
  - Some athletes look for every advantage over their competitors, including in relation to interpretation of and compliance with the rules of the sport
  - Coaches, selectors and administrators are often related to or form close bonds with athletes and are therefore not free from bias
- There are common grounds for disputes that are specific to sports such as:
  - Nomination and selection for national teams
  - Rules breaches that can result in suspension of membership and bans, including for anti-doping violations
- Participants in sports, including NSOs, often have limited resources with which to resolve disputes, in some cases constraining options for achieving just outcomes

- Sports disputes can have high stakes for those involved. Selection and disciplinary disputes can potentially impact on the career of an athlete and can also adversely affect the sports involved, for example if the credibility of selectors is undermined

The above features underpin a *prima facie* argument for a specialist approach to sports disputes resolution that is tailored to the particular circumstances that sports organisations, athletes and other participants face. That said, it has been pointed out that sports disputes also have much in common with other types of disputes. Perhaps most significantly, they are often inherently legal in nature. A review of the decisions of the Tribunal suggests that most disputes boil down to the correct interpretation and application of constitutions, selection and discipline policies and the rules and regulations of the sport.

## Frequency of disputes

Most interviewees consider that the frequency of disputes requiring external resolution is probably on the rise, although this was based on instinct rather than hard evidence. Factors thought to be leading to greater potential for disputes requiring external resolution include:

- Arguably, society in general has become more litigious in nature and stakeholders argue that this general trend is being mirrored in the physical recreation and sport sector
- There has been a general increase in the level of professionalism within sport:
  - This has direct implications for the nature and propensity of disputes within sports that have increased in professionalism over the period
  - The general trend towards greater professionalism has had an indirect effect on predominantly amateur sports, with a general rise in athletes' expectations of more professional practices within sports (particularly at the high performance end)
- There is a perception that the stakes are now higher within sports. Whether or not this is true in relation to the '*prestige*' factor is debatable but there would appear to be higher stakes involved in a monetary sense (e.g. sponsorship, endorsements, appearance fees)
- Athletes are thought to have grown in awareness of their rights over time. This does not mean that athletes are diligent when it comes to reading official documents, such as sports' constitutions and rules, selection policies and player contracts. Rather, awareness is likely to have increased as a result of increased investment in education by sports organisations
- For high performance athletes, the use of professional agents has undoubtedly played a role in raising awareness and increasing the potential for represented athletes to enforce their rights
- A number of high profile Tribunal cases have also increased awareness in the sector of the role of the Tribunal as a potential pathway for dispute resolution

- Anecdotally there has been a high turnover of NSO administrators in recent years, such that organisations struggle with a lack of experience and institutional knowledge when it comes to the prevention and management of disputes
- The acceptance and enforcement of the anti-doping code has strengthened over time

Countering this are some developments that may have reduced the potential for disputes requiring external resolution:

- The general increase in professionalism and incremental improvement in sports constitutions, rules and dispute resolution practices means most disputes are managed within NSOs without requiring escalation to the Tribunal
- There has been general increase in spending on legal fees by sports organisations, including in relation to the drafting of tighter constitutions, contracts and policies (especially in relation to selection) and the use of independent lawyers in internal dispute resolution processes
- Significant investment in education has been made by NSOs, NZOC and others and there is generally greater transparency of rules and procedures within sport (e.g. early publication of selection policies). A great deal of effort has especially gone into clarifying the process around Commonwealth and Olympic Games nomination (by sports) and selection (by the NZOC) and it would appear most high performance athletes are now aware of this distinction. Similarly there have been significant educational efforts in the anti-doping area by Drug Free Sport and SPARC.
- Greater awareness of the Tribunal may have played a deterrent role. Sports organisations are aware that Tribunal proceedings can be damaging in both financial and reputational terms. A small number of high profile cases have attracted significant media attention.
- There is direct evidence of sports organisations tightening up their own rules and processes including as a result of:
  - SPARC investing significantly in reviewing constitutions as part of the initial push to encourage NSOs to give jurisdiction to the Tribunal
  - Errors or inadequacies in NSOs processes pointed out during Tribunal hearings which have resulted in significant overhauls and improvement to rules
  - Sports organisations (including those not parties to cases before the Tribunal) and their legal advisers applying the lessons from the body of case law that has developed, helped especially by the openness and transparency of the Tribunal and the online publication of its decisions
- Representation of athletes within sports organisations is now considerably stronger than it was a decade or more ago. Sports organisations generally have more open channels for engaging their athletes. For example, it is now relatively common for an athlete's representative to be involved in the management structure of sports. Related to this, the science of coaching has developed to become more athlete-centred. As a result of these developments, there is greater respect between sports administrators, officials and athletes.

## How have sports organisations practices evolved over time?

The general message from interviews with stakeholders is that sports organisations have improved their practices in relation to dispute resolution over time. The improvements have come in three main areas: increased clarity of rules and policies, thereby reducing the scope for disputes; improved processes within sports for resolving the disputes that inevitably occur; better communication and stronger relationships both within sports organisations and across them. We briefly comment on each of these matters in turn.

### Increased clarity of rules and policies

A significant investment has been made by NSOs with the support of SPARC and other organisations to amend constitutions, rules, policies and contracts in order to reduce the scope for ambiguity and disputes.

In relation to constitutional change, the establishment of the Sports Tribunal was a significant catalyst for change. That is because the Tribunal can only hear appeals against the decisions of a sports organisation if the constitution and rules of the sport allow it. The establishment of the Tribunal therefore led to widespread changes to NSO constitutions to give the Tribunal jurisdiction to hear appeals against various decisions. This was facilitated by SPARC which used its funding levers to encourage sports to give the Tribunal jurisdiction over certain types of disputes once internal dispute resolution processes have been exhausted. SPARC also provided significant support to NSOs by engaging lawyers to review constitutions and provide advice on necessary changes.

More generally, a number of NSOs have independently invested significant resources in clarifying their rules and policies in order to prevent disputes<sup>4</sup>, particularly in relation to selection policies and practices. The New Zealand Olympic Committee has invested significantly to ensure its own documentation, as well as that of their member sports, is consistent and clear on the respective roles each plays in the nomination and selection process for Commonwealth and Olympic Games. SPARC and Drug Free Sport have played a significant role in the adoption of anti-doping rules, working with sports organisations to ensure their rules provide for compliance with and enforcement of the World Anti-Doping Code. SPARC has developed model rules that sports are able to adopt, making it easy for sports organisations to comply with the Code. This has been reinforced by a requirement that sports comply with the Code in order to receive funding and recognition from SPARC.<sup>5</sup>

<sup>4</sup> Arguably this was motivated in part by the increased potential for highly publicised and costly (both in financial and non-financial terms) disputes.

<sup>5</sup> Most sports organisations have adopted the model rules as the easiest way of complying with this requirement.

More generally, a number of sports organisations have commented that their expenditure on legal protections has increased in recent years, although NSOs are not necessarily incurring greater costs associated with actual disputes. Rather, the increased spending is out of recognition that sports are potentially vulnerable to an expensive legal challenge if their own rules and policies are found wanting. Such spending is therefore viewed as an insurance policy by sports. Although the sums involved are significant for the sports concerned, the expenditure is largely viewed as one off rather than ongoing. That said, it is common for the documents and contractual provisions to be reviewed from year to year, and this tinkering also incurs costs.

Notwithstanding the general improvements in NSO rules and policies, a number of interviewees commented that they still consider sports' rules and constitutions are variable in quality. Lawyers are particularly likely to comment that such documents are full of holes and inconsistencies. Anecdotally, most jurisdictional provisions are very broad in nature, effectively giving the Tribunal jurisdiction over almost any matter that is the subject of a Board decision. However based on experience to date, there appears little risk of low-level or unmeritorious disputes being brought before the Tribunal.

## Improved dispute resolution processes within sports organisations

A wide range of dispute resolution processes exist within sports organisations. These range from formal and quite complex, multi-tiered dispute resolution structures to relatively informal processes with almost direct recourse to the Sports Tribunal.

A relatively common structure is for the constitution of a sport to provide for:

- Informal means of resolution of minor disputes, such as face-to-face meetings or formal mediation
- The Board of an NSO acting as an appellate body against decisions of a club or regional association involving suspension, expulsion or the imposition of some other form of penalty on a member of the sport
- An internal tribunal to hear appeals against Board decisions affecting a member, club or regional association. Such tribunals typically comprise a panel of independent people qualified to hear disputes, often including experienced barristers or solicitors and retired athletes
- Ultimate appeal to the Sports Tribunal of New Zealand, sometimes limited to suspension/expulsion decisions and NZOC nomination disputes, but often not limited to these matters. Indeed many constitutions would appear to allow very broad range of decisions to be appealed to the Tribunal

Despite some common features, there are almost as many processes for resolving disputes within sports as there are sports organisations. In one sense this should not be surprising since sports dispute resolution processes must be tailored to the particular needs of the sport concerned. Take motorcycling, for example, which is governed by a very prescriptive and complex set of rules that are administered by officials, marshals and stewards at various pre-, during- and post-race points. It is unsurprising that this sport has a relatively complex, multi-tiered process of reviewing and appealing the decisions of stewards, protest committees, appeals committees and the Board.

While a degree of diversity is to be expected, some interviewees have questioned whether there is greater diversity than is optimal. Proponents for greater consistency argue that sports processes have evolved in isolation and there are opportunities for greater consistency across sports bringing enhanced credibility to their processes. Others have questioned the need for sports to have multi-tiered processes arguing there is an opportunity to streamline sports' dispute resolution processes and provide a more direct line to the Tribunal. Ultimately, this judgement hinges on the costs and benefits sports organisations perceive to be associated with their own dispute resolution procedures vis-à-vis those of the Tribunal. The degree of comfort Boards have in ceding control over dispute resolution is also a key consideration.

On the whole, our research suggests sports organisations have generally improved their internal dispute resolution processes and practices. Over time NSOs have gradually adopted improved practices in relation to dispute resolution. Sports administrators are generally more aware of the principles of natural justice and internal dispute resolution processes tend, accordingly, to be more consistent with those principles than they previously were. A typical comment was that:

Sports have relatively robust sets of rules that tend to hold up most of the time. Disciplinary panels have evolved, with greater independence in the form of neutral, often legally qualified people. Most sports now have processes that are consistent with principles of natural justice. With some exceptions, these things are now handled pretty well by the sports sector. Not 100% right but mostly right.

That is not to say that there are no longer shortcomings in NSO practices. Indeed, recent cases before the Tribunal clearly demonstrate that weaknesses remain. Further, the good process on paper is useless in practice if sports organisations fail to follow their own procedures.

It is important to note that the Tribunal has directly influenced the way some sports manage disputes. For example, a number of NSOs have improved their processes as a direct consequence of going to the Tribunal (i.e., as a result of having contradictions in their rules or flaws in their processes pointed out). Further, the accessibility of Tribunal decisions has provided a resource for sports to learn from, although it is not clear to what extent this is happening in practice.

## Improved communication and relationships

One common theme emerging from our interviews is the apparent improvement in communication and relationships over time, both within sports organisations and across the sector, thus reducing the scope for disputes. A good example is the collaborative way in which NSOs, the NZOC and Athletes Commission work together. Interviewees have commented on the generally good relationships between sports organisations, Drug Free Sport and SPARC. Clearly there is a lot of goodwill within the sector which contributes to an environment where disputes are worked through informally where possible.

One factor that has changed considerably over time is the role of athletes in sports. Since the advent of the Athletes Commission at the NZOC, NSOs have increasingly given athletes a stronger voice within sports, helping to create a climate of greater trust in sports with less potential for disputes. An illustration of the benefits is the reduced role that the NZOC Athletes Commission has needed to play over time in advocating on behalf of individual athletes in dispute with their NSOs.

## Is adequate use being made of the Tribunal?

There are disparate views about whether adequate use is made of the Tribunal. On the one hand, a small number of interviewees consider the Tribunal to be underutilised, citing the relatively small number of non-doping cases that come before the Tribunal each year.<sup>6</sup> This view is often associated with a belief that there are disputes not being effectively dealt with by sports organisations that should come before the Tribunal. Further, they argue that athletes are reluctant to bring disputes before the Tribunal for a variety of reasons (e.g. perceptions that it is unsportsmanlike or a form of whinging). It has been suggested that the public nature of the Tribunal may act as a deterrent for parties applying to have disputes settled by it. Related to this, it has been suggested that athletes need to feel a very high level of injustice before they will consider bringing a case before the Tribunal. There may also be a perception that costly legal representation is required, which could act as a deterrent.

While there is undoubtedly some truth in the above arguments, interviewees found it difficult to give concrete examples of this kind of behaviour. Further, a number of interviewees were firmly of the view that no unmet need for external dispute resolution exists. They argued that the relatively small number of non-doping cases is, in fact, evidence that sports organisations are generally able to resolve disputes internally. These interviewees argued that there are no obvious barriers to accessing the Tribunal. Anecdotally, the vast majority of sports provide jurisdictional access to the Tribunal through their rules and constitutions, and such jurisdiction is

<sup>6</sup> Clearly this is only one possible interpretation. Other possible interpretations of a low number of non-doping cases include: low level of need for external arbitration of sports disputes, for example because sports have effective internal dispute resolution mechanisms; low level of awareness of the sports disputes tribunal; a lack of willingness on the part of parties to apply to the Tribunal to determine disputes; a lack of jurisdiction for the Tribunal, for example because the grounds for appeal are relatively narrow; and/or because disputes are not being brought within the requisite timeframes provided by sports rules and the tribunal's own rules.

often broad in nature. While most interviewees agreed that the public nature of the Tribunal makes parties think twice before bringing cases, this was not considered problematic given the availability within NSOs of private and less formal means of resolving disputes.

On balance, we consider that adequate use is made of the Tribunal, although we note that we have hardly undertaken a comprehensive investigation into this question given the relatively limited number of stakeholders we interviewed. We note that the Tribunal has recently changed its rules to allow for mediation orders, potentially signalling greater use of mediation as a step prior to arbitration. Offering mediation may encourage more parties to approach the Tribunal, although parties often have entrenched positions and mediation will not always be suitable.

## Is there sufficient awareness of dispute resolution processes?

We have already made a number of observations about awareness of dispute resolution processes amongst athletes. It is worth briefly restating them here:

- It is generally thought that athletes have grown in awareness of their rights and the means by which they can protect those rights. Factors that have contributed to this include:
  - Clearer and better communicated policies and rules especially in relation to nomination/selection and anti-doping. This is a direct result of efforts by NSOs, the NZOC, Drug Free Sport and SPARC to educate athletes and administrators about these issues
  - A number of high profile cases have undoubtedly increased awareness of the Tribunal
- While the above points suggest there is reasonable awareness of rights and the existence of avenues to uphold those rights, there is probably a low level of awareness of the specific steps involved in dispute resolution processes. In other words, athletes are often unaware of the fine print.
- Interviewees were in no doubt, however, that this information is readily available if the need arises, both within sports organisations and through external channels
- The channels by which parties become aware of specific dispute resolution processes include:
  - Advisers such as sports agents and lawyers whom an athlete may approach for advise when an issue arises
  - Sports organisations generally publish their constitutions, policies and rules online. While such documents are not necessarily that accessible to athletes, given the use technical jargon, information is sometimes provided in more user friendly formats
  - A number of sports have internal personnel who are known within the sport to be approachable when disputes arise. Sometimes these are formal positions within sports organisations but often they are informal roles. Such people provide advice to



athletes about options for resolving issues, including the formal processes set out in the rules of the sport

- The Tribunal has an informative website ([www.sportstribunal.org.nz](http://www.sportstribunal.org.nz)) that provides user friendly information on its role, processes and how to bring a matter before the Tribunal. The material available includes a downloadable guide that provides all the essential information a party needs to know about the Tribunal process.
- The Tribunal also has an 0800 number and email address and a significant part of the Registrar's job involves responding to queries that come in through these channels

Awareness is also very high amongst sports organisations by virtue of the fact that:

- Their own constitutions and rules spell out the processes that apply
- Many organisations have their own legal counsel to whom they can turn to for specific advice

The one caveat to these conclusions is that they are based on a limited sample of sports organisations and athletes. To be fully confident in these conclusions, it would be necessary to survey a wider range of athletes and sports organisations about their views. Nevertheless, the views of people we interviewed were highly consistent suggesting there is a good chance our conclusions would apply more generally.

## Is the original policy intent of the Tribunal being met?

### What is the original policy intent?

In 2001, the Sport, Fitness and Leisure Ministerial Task Force report, Getting Set for an Active Nation, recommended that a sports disputes tribunal be set up to:

"have a primary focus on national sport to assist National Sport Organisations to avoid lengthy and costly legal battles; ensure quality and consistent decision making for athletes in New Zealand sport; add credibility to the operation of elite sport in New Zealand and provide for appeals to the Court of Arbitration of Sport".

Following that report a thorough consultation with sporting organisations and review of the evidence base was carried out by Maria Clarke. The Clarke report called for the establishment of an independent and credible body to hear and resolve sports-related disputes in a fair, consistent, timely and affordable way. These characteristics provide the benchmark by which the performance of the Tribunal can be judged.

## Is the original policy intent still appropriate?

While sports organisations are generally getting better at preventing disputes and putting in place sound processes for resolving them, interviewees were strongly of the view that the same needs for a safeguard, consistency and fairness that led to the establishment of the Tribunal exist today. Indeed, most of the stakeholders we interviewed considered that there is now greater scope for serious disputes in sport and many consider that the frequency of disputes requiring external resolution is likely to increase over time.

## Has the policy intent been met?

In order to address this question, it is necessary to consider a number of more detailed questions:

- Is the Tribunal accessible to parties facing sports-related disputes?
- Does the Tribunal determine disputes in a fair manner?
- Does the Tribunal determine disputes in a timely manner?
- Is the cost of taking proceedings before the Tribunal affordable?
- Does the Tribunal have credibility within the sport and recreation sector?
- Is the Tribunal's jurisdiction appropriate?

We briefly address each of these points in turn before making an overall assessment.

### Accessibility

Accessibility is a function of awareness, transparency and affordability. We deal with affordability as a separate point and so focus here on awareness and transparency.

There is a reasonably high level of awareness of the Tribunal within the sport and recreation sector, particularly at the high performance end of the spectrum. NSOs and the NZOC make their members aware of their appeal rights to the Tribunal through a number of channels, including their constitutions, rules, regulations, policies and contracts. These organisations also communicate to and educate athletes about anti-doping rules, selection procedures and expectations regarding conduct. A number of sports organisations have experienced members who can help other members with enquiries about the Tribunal.

An area where there has been significant improvement over time is in the quality and accessibility of information about nomination and selection to Olympic and Commonwealth games. Here the NZOC has been proactive at improving the quality of documentation on the process, including clarifying the role of NSOs in relation to nomination and the NZOC in relation to selection, and ensuring that policies, agreements and contracts are consistent and as clear as possible. Further, NSOs and the NZOC are active in educating athletes about the process.

SPARC's high performance managers and relationship managers have also played a role by developing capacity capability within the sports sector. Drug Free Sport has played a similar role in relation to awareness raising of anti-doping rules, providing information and education to both NSOs and athletes including working closely with elite athletes.

Despite these efforts, the general view of interviewees is that there is mixed awareness amongst athletes of dispute resolution processes, and also mixed awareness of anti-doping rules, the policies and processes surrounding nomination/selection, rules of conduct within sports, and the detail of athlete contracts. It is partly this lack of awareness that can give rise to disputes in the first place. A lack of awareness also means that when an athlete feels aggrieved, they are often unsure of the options available to them. This has been reinforced by some poor practices within the sports sector. Many athletes are known not to read selection policies or athletes contracts and some sports organisations have been observed telling athletes to sign contracts, for example for games selection, without first reading them. This highlights that there remains room for improvement in awareness raising of both sports organisations and athletes.

In relation to specific knowledge of the Tribunal process, our research suggests that awareness is low. This is unsurprising since parties do not need to know the detail of the complaints and appeals process until they feel sufficiently aggrieved to want to find out. As previously discussed, there are plenty of channels by which athletes can find out about the specific process, both within their sport and through the Tribunal, if the need arises.

In terms of the Tribunal's own awareness raising, the quality of information on the Tribunal's website is high and contains all the information a potential party may need to know before considering to take a matter before the Tribunal. There is a step-by-step guide on the Tribunal process and the Tribunal's rules and procedures can be downloaded for those interested in the detail. The Tribunal is also accessible through an 0800 number and by email. The Registrar is proactive in responding to enquiries from parties who may be considering applying to the Tribunal to determine a dispute. Recently, the Tribunal has begun to publish summaries of its decisions on the website and media releases are prepared when new decisions are issued. These efforts are primarily intended to make the decisions of the Tribunal accessible, rather than raising awareness of the role of the Tribunal. The Tribunal Chair does not consider it his role to promote the Tribunal, other than indirectly through the quality of decisions it makes.

A number of stakeholders have suggested that Tribunal Members, in particular the Chair, should more proactively raise awareness of the Tribunal's role (e.g. the types of matters it can hear, its processes, and procedurally how to go about bringing a case) within the sports sector, through for example speaking at SPARC's annual sports conferences. The main target groups would be elite athletes, athletes with high performance potential, and administrators of minor sporting organisations where awareness may be lacking. This is seen by some as controversial since many would say that quasi-judicial bodies should not be aiming to drum up business for

themselves. On the other hand, if awareness of the Tribunal within the sector is low, this may represent a barrier to access.

In terms of transparency, a major strength of the Tribunal is the publication of its decisions on its website. From an NSO perspective, this means that lessons from the body of case law are accessible and, in theory at least, can be disseminated throughout the sector. Whether NSOs make good use of the lessons learned from Tribunal decision making is unclear, although most interviews suspect that NSOs are not proactive in this regard.

A potential barrier to access is the apparent reluctance of athletes to pursue disputes all the way to the Tribunal. While this partly reflects the 'non-whinging' culture of sport and, perhaps, fear of adverse repercussions within the sport, other deterrent factors may include the public nature of Tribunal decisions and the fact that Tribunal proceedings represent a formal and somewhat intimidating step to take. We have not been able to quantify the extent to which such factors may be barriers, however, and know of only a small number of proceedings that have not been brought for these reasons.

A further potential barrier to access relates to low awareness amongst athletes of the time limits for bringing matters before the Tribunal. Generally, NSO's constitutions, rules or regulations provide relatively short time limits within which an appeal must be filed. The Tribunal has no power to extend any time limit in an NSO's rules, except where the parties agree.<sup>7</sup> In the absence of time limits, the Tribunal's Rules require appeals against decisions to be brought within 28 days. There have been four cases since the Tribunal's establishment where the Tribunal has not had jurisdiction because of time lapse. When this happens the consequences for the party concerned can be significant. While our research has not identified this as a matter of significant concern, it could be desirable for the Tribunal to monitor such occurrences and report on this in its annual report.

A final issue regarding accessibility is the Tribunal's jurisdiction. For many NSOs the Tribunal's jurisdiction as set out in the constitution of the sport is very broad. On the other hand, some NSOs have defined the Tribunal's jurisdiction in very narrow terms. There have been a small number of cases – both selection and anti-doping – where the Tribunal has not had jurisdiction. Again, it could be desirable to monitor the incidence of such cases in order to better understand whether jurisdiction represents a barrier to access.

To enhance accessibility, there may be merit in the Tribunal offering a mediation step prior to arbitration. If such a step was available and publicised, there may be a greater willingness for members of sporting organisations to seek external resolution of disputes. It is worth noting that the Tribunal has, in the past, assisted parties to reach a resolution without recourse to adjudication. For example, in 2004 and again in 2005 the Chair of the Tribunal assisted in

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<sup>7</sup> Recent changes to the Tribunal's rules clarify that extensions are permitted by agreement.

resolving selection disputes by mediation, resulting in the parties reaching agreement. In light of these examples, the rule change that provides for greater use of mediation is a useful step.

Overall, our research suggests that the Tribunal is accessible to those that require its services. We found no hard evidence of an unmet demand for external dispute resolution within the sector, although we note our methodology was not specifically designed to determine this.

## Fairness

A key issue for parties is whether the Tribunal determines disputes in a fair manner. Fairness encompasses a number of different dimensions including:

- Members who are independent and free of conflict
- Members who are knowledgeable and informed about the dispute
- Members who are empathetic to the parties and the sporting context within which the dispute has occurred
- Processes are consistent with the principles of natural justice and, critically, allow parties to have their say, call witnesses and provide evidence to support their case

In relation to the above points, the key findings of our research are as follows:

- Interviewees have a very high degree of confidence in the membership of the Tribunal. Tribunal members have a strong understanding of conflict of interest and members will stand down if an actual or perceived conflict exists. Appointment of Tribunal members is an arms length process and based on merit.
- The composition of the Tribunal, with its mix of judicial and legal expertise, knowledge of sports administration, selection and coaching and athletes perspectives, is seen as important for ensuring the Tribunal has knowledge of not only the legal aspects of a dispute but also the broader sporting context
- Interviewees are very impressed with the level of preparation by Tribunal members and their insightful questioning
- Interviewees consider that panel members make a real effort to put parties at ease and are demonstrably empathetic to the positions of the parties while taking care to remain neutral
- The Tribunal process has clear parallels with court processes and its rules and processes are consistent with principles of natural justice. Irrespective of what side of the decision parties come out on, almost without exception parties consider they get a fair hearing.
- The Tribunal is seen as delivering decisions that are consistent, particularly in relation to the sanctions applied for anti-doping and disciplinary matters. This is something that was difficult for sports to achieve prior to the establishment of the Tribunal and is an important contribution by the Tribunal to increased fairness.

The one area of criticism about fairness we encountered related to a perception, in one case, that excessive leniency had been afforded to a party. Throughout the interviews we heard a number of examples of leniency, such as allowing timeframes to slip, allowing irrelevant evidence to be put forward, allowing issues not identified pre-hearing in the appeal documents to be introduced at the hearing and, in at least one case, allowing further evidence to be submitted after the hearing. Generally this leniency would appear to favour athletes, especially where the applicant is unrepresented. In at least one case, leniency towards a party in an anti-doping case led to a more just outcome because the extension of timeframes allowed the discovery of evidence that ultimately 'turned the case'. All interviewees considered that a general policy of leniency was an appropriate stance for the Tribunal to take. This was seen as being in keeping with the spirit of the Tribunal as a relatively informal means of resolving disputes and consistent with principles of natural justice. The one case of heavy criticism we encountered is, in our view, an exceptional case and we do not believe it is appropriate to reach general conclusions on the basis of this one example.

## Timeliness

Timeliness refers to the speed at which the Tribunal is able to determine disputes. It is a relative measure in the sense that the appropriate timeframe depends on the urgency required in any given case and the complexity of the proceeding. The need for urgency is typically more important in relation to:

- anti-doping matters where if a ban is to apply it is desirable that it apply from the earliest possible date
- applications from sports for provisional suspensions
- nomination and selection decisions, since decisions are often made at short-dated intervals before competition

In relation to timeliness, quicker resolution is not necessarily better in every case. By definition, a just process requires parties to be afforded sufficient time to prepare documents, consider and respond to requests for information, review other parties' information, and prepare for and attend the hearing. Complex matters are therefore going to take longer than simpler matters.

The benchmark for timeliness differs depending on the circumstances of the case. For example, the benchmark for an anti-doping case that involves recreational cannabis use where the athlete does not challenge the allegation is likely to be considerably shorter than the benchmark for a complex selection or disciplinary matter, where evidence needs to be gathered, witnesses called, and arguments prepared.

We have not collected detailed statistics on the time it takes for cases to be resolved, since the relatively small number and diversity of cases means that such analysis would be meaningless. The length of time from the filing of forms to the issuance of a decision ranges significantly, from

just a few days in some cases to several weeks in others. Occasionally cases have taken a few months to resolve although the circumstances in these cases tend to be exceptional.

The Tribunal's pre-hearing process is typically relatively swift and uncomplicated. The Tribunal has streamlined its procedures over time, cutting out prescriptive steps from the rules and taking a more tailored approach to each individual case. In the past the process involved a series of pre-hearings but now, where possible, the panel chair aims to have one pre-hearing conference.

The general view amongst interviewees is that straightforward matters proceed to a hearing very quickly with the minimum of fuss and without much preparatory work. For complex cases, the pre-hearing process may involve a number of pre-hearing conferences, and time for each party to develop and exchange documents, and for witnesses to be called. For appeal hearings, if the time allowed in the Tribunal's rules are taken to their maximum, then it can take up to 24 days between the initial filing of an application and submission of the notice of defence. Anti-doping cases are generally dealt with more swiftly and even defended anti-doping hearings typically take no more than 12 days to get to a hearing.

The duration of a hearing varies from 30 minutes to an hour for a straightforward anti-doping case to a full day hearing in the case of complex selection and/or disciplinary cases. Hearings are held by teleconference where appropriate, which saves travel time and costs and allows greater flexibility of scheduling. There have been no hearings that have lasted more than a day although at least one has carried on into the evening.

Following a hearing the issuance of a decision typically takes between a few days and a few weeks but in exceptional cases has taken longer. Where cases are urgent the Tribunal reaches its decision very promptly and, where necessary, will issue its decision with the reasons to follow. The longest time between a hearing and a final decision has been two and a half months, although further decisions relating to the same case were issued up to 10 months after the original hearing. This was a highly exceptional case and is not indicative of the normal Tribunal process.

Generally interviewees consider the timeliness of the Tribunal to be good. A particular strength of the Tribunal is its ability to sit at very short notice when required. There have been occasions, when the Tribunal has heard a case within 24 hours of the application being lodged. Anti-doping and selection cases are typically heard with urgency<sup>8</sup>, since there is often little time between the decision and the competition, and because the situation is stressful for athletes and there is a need to resolve uncertainty for the parties concerned. Similarly, where a case is required to be determined with urgency, decisions are also issued within the timeframes required by the practicalities of selection appeals.

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<sup>8</sup> The Tribunal has the power to abridge time limits in the rules for filing and often does so, particularly in the case of selection appeals.

Other examples of responsiveness include cases which were convened during the weekend for reasons of urgency and another case where the Tribunal adjourned an Olympic nomination hearing in order to hear an anti-doping case, before reconvening the nomination hearing within the hour. Such responsiveness and flexibility is a major strength of the Tribunal and is remarkable given the part-time membership comprised of very busy people. It is also a credit to the organisational abilities of the Registrar.

There have been a small number of cases where there have been delays. Delays can either occur before the hearing or after the hearing:

- Pre-hearing delays are typically due to one or both parties missing deadlines for filing information, or because there is a large amount of evidence to be prepared. As previously discussed, the time limits for parties to file documents are in some cases not adhered to and on occasion the Tribunal has treated both NSOs and, more commonly, athletes with leniency. This has at times frustrated parties but most concede this is in keeping with the spirit of the Tribunal.
- When delays occur post-hearing it is typically because of constraints on the person drafting the decision. Because sports disputes are essentially legal in nature, the legally qualified person who chairs the panel typically takes the lead in drafting the decision. Since Tribunal members are part time and are busy people, occasionally they have other work that must take priority (e.g. a legal member may have a 6-8 week court case). This problem is an inherent characteristic of the Tribunal's make-up. The need to consult other members can also hold up the process on occasion. In general, however, Tribunal members bend over backwards to avoid delay.

Overall, post-hearing delays generally add only a few days to the process. Occasionally there are more significant delays because of the need to undertake investigation into questions unresolved at the hearing, undertake research into precedent to support a decision and, in exceptional circumstances, collect further evidence.<sup>9</sup> In such cases parties may perceive the post-hearing process to be opaque and uncertain.<sup>10</sup> The Registrar is proactive in communicating with parties and tells them what he can but on occasion parties have felt that they are in the dark as to when a decision will emerge. In general, however, most parties will have a reasonable indication of when a decision is likely to emerge.

A common driver of the length of time a case takes is complexity. More complex cases, by their nature, require:

- Longer timeframes to prepare documents, gather and submit evidence
- Longer timeframes to digest and interpret that evidence
- A greater number of points to determine

<sup>9</sup> Where appropriate the Registrar, who is legally qualified, provides research and support to expedite matters.

<sup>10</sup> This is not dissimilar to court processes whereby the date of a decision is not normally specified in advance.



- The need for specialist research and investigation in some cases, such as reviewing medical research in relation to complex anti-doping cases

Where a party is not represented by a lawyer, a further driver can be the scatter gun approach that an unrepresented party may take to the case. Where a party is unrepresented, the Tribunal will rightly go to considerable lengths to ensure the party has a fair opportunity to put their side of the argument, and will undoubtedly permit a wider range of points to be raised than would be permitted of a qualified lawyer who understands the grounds for appeal.

There are a small number of parties who have been disappointed with the timeliness of the Tribunal. There is a perception that of late the Tribunal has taken longer to reach decisions and has been more pedantic and legalistic. Our research suggests this probably reflects a misunderstanding of the source of delay, since responsibility typically lies with one or both of the parties. That said, the Tribunal has the power to enforce stricter timeframes but has chosen to take a relatively lenient approach.<sup>11</sup> A balance needs to be struck here since leniency for one party can come at the expense of the other.

A final consideration in relation to timeliness is that the Tribunal should be judged relative to the next best alternative, being the courts or CAS. We know that prior to the Tribunal's establishment, delays were relatively common in sports own internal dispute resolution processes. In relation to external dispute resolution, the courts frequently took months to hear a case. According to lawyers with experience of CAS in Australia, CAS is more timely than the courts but usually slower than the Sports Tribunal.

### **Affordability**

A key rationale underpinning the establishment of the Tribunal was that it would be an affordable means of for athletes and NSOs to resolve disputes. In other words, it was intended that cost not be a barrier to justice. Prior to the establishment of the Tribunal, the cost of external challenge to a decision of a sports organisation (typically via judicial review in the High Court) was prohibitive in most cases. The Tribunal was therefore intended to be a streamlined and cost effective vehicle for resolving disputes.

The main features of the Tribunal intended to contribute to affordability relative to the courts are:

- Low filing fees of \$500 for an appeal against a decision of an NSO or the NZOC, and \$250 per party for application for resolution of other sports-related disputes. There is no fee for anti-doping cases
- While parties are entitled to a lawyer or another person as a representative<sup>12</sup>, the Tribunal makes clear on its website and in communications that parties do not have to have

<sup>11</sup> In certain circumstances the Tribunal requires parties to explain why timeframes have been exceeded.

<sup>12</sup> Parties are responsible for choosing and paying for their representative(s).

representatives. In its guidance material the Tribunal also stresses that parties will have the opportunity to fairly put their case whether or not they have a representative

- Relative to the courts the Tribunal's process is less formal and more streamlined meaning matters can be dealt with faster and, therefore, more cheaply
- The Tribunal has also recently introduced a "pro-bono lawyer" scheme, which is essentially a referral service based on a list of experienced sports lawyers who are able to offer low cost or even free legal assistance
- The costs of administering the Tribunal (e.g. remuneration of Tribunal members and the Registrar, travel for tribunal members, costs of hiring tribunal venues, communications costs and overheads) are born by the Crown and only partial recouped through filing fees.<sup>13</sup>

Tribunal members are acutely aware of the need to deliver just decisions in a timely and affordable manner. A number of Tribunal members raised concerns about a small number of cases where costs had become disproportionate to the case at hand, and commented that they believe the extensive use of lawyers in those cases had been excessive.

In general, perceptions of affordability amongst interviewees are generally favourable. Anti-doping cases, which represent the majority of the Tribunal's business, are often handled without financial cost to the athlete concerned. For other disputes, the general view is that costs are manageable under normal circumstances for athletes and NSO's, certainly relative to the alternative of determining the matter in court.

Having said that, the issue of costs is the area in which we encountered most criticism of the Tribunal. In a small number of nomination/selection and disciplinary cases, NSOs legal costs have been estimated at between \$30,000 and \$50,000 per case. For example, in a recent case involving Motorcycling New Zealand the Tribunal noted in its decision that:

"MNZ indicates its costs, including legal and other, have reached approximately \$30,000.00. This amply demonstrates to other sports just how detailed and costly a disciplinary process may become, and the Tribunal is not surprised by the size of those costs, given the legal and factual issues involved."

Further, a number of NSOs have been involved in multiple Tribunal cases over time so the cumulative financial cost to the sport can be considerable. In a number of complex cases where there has been pro-bono legal assistance, the legal bill that would otherwise have accrued would have been substantial, in one case reportedly in excess of \$100,000.

<sup>13</sup> One Tribunal member indicated that a good deal of administration costs fall on some Tribunal members at their own expense and is not covered by the fees paid to Tribunal members.

In addition to the direct financial costs, disputes are often time consuming for parties and we have heard reports of disputes consuming in excess of 100 hours of administrator and Board time. The financial and non-financial consequences of disputes can therefore be very significant for the parties concerned.

**Table 3: Use of Legal Representation in Tribunal Cases**

Type of case	No. of cases	No. of cases where legal representation	No. of cases where non pro-bono lawyers appeared	No. of cases where pro-bono lawyers appeared
Doping	52	19	13	10
Selection appeal	11	10	8	6
Disciplinary/ other appeal	16	13	10	6
Mediation	1	1	0	1
<b>TOTALS</b>	<b>80</b>	<b>43</b>	<b>31</b>	<b>23</b>

Source: Brent Ellis, Tribunal Registrar

The primary driver of costs is the decision by parties to involve legal representation. Table 3 summarises the use of legal representation in Tribunal cases, including whether the lawyer was drawn from the Tribunal's pro bono list introduced in 2005. More detailed information is available by year in Appendix 3. The key points are as follows:

- Legal representation is used by one or both parties in just over half of all disputes
- Historically legal representation is more than twice as likely in selection, disciplinary and other matters than for anti-doping cases
- There has been a trend over time towards increasing use of lawyers in anti-doping cases
- Since the introduction of the "pro-bono lawyer" scheme in 2005, lawyers from the pro-bono list have been used in 23 cases compared with 27 cases for non-pro-bono lawyers

It is important to understand reasons why parties decide to use legal representation, which vary from case to case:

- Both sports and high performance athletes are increasingly using lawyers for advice in managing their sports. For example, sports organisations hire lawyers to advise them on their constitutions, policies, regulations and contracts as well as their dispute resolution processes. Athletes increasingly use lawyers in relation to contractual matters, such as player contracts and endorsement deals. This trend translates into a higher propensity to use lawyers when disputes arise. Related to this, lawyers acting in this capacity develop a familiarity with the sport and can become trusted advisers.

- A small number of lawyers have built up reasonably significant sports law practices and are actively marketing their services to NSOs and athletes
- Since the introduction of the Sports Anti-Doping Act 2006, which saw Drug Free Sport become responsible for bringing anti-doping cases to the Tribunal, legal counsel has routinely appeared in anti-doping cases. This is a change from times when NSOs were the applicants and brought proceedings and usually did not have legal representation.
- The stakes are often high for those involved in disputes. For sports organisations, the reputation and credibility of the board, administrators and selectors is often perceived to be at stake. For athletes, a selection or disciplinary matter can have career ending implications. It is therefore unsurprising that sports organisations and athletes will use the resources at their disposal to challenge decisions.
- A combination of factors create a perception within sports organisations that legal representation is important despite the messaging from the Tribunal that such representation is not necessary. The fact that Tribunal panels are headed by senior members of the legal profession, the process is court-like and adversarial in nature, and the decisions are formal and legally binding all act to create a perception amongst parties that legal representation is to the advantage of the parties concerned.
- In some cases the decision by a party to engage legal representation has caused the opposing party to also engage legal representation, even if they were not initially intending to do so. Thus, there can be something of an arms-race effect.
- Pragmatic factors also come into play. For example, in many sports organisations administrators simply do not have the time, skills or experience to undertake the work involved in applying or defending a case. Many sports are largely run by volunteers and they do not have the capacity to deal with disputes. If there are resources available, using a lawyer is therefore seen as a convenient option.

While all of the above are valid concerns, it remains the case that it is the parties that choose to use legal representation. There is little about the Tribunal's own fees or processes that add to these costs. Indeed, the Tribunal's relative efficiency acts to keep costs down. It is likely that the costs would be considerably higher if the disputes were being resolved instead within the High Court. In short, it is difficult to lay significant responsibility for the high costs involved in a small minority of cases at the door of the Tribunal. This is especially the case where parties involve multiple lawyers, or lawyers who are very expensive.

During the course of our interviews a number of suggestions were made as to how costs could be kept to a minimum. The most common suggestion was to disallow representation. However, given the high stakes sometimes involved this would be an extreme step to take. An idea with more potential is to allow greater flexibility in the Tribunal's processes, for example using a more streamlined process of arbitration for certain cases. One idea is to use a simpler arbitral process (e.g., a single arbitrator with no legal representation) where the stakes are not high or where the parties agree in the interests of cost minimisation. Another common suggestion was

to introduce a form of legal aid so that athletes could receive financial assistance to hire lawyers. We discuss this further below.

### Pro bono scheme

The Sports Tribunal established the “pro-bono lawyer” scheme in 2005 with the aim of providing parties access to high quality affordable legal representation. 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 even free basis. The Registrar offers a list of contact details of such lawyers to parties considering bringing a case.

Overall, the scheme is seen as a positive development. The fact there is a pool of lawyers with specialism in sports law who are prepared to offer services to athletes and NSOs on a free or reduced fee basis is widely viewed as a good thing in the sector. That said, a number of points made about the scheme:

- First, the term pro bono is conventionally interpreted to mean free and so is seen by some a misnomer since the scheme does not guarantee that legal assistance will be free. The use of the term to describe the scheme may create unrealistic expectations for parties.
- Second, some lawyers participating on the list have indicated that their future participation may not be sustained because of the potential volume of work. With more complex and significant cases, the income forgone can be significant. These lawyers would prefer that there was some financial assistance available to make up for the discounted fees charged.
- Third, some sports organisations have indicated that they would not use a lawyer on the pro bono list because they have their own trusted legal advisors.

Two suggestions for improvement were offered including:

- Revising the title of the scheme to avoid creating the impression of free legal advice in every instance
- Requiring participating lawyers to sign-up to some ethical guidelines and/or minimum standards (e.g. maximum fees) so as to clarify the public good nature of the referral scheme

We asked lawyers not participating in the scheme why they chose not to. Primarily their reasons related to the fact that they were practicing on a commercial basis and in some cases had developed relatively significant sports law practices. Routinely offering pro bono or discounted services was therefore seen as inconsistent with their commercial interests. That said, lawyers who work on this field are typically not solely motivated by commercial interest and, depending on the circumstances of a particular case, will reduce and or discount their fee.

## Extend legal aid to the Sports Tribunal

A common suggestion was to introduce a form of financial assistance so that athletes and/or organisations without financial resources could afford to hire lawyers. However, before considering the introduction of such a scheme, it is worth asking whether existing legal aid schemes are applicable to the Sports Tribunal.

The Legal Services Agency (LSA) currently offers civil legal aid to parties who have a legal problem but cannot afford a lawyer. Legal aid covers all legal costs and is available for many types of private disputes and other non-criminal problems that will or might go to a court or tribunal. The LSA publishes a list of tribunals for which legal aid can be obtained, but this list does not currently contain the Sports Tribunal.<sup>14</sup>

Information obtained from the LSA suggests that individuals who are party to a Sports Tribunal hearing, and who meet general eligibility criteria for legal aid<sup>15</sup>, would have a good chance of meeting the eligibility criteria for civil legal aid laid down in Section 7 (1) (e) (v) of the Legal Services Act 2000. That section states that:

**“7 Proceedings for which legal aid may be granted: civil matters**

(1) Legal aid may be granted in respect of the following civil matters: ...

... (e) in any case where the Agency considers that the case is one that requires legal representation (having regard to the nature of the proceedings and to the applicant’s personal interest) and considers that the applicant would suffer substantial hardship if aid were not granted, proceedings in-...

... (v) any administrative tribunal or judicial authority (not being a tribunal or an authority in respect of any decision from which an appeal lies to any of the bodies referred to in any of paragraphs (f) to (j)):

Determining whether a proceeding before the Sports Tribunal would be eligible for civil legal aid would therefore require establishing that:

- It is an eligible matter in an eligible forum, and
- It is a case that requires legal representation, and
- The applicant would suffer substantial hardship if aid were not granted

<sup>14</sup> The Tribunals included on the list are the Employment Relations Authority, Environment Court, Human Rights Review Tribunal, Legal Aid Review Panel, Maori Land Court, Motor Vehicle Disputes Tribunal, Refugee Status Appeal Authority, Social Security Appeal Authority, Taxation Review Tribunal, Tenancy Tribunal and the Waitangi Tribunal. Civil legal aid is not available for the disputes tribunal, immigration matters, companies or groups of people, reviews by work and income, problems with schools, universities and other educational institutions.

<sup>15</sup> Eligibility criteria include, among other things, income and asset tests.

In addition, an applicant would need to meet the general eligibility criteria for legal aid:

- The applicant is an eligible person – i.e., a natural person, and
- The applicant is financially eligible based on their income and capital, and
- The application has sufficient merit

On the face of it, a strong argument could be made that many if not all proceedings before the Sports Tribunal brought by individuals would be eligible for civil legal aid. Currently any application would need to be dealt with on a case by case basis as the LSA does not have a formal process under which a tribunal may become a recognised tribunal for the purposes of legal aid. In view of this, there would appear to be two potential ways forward to further examine the applicability of civil legal aid to Sports Tribunal cases:

- SPARC could engage with the Ministry of Justice to determine whether the Sports Tribunal could be recognised as a tribunal for which proceedings are always eligible for civil legal aid, subject to an assessment of the merits of the particular case<sup>16</sup>, and/or
- The Tribunal or other party could submit (on behalf of someone appearing before the Tribunal) an application for legal aid, which would trigger a formal decision by the LSA on whether or not such proceedings are eligible for civil legal aid.<sup>17</sup>

Clearly legal aid would not be suitable for all cases. Some matters are sufficiently significant for the parties concerned that they will demand to use highly qualified lawyers at commercial rates in excess of those paid to legal aid lawyers. Further, it is likely that parties with lawyers will continue to use their existing counsel who may not be eligible to provide legal aid funded services. Finally, some athletes will not satisfy the eligibility criteria for legal aid and it would appear that NSOs would be ineligible since the legal aid scheme is not intended to support organisations.<sup>18</sup> Legal aid should therefore be seen as complementary to private use of legal representation. We suggest SPARC consider further investigating the potential for civil legal aid to be applied to athletes for Sports Tribunal cases.

## Credibility

A key overarching question for this review is whether the Tribunal has credibility within the sport and recreation sector. Credibility is a function of many of the characteristics already discussed, notably accessibility, fairness, timeliness and affordability, and cannot realistically be analysed independently of those factors. But since the Tribunal's jurisdiction is essentially voluntary in nature, a direct measure of credibility is the extent to which sports organisations give it jurisdiction in their constitutions and rules.

<sup>16</sup> By way of comparison, this status would be similar to that applied to proceedings before the Tenancy Tribunal, Social Security Appeal Authority and adjudications under the Weathertight Homes Resolution Services Act 2002.

<sup>17</sup> The limitation of this approach is that it would not necessarily establish a wider precedent.

<sup>18</sup> Eligibility criteria include, among other things, income and asset tests.

Following the establishment of the Tribunal, SPARC made a concerted effort to encourage NSOs to amend their constitutions to provide for the Tribunal to have jurisdiction for anti-doping disputes and appeals against Board decisions. By 2005, as a result of SPARC requiring sports to give jurisdiction to the Tribunal as a condition of recognition (and therefore funding) of the NSO, 31 sports had recognised the Tribunal, 15 were progressing towards recognition, and 6 sports had made limited progress.

During our research we have not been able to obtain a reliable up-to-date record of which NSOs have given jurisdiction to the Tribunal. However, we reviewed a sample of constitutions for sports that, in 2005, were either progressing towards recognition of the Tribunal or had made limited progress. Of those we reviewed, the majority of constitutions gave jurisdiction to the Tribunal for anti-doping infractions and for certain types of decisions made by the Board and/or an internal tribunal. Anecdotally, there would appear to be only a very small number of sports that have not given the Tribunal jurisdiction, although it is notable that three of those sports are major New Zealand sports (Rugby, Cricket and Soccer).

Since one of the reasons the Tribunal has wide penetration in the sports sector is related to conditionality of SPARC funding, we also asked interviewees whether they believed the Tribunal was credible and whether, if they had a completely free choice, they would choose to use the Tribunal for dispute resolution purpose. With one exception, the answer was a definitive yes. While the Tribunal had its fair share of sceptics when it was established, and the Yachting New Zealand case<sup>19</sup> damaged the Tribunal's credibility early on, the general feeling now is that the Tribunal has become an important part of the landscape in the sport and recreation sector.

The Tribunal now has a strong level of support amongst the parties we spoke to, although interviewees also cautioned that the Tribunal needs to remain focussed on delivering decisions in a timely and cost effective manner. By contrast neither the courts nor CAS would enjoy the confidence of the sector. While not perfect, the Tribunal is seen as a far better model for New Zealand than the alternatives.

The confidence that NSOs and the NZOC have in the Tribunal is an important achievement since, as was suggested to us, it could be argued that sports organisations would be better off without the Tribunal.<sup>20</sup> Indeed, the Tribunal has challenged some NSOs over the course of its history and its decisions have, in some cases, effectively required sports to amend their constitutions, policies, regulations and rules and to improve their handling of selection and disciplinary matters. That NSOs have been challenged in this way and retain confidence in the Tribunal goes a long way to suggesting that the objective of credibility has been met.

<sup>19</sup> The case, which involved Olympic yachting selections in 2004, was successfully appealed to the International Court for Arbitration in Sport, denting the early credibility of the Tribunal. A number of stakeholders at the time questioned the decision-making ability of the Tribunal and its appropriateness as a body for sport disputes resolution.

<sup>20</sup> The argument, as put to us, is that in the absence of the Tribunal there are very few viable means for members to challenge decisions outside of sports organisations own processes.



## Appropriateness of jurisdiction

The vast majority of cases coming before the Tribunal relate to two jurisdictional areas:

- Anti-doping (54%)
- Appeals against decisions made by a National Sporting Organisation (NSO) or the New Zealand Olympic Committee (46%)

It is notable that the ability of parties to bring *sports-related* matters before the Tribunal by the agreement of the parties involved, which was introduced in the Sports Anti-Doping Act 2006, has not been used.<sup>21</sup> Nor has the SPARC board referred matters to the Tribunal for resolution, as provided for in the Act.

Interviewees were asked about their views of the appropriateness of the Tribunal's jurisdiction. In general most respondents are comfortable with the scope of the Tribunal's jurisdiction and believe it does a good job of:

- Allowing sports to determine the boundaries of the Tribunal's jurisdiction within their own constitutions rather than applying a one size fits all model through legislation
- Not crowding out the ability of sports organisations to put in place their own internal dispute resolution procedures
- Containing Tribunal cases to reasonably significant national-level matters

Since the Tribunal's establishment, one in every 9 cases has been dismissed on jurisdictional grounds. Broadly these grounds relate to:

- Cases brought outside the time limits allowed in the sport's constitution, rules and regulations (4)
- The constitution of sports did not give jurisdiction to the Tribunal in relation to the specific matter (2)
- Matters not sufficiently sports-related<sup>22</sup> (2)
- Internal dispute resolution procedures within the sport not being exhausted (1)

A number of stakeholders indicated that they see potential for an increasing number of sports-related disputes that may not necessarily fit comfortably within the jurisdiction of the Tribunal. For example, contractual related disputes (e.g. conflicts between contracts regarding sponsorship) and sub-national disputes between administrative bodies, for example between clubs or regional committees.

<sup>21</sup> The requirement that both parties must agree to bring a sports-related matter before the Tribunal represents a fairly tough test since the parties cannot agree to resolve the matter under dispute and, therefore, quite likely also cannot agree on a means for resolving the issue.

<sup>22</sup> This relates to the tribunal's former jurisdiction prior to the passage of the Sports Anti-Doping Act 2006.

Arguably, there is scope within the Tribunal's existing jurisdiction for such matters to come before the Tribunal. For example, sports organisations own constitutions and rules could provide for such disputes to be heard by the Tribunal, providing they relate to appeals against decisions by the national body. Further, most if not all of the above examples of disputes could arguably be heard by the Tribunal as *sports-related* matters, subject to: (a) the parties to the dispute agreeing to bring the matter before the Tribunal; and (b) the Tribunal agreeing to hear the dispute so brought.

That said, it might be rare that parties can agree to bring a dispute to the Tribunal, especially when positions are entrenched, raising the question of whether the Tribunal's jurisdiction should be statutory rather than contractual. Generally, people we interviewed considered that the contractual basis for the Tribunal's jurisdiction was appropriate and did not see a pressing need to alter it. Indeed, many sports organisations would see this as an infringement of their right to determine how to govern their sport.

We asked stakeholders whether they thought the jurisdiction of the Tribunal should be expanded to include sub-national disputes and other matters such as employment-related disputes. Again, interviewees largely considered the existing jurisdiction as appropriate and generally permissive. For example, there is no reason why a sub-national dispute could not be brought to the Tribunal if the parties agreed. Some interviewees were worried that a broader jurisdiction might open up the Tribunal to a large number of unmeritorious appeals.

Finally, we asked interviewees whether they thought the words 'sports-related' needed to be defined to clarify that aspect of the Tribunal's jurisdiction. Since there have been no appeals under that jurisdiction to date, and since any matter would require the agreement of all parties and the Tribunal, interviewees did not see a pressing need to define the term.

### Expanded Anti-Doping Jurisdiction

A specific focus for us was how the Tribunal's expanded anti-doping jurisdiction is working and, in particular, whether the Tribunal requires additional resources or expertise to manage this expanded jurisdiction and whether the Tribunal receives adequate evidence from Drug Free Sport to fulfil this role.

It is worth noting that the expanded anti-doping jurisdiction only makes a material difference to the role of the Tribunal in two areas:

- The first is for anti-doping cases that are defended by the athlete. This is because the biggest change in jurisdiction relates to the Tribunal's new role in determining whether a violation has occurred, which was previously the role of Drug Free Sport and subject to appeal to the District Court. Since there have only been a small number of cases where the question of whether a violation has occurred has been substantively challenged by the defendant, the expanded jurisdiction has not had a significant impact on the workload of the Tribunal. Indeed, the number of doping cases coming before the Tribunal has declined

every year since 2006 and, for the 9 months to March 2009, only 2 doping cases had come before the Tribunal.

- The second relates to applications for provisional suspension by NSOs against athletes who have failed a doping test. These cases impact on the Tribunal because the matters need to be heard urgently, typically within 24-36 hours. The ability to form a panel and hold the hearing at short notice has the potential to tax the Tribunal in future although to date this has been manageable.

The Tribunal appears to have adequate capacity to undertake its expanded role. The Tribunal Chair believes that the evidence presented by Drug Free Sport is adequate for the Tribunal to fully perform its role. Indeed, he observes there has been improvement in evidence since Drug Free Sport became responsible for 'prosecuting' cases because the evidence previously prepared by NSOs was of variable quality. The Chair considers Drug Free Sport to be well organised and engages experienced legal representation for complex cases while avoiding this for routine (usually cannabis) cases. The Tribunal has recently adopted a policy of automatically adding relevant NSOs as interested parties in anti-doping cases, which further reduces risks of gaps in the evidence base.<sup>23</sup>

Most stakeholders we spoke to are very positive about the changes to the anti-doping jurisdiction and there is widespread agreement that the principles underpinning the new approach are a big improvement on the previous situation. NSOs previously struggled to deal with anti-doping cases, both in terms of the technical requirements of compiling evidence and bringing a case, and in managing relationships with the athletes concerned. Now that Drug Free Sport has responsibility for collecting evidence and acting as 'prosecutor', sports organisations are merely interested parties and are free to play a more neutral role or, if warranted, a supportive role for the athlete concerned. The changes are widely viewed as having removed a potential conflict of interest between Drug Free Sport's testing role and their former role of determining whether a violation had occurred.

Athletes are sometimes reticent to participate in anti-doping hearings especially for cannabis use. This is to their detriment since if an athlete can show that use of a specified substance (e.g. cannabis) was not intended to be performance enhancing then the penalty can be as minor as a warning and reprimand. By contrast, where an athlete cannot show that use of the specified substance was not intended to be performance enhancing – which by definition is the case when they do not attend the hearing – then the sanction is an automatic 2 year band. Because of the reticence of athletes to engage, NSOs and the Registrar of the Tribunal often need to persuade athletes into participating in the hearing.<sup>24</sup>

<sup>23</sup> Sometimes sports organisations are privy to information relevant to a case that Drug Free Sport NZ is unaware of.

<sup>24</sup> The Registrar has generally been very successful in doing so.

The only area in relation to jurisdiction that would appear to require further development relates to provisional suspension. The issue is that, in the event the alleged violation is upheld, provisional suspension of an athlete brings forward the date of suspension and, therefore, the date on which the suspension is lifted, which is advantageous in terms of the athlete returning to sport. As the responsibility for applying for provisional suspension rests with the sport, there is a need for sports and the Tribunal to act quickly when notified of a doping infraction. The Tribunal is well aware of this issue and has recently introduced a form for applying to the Tribunal for a provisional suspension and amended its rules to clarify the process of applying for provisional suspensions. Drug Free Sport NZ and/or SPARC may need to undertake some awareness raising with NSOs to highlight this issue and the process to be followed for provisional suspensions when sports organisations are notified of an alleged doping infraction.

### Overall performance of the Tribunal

In forming a view about the overall performance of the Tribunal it is important to bear in mind that the Tribunal cannot be looked at in isolation from the broader system of dispute resolution of which it forms part. This system encompasses a number of layers that disputes may escalate through. At the bottom of the pyramid are the informal dispute resolution mechanisms that operate within sports organisations (e.g., the peacemakers and advocates who work within sports organisations and smooth over disputes). The next layer up is the formal dispute resolution mechanisms within sports organisations, which themselves are often multi-layered and typically involve an independent internal tribunal. Next comes the external dispute resolution mechanisms, which range from formal mediation through to arbitral mechanisms such as the Sports Tribunal and the International Court of Arbitration in Sport.

Given that the Sports Tribunal was intended to be an ultimate appeal body, and not a substitute for NSOs own dispute resolution processes, there are few obvious points of comparison by which the overall performance of the Tribunal can be judged. Nevertheless it is important to consider the performance of the Tribunal relative to the next best alternative. There were different views amongst interviewees as to the most appropriate alternatives, although two possibilities were commonly mentioned:<sup>25</sup>

- The first alternative is the situation that existed prior to the establishment of the Tribunal, whereby the decisions of sports organisations could be challenged in the courts of general jurisdiction, usually by way of judicial review. This option is viewed as fraught for a number of reasons:
  - The courts are not particularly interested in resolving sporting disputes and are perceived as trying to discourage such matters from coming before them

<sup>25</sup> Other possibilities, such as a Sports Ombudsman, were not raised by interviewees. In both Australia and the UK there have been proposals, from time to time, to establish a Sports Ombudsman. However, the general trend internationally appears to be towards the creation of specialist sports mediation and arbitration bodies. It is noteworthy that similar specialist tribunals have recently been established in the United Kingdom and Germany (Personal communication with Paul David, 2009).

- The courts are already overloaded and the timeframes for hearing matters are typically long, with little scope to deal with matters that require urgency such as anti-doping and selection matters. Prior to the establishment of the Tribunal, when sports-related matters went before the courts there were typically long delays
- The scope of judicial review is limited to the legality of a decision and, in the case of sports disputes, the grounds for determining legality are typically provided by the constitutional provisions and related regulations and rules of sports organisations. While judicial review may consider the reasonableness of a decision, it is not a review of the decision on its merits, and so is limited in scope
- The courts are extremely formal and intimidating for athletes and sports organisations alike
- The costs of court proceedings are likely to be considerably higher, on average, than the costs associated with a Tribunal hearing
- The courts would be likely to adopt a different policy to the Tribunal with respect to the allocation of costs, and would be perceived as more punitive in that regard
- Because the number of non-doping cases would likely be fewer, there would be little scope for the development of case law and consistency of decision making
- The second alternative is for sports organisations to give jurisdiction to the International Court for Arbitration in Sport (CAS). A number of interviewees have commented that CAS would not be suitable for a variety of reasons. For example, it was felt that many sporting matters were so important to New Zealand sports organisations that it would be inappropriate to devolve decisions to an international body. CAS has higher filing fees than the Tribunal and lawyers active in both jurisdictions believe that CAS is more costly on average than the Sports Tribunal. Anecdotally, there is a significant concern within the Australian sports sector about the costs of CAS. Other concerns about CAS relate to non-transparency as, until recently, it did not publish its decisions, making it difficult for the sector to learn from jurisprudence.

In sum, the general view of respondents is that either of the two alternative described above would be significantly inferior to the current arrangement. Overall, there can be no doubt that the Tribunal is meeting its original policy intent, and that policy intent remains at least as relevant today as it did at the time of its establishment. The Tribunal is now firmly embedded in the sport and recreation sector and the only real questions relate to how its role can be enhanced.

### International comparison

As part of this research, we undertook a succinct and targeted review of sports dispute resolution bodies in Australia, Canada, Ireland and the United Kingdom. For each country, based on readily available information, we compared their jurisdiction, organisational structure, funding and administrative arrangements, accessibility, procedures and caseload. While the

comparison holds few direct implications for the Sports Tribunal, because of the different country contexts within which each body operates, there are some interesting patterns and differences across the countries.

To begin with the bodies take a wide range of forms (e.g. independent not-for-profit incorporated society (South Australia), limited liability companies (UK), subsidiary companies of sporting federations (Ireland), and statute-based non-governmental organisations (NZ and Canada)). Most of the organisations are governed by boards and the New Zealand Sports Tribunal stands out as unusual in this regard.

The funding situation is similarly diverse. All models involve some form of fee for service (although not universally for all types of disputes). However the balance of funding from members, users of services and the government varies. It is not possible to get an indication of overall costs or the level of subsidy from available information. Nor is it possible to compare the costs to parties since most jurisdictions allow legal representation and information on these costs is not collected. Filing fees are generally relatively low across the board. Some bodies charge for the time of mediators and adjudicators whereas other bodies do not charge directly for these services, other than the filing fee which may include some allowance for this.

The scope of the disputes handled by the bodies is reasonably similar although there are differences. It is relatively common for eligible disputes to be restricted to national issues, although some jurisdictions have an extended jurisdiction. For example, Sports Resolutions in the UK is open to the resolution of disputes at any level (e.g. elite, recreational or professional; international, national, regional, local). Some of the bodies handle anti-doping matters while in other countries there is a separate body that handles such matters. Selection and disciplinary matters are commonly dealt with across all of the bodies. For some bodies, the jurisdictions are wider and include additional matters such as harassment, employment-related matters, commercial matters including sponsorship and disputes about player agreements.

All of the bodies require the agreement of parties before a matter can be heard. This can be on a case by case basis or by virtue of jurisdiction being given in the constitutions, rules and policies of sports organisations. Canada and New Zealand both provide some a statutory basis for their dispute resolution bodies but the jurisdiction of the relevant bodies in both countries is nevertheless voluntary. In both countries sports funding policies have been used to strongly encourage the use of their respective dispute resolution bodies by NSOs.

Each of the international bodies offer a broader range of dispute resolution services than the New Zealand Sports Tribunal. For example, some bodies provide independent arbitrators to sports organisations for use in internal tribunals. The provision of education and policy advice is also a common feature and, in the case of the Canadian body, this role is heavily emphasised and well resourced. All of the bodies offer mediation services as well as independent external arbitration.

Most of the bodies, with the exception of the South Australian body, have well mapped out and reasonably standardised processes and procedures. In the South Australian case, the procedure to be followed is spelled out in the constitutions and policies of the relevant sports organisation. When it comes to the model of arbitration, a single arbitrator appears to be more common than a panel of arbitrators although most bodies appear to offer a mix of single or 3 person panels depending on the policies and/or preferences of the parties. Most bodies use an adversarial approach to arbitration although there is variation. For example, the UK approach to arbitration is determined by the contractual clause under which it is being conducted and generally the approach tends towards inquisitorial rather than adversarial. Legal representation is generally permitted in arbitration for all bodies but information on the prevalence of legal representation is not available.

## What factors underpin the Tribunal's effectiveness?

This section briefly summarises some of the key factors that underpin the Tribunal's effectiveness:

### Membership and panel composition

There is wide recognition of the very high calibre of members on the Tribunal and a great deal of respect for the role that Tribunal members play in the sector. Membership of the Tribunal is seen as a privilege and significant responsibility, and it is because of the standing of the body that it has been able to recruit members of such high calibre.

A number of interviewees commented that they were impressed by the skill and empathy of Tribunal members and their willingness to “bend over backwards” to ensure that matters are heard and decided as quickly as possible. The Chair has worked hard to ensure that members keep up to date with changes, for example in relation to anti-doping matters. There is ongoing communication between members which helps to develop a body of specialist knowledge and consistency of practice.

There is generally a high degree of satisfaction with the composition of Tribunal panels. The mix of members with legal and sports administration backgrounds and former athletes is seen as a very positive feature of the Tribunal. Stakeholders have commented at the different and complementary perspectives that members with different backgrounds and experiences bring. Particularly for women athletes, the presence of a woman on the panel is valued.

A number of people have commented that the questions of sporting members are sometimes more direct, incisive and challenging for parties than those of the legal members, suggesting the sporting members are equipped with the skills they need to get to the heart of the matters. At the same time it has been suggested that at times sporting members have struggled to follow some of the legal arguments put to the Tribunal and, since most decisions hinge on matters of

legal interpretation, it is important that a legally qualified member take a leadership role in relation to the proceedings.

In view of the occasional delay caused by time pressures, particularly because of the busy schedules of the Chair and Deputy Chairpersons, some interviewees queried whether additional legally qualified members are required. The Chairperson believes that, for the current caseload, the number of Tribunal members is sufficient, and noted that in addition to the Chair and two deputy chairs there is a fourth legally qualified member who can chair panels if required. Further, the Tribunal is currently at its statutory maximum number of members, so adding a further legal member would either require the replacement of a non-legally qualified member, thus changing the composition of the membership, or a change to the Act. We suggest keeping the Tribunal membership under review but see no urgent need for change.

## Flexibility of process

A major asset of the Tribunal is its ability to hear a wide range of disputes, from very serious through to quite minor, with a process that is tailored to the needs of the individual case and the parties involved. Examples of flexibility include:

- Suggesting mediation to parties and, on occasion, providing this as a service to parties
- Allowing parties to extend deadlines, particularly unrepresented athletes, in order to allow time to compile necessary evidence
- An ability to hear time-critical cases at very short notice, including sometimes within 24 hours and over the weekend if necessary
- Its willingness to hear matters by tele-conference to minimise cost and inconvenience

Such flexibility directly contributes to the timeliness and efficiency of the Tribunal. These outcomes have been achieved without compromising the integrity of the decision-making process.

## Transparency

The Tribunal is highly transparent and publishes its decisions. Further, the decisions are clear and can be understood without detailed legal knowledge, while at the same time being rigorous. This means that that body of decisions is highly accessible to sports organisations, athletes and the general public. The summaries and media releases are also valued by people within the sector as maintaining awareness of the Tribunal and providing basic information on the nature of cases heard and the decisions flowing from them.



## Leadership

The Chair of the Tribunal is widely credited with guiding the Tribunal to the position of credibility it enjoys today. A number of people have commented that because of the strong leadership of the Chair, the Tribunal has become more efficient and effective over time. Reflecting this, a number of interviewees have questioned whether succession is being adequately planned for in relation to the Chair's role.<sup>26</sup>

## Registry function

A number of interviewees commented positively on the performance and efficiency of the registry function. The Registrar has been variously described as approachable, responsive, efficient, accessible and helpful to Tribunal members and parties alike. The timeliness of the Tribunal process is in no small part due to the organisational abilities of the Registrar, who is skilled at assembling Tribunal members and parties for hearings at short notice and advising on the process to be followed. The Registrar is regarded as very proactive in dealing with enquiries from potential parties and advising them on their options for dispute resolution.

A number of positive developments have been led by the Registrar including the development of an information guide, upgrading of the website, the development of decision summaries and media releases, and online publication of statistics on case load. The Registrar also played a key role in the introduction of the "pro bono lawyer" scheme.

The role is more than simply an administrative role. The Registrar is a qualified lawyer and contributes legal research in support of Tribunal decisions and from time to time acts as a sounding board for Tribunal members.

## Possible areas for improvement

Given the generally positive findings of this review, we have identified relatively few options for improvement. However, we believe there may be opportunities to improve affordability, primarily through various measures to discourage excessive use of lawyers and for a strengthened educative role for the Tribunal and SPARC.

## Improving affordability

Our research has found that, in a small number of cases, the legal costs for parties have been as high as \$50,000 for a single case. For any NSO or athlete this represents a significant sum of money that could be utilised for better purposes.

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<sup>26</sup> One Tribunal member indicated that transition to another Chair would not be difficult and a transitional position could easily be created within the existing Tribunal membership to accommodate this.

Short of restricting parties' rights to obtain legal representation, which would be an extreme step to take, the levers available to the Tribunal to reduce the costs born by parties are limited. It is the parties after all who are responsible for choosing to use legal representation. We have concluded that there is nothing about the Tribunal's own fees or processes that contribute to these costs and, indeed, the Tribunal's relative efficiency acts to keep costs down. It is likely that any feasible alternative to the Tribunal, such as judicial review in the High Court or an appeal to the International Court for Arbitration in Sport, would be considerably more expensive.

Clearly it is desirable for the Tribunal to aim to prevent costs from escalating where it is able to. While the scope to do this may be relatively limited, there are a number of options that could be considered to mitigate cost:

- Encouraging greater use of mediation as an alternative to, or preliminary step before, arbitration. This is already in train and the Tribunal's rules and procedures have been revised to more explicitly provide for this step. This could be supported by the development of a pool of qualified mediators experienced in sports law.
- Introducing further flexibility into the Tribunal process, for example using a simpler arbitration processes and disallowing legal representation where the stakes are not high or where the parties agree
- Discouraging parties from using legal representation at pre-hearing stage where, in the eyes of the Tribunal, such representation would be unnecessary and excessive
- Advocating for an extension of civil legal aid to Sports Tribunal cases

## A stronger educative role

Interviewees generally considered that more could be done to communicate and educate NSOs about good practice in relation to selection, discipline and dispute resolution. The stock of Tribunal decisions represents a body of knowledge that contains valuable lessons for sports organisations and athletes. Interviewees considered there was a role for the Tribunal or SPARC to communicate these lessons to sports organisations and, further, to provide advice and tools to encourage best practice. It was suggested, for example, that there may be scope to develop templates, for example on selection policies, based on good practice that could assist sports to put in place robust policies, rules and regulations. This would be similar to the role played by the Dispute Prevention Resource Centre at the Sport Dispute Resolution Centre of Canada, although it is noteworthy that this role is kept separate from its role as a Tribunal. In our view, this educative role would more appropriately be carried out by SPARC because the Tribunal's credibility to independently determine disputes could be put at risk were it to issue guidance on best practice.

In addition, interviewees consider the Tribunal could play a greater role in raising awareness within the sector about its role and how it carries out that role, in order to enhance accessibility. The Tribunal Chair indicated that he did not see it as his role to drum up business for the

Tribunal but by the same token it would be of concern if the Tribunal was not used because of a lack of awareness. Thus a balance needs to be struck between awareness raising and outright promotion. One option would be to make greater use of speaking opportunities at appropriate gatherings, such as SPARC's annual sport sector conference and the NSO CEO forum. The Tribunal Chair has no objection to members of the Tribunal speaking at annual meetings and other relevant fora to explain the workings of the Tribunal.

## Appendix 1: Key questions

The full list of questions considered as part of this research is as follows:

Key Questions	Sub-questions
1. What are the current dispute resolution needs of the sport and physical recreation sector?	<ul style="list-style-type: none"> <li>Is there a need for the Tribunal to be more accessible to recreation organisations and persons involved in physical recreation?</li> </ul>
2. Do sport and physical recreation organisations make adequate use of the Tribunal?	<ul style="list-style-type: none"> <li>How many sport and recreation organisations provide for appeals to the Tribunal in their rules?</li> <li>What proportion of disputes is dealt with at organisational level and do not proceed to the Tribunal?</li> </ul>
3. Do sport and physical recreation organisations (including NZOC) do enough to make athletes and other persons aware of sports disputes resolution procedures and do they make this information easily accessible and understood?	<ul style="list-style-type: none"> <li>Do NSOs do enough to make their members sufficiently aware of dispute resolution procedures set out in their own rules?</li> <li>Is this information easily accessible to members? (often there are tight time-frames to appeal in NSO rules and members are not aware of that)</li> <li>Do NSOs act promptly in relation to disputes raised by their members and provide the necessary information to members so that they can adequately act on these disputes in a timely manner?</li> <li>Do NSOs and NZOC make athletes sufficiently aware in an understandable manner of procedures to appeal non-nominations or selection for Olympics?</li> </ul>
4. Is the Tribunal, as currently established under the Sports Anti-Doping Act, able to meet the original policy intent behind the establishment of the Sports Disputes Tribunal in 2003?	<ul style="list-style-type: none"> <li>How quick is the Tribunal in resolving disputes?</li> <li>Is it resourced sufficiently to allow disputes to be heard and resolved in a speedy manner?</li> <li>Should there be more members?</li> <li>Is its statutory mandate sufficient to meet the needs of the sport and recreation sector?</li> <li>Does the jurisdiction of the Tribunal need to be expanded to include disputes not presently allowed for or only allowed for by agreement of the parties?</li> <li>Should there be statutory appeal rights and processes for some matters so that the jurisdiction of the Tribunal to hear these matters does not depend on them being in rules/constitution of the NSO?</li> <li>Does the term "sports-related" in the Sports Anti-Doping Act need to be defined?</li> <li>Should the Tribunal have the power to compel parties to attend mediation before commencing the adjudication process?</li> </ul>

Key Questions	Sub-questions
5. What costs are involved in Tribunal proceedings?	<ul style="list-style-type: none"> <li>• What are the costs for parties to proceedings in preparing Tribunal cases?</li> <li>• What costs flow from Tribunal cases?</li> <li>• Have any recent Tribunal decisions created any precedents that may increase costs or reduce accessibility?</li> <li>• Are there any trends in costs flowing from recent Tribunal hearings or changes in the way proceedings are brought before the Tribunal?</li> </ul>
6. Is the Tribunal's pro bono legal scheme effective?	<ul style="list-style-type: none"> <li>• What use is made of the pro bono scheme?</li> <li>• Have parties using the scheme found it to be beneficial?</li> <li>• Has the Tribunal's pro-bono scheme assisted in the resolution of sports disputes even if they do not formally make it to the Tribunal?</li> <li>• Does the pro bono scheme need expanding by recruiting more lawyers, by funding it, or by establishing a broader scheme that is available for matters that are not before the Tribunal?</li> </ul>
7. How is the Tribunal's expanded anti-doping jurisdiction working?	<ul style="list-style-type: none"> <li>• Does the Tribunal require any additional resourcing or expertise to manage this expanded jurisdiction?</li> <li>• Is the Tribunal receiving adequate evidence from Drug Free Sport NZ to allow it to fulfil its role adequately?</li> </ul>
8. Does the Law Commission report on tribunals have any implications for the Tribunal?	

## Appendix 2: Interviewees

Name	Title
Alan Cressey	Board member, Motor Cycling New Zealand
Barry Maister	Secretary General, New Zealand Olympic Committee
Barry Paterson	Chairperson, Sports Tribunal
Bert Richardson	Legal counsel for Liza Hunter-Galvan
Bill Nash	Legal counsel for Liza Hunter-Galvan
Brent Ellis	Registrar, Sports Tribunal
Bruce Corkill	Legal counsel for Motor Cycling New Zealand
Carol Quirk	Member, Sports Tribunal
Dale Eagar	Former CEO for Softball New Zealand
Dave Adams	Manager of Stakeholder Relationships, SPARC
Graeme Steel	Chief Executive, Drug Free Sport NZ
Ian Hunt	President, Australia-New Zealand Sports Law Association (ANZSLA); Lawyer on pro bono list
Jayne Kernohan	General Manager, Anti-Doping Programme, Drug Free Sport NZ
John Wells	Chairperson, SPARC
Kevin Bailey	Football Operations Manager, New Zealand Rugby League Inc
Liza Hunter-Galvan	Athlete
Maria Clarke	Legal counsel for Athletics New Zealand
Mark Stewart	Former President, New Zealand Federation of Body Builders
Michael Smyth	Lawyer on pro-bono list, Legal counsel for Swimming New Zealand
Mike Kernaghan	Athletes Commission; Chief Executive Officer, Badminton New Zealand
Nick Davidson	Deputy Chairperson, Sports Tribunal
Noel Curr	Official
Paul David	Sports lawyer, Legal counsel for Athletics New Zealand, Drug Free Sport, Kane Radford

Name	Title
Peter Hobbs	Legal counsel for Cindy Potae
Peter Miskimmin	CEO, SPARC
Ron Cheatley	Member, Sports Tribunal
Scott Newman	CEO, Athletics New Zealand
Tim Castle	Member, Sports Tribunal

## Appendix 3: Legal Representation

2009 summary table:

Type of case	No. of cases	No. of cases where legal representation	No. of cases where non pro-bono lawyers appeared	No. of cases where pro-bono lawyers appeared
Doping	3	3	3	2
Selection appeal	0	0	0	0
Disciplinary/ other appeal	1	1	1	0
<b>TOTALS</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>2</b>

2008 Summary Table

Type of case	No. of cases	No. of cases where legal representation	No. of cases where non pro-bono lawyers appeared	No. of cases where pro-bono lawyers appeared
Doping	7	3	2	2
Selection appeal	4	4	3	2
Disciplinary/ other appeal	5	5	5	0
<b>TOTALS</b>	<b>16</b>	<b>12</b>	<b>10</b>	<b>4</b>

2007 Summary Table

Type of case	No. of cases	No. of cases where legal representation	No. of cases where non pro-bono lawyers appeared	No. of cases where pro-bono lawyers appeared
Doping	12	4	2	2
Selection appeal	0	0	0	0
Disciplinary/ other appeal	4	2	0	2
Mediation	1	1	0	1
<b>TOTALS</b>	<b>17</b>	<b>7</b>	<b>2</b>	<b>5</b>



2006 Summary Table

Type of case	No. of cases	No. of cases where legal representation	No. of cases where non pro-bono lawyers appeared	No. of cases where pro-bono lawyers appeared
Doping	14	4	2	2
Selection appeal	4	4	4	3
Disciplinary/ other appeal	4	4	3	4
<b>TOTALS</b>	<b>22</b>	<b>12</b>	<b>9</b>	<b>9</b>

2005 Summary Table

Type of case	No. of cases	No. of cases where legal representation	No. of cases where non pro-bono lawyers appeared	No. of cases where pro-bono lawyers appeared
Doping	12	3	2*	2
Selection appeal	1	1	0	1
Disciplinary/ other appeal	2	1	1	0
<b>TOTALS</b>	<b>14</b>	<b>5</b>	<b>3</b>	<b>3</b>

2004 Summary Table

Type of case	No. of cases	No. of cases where legal representation	No. of cases where non pro-bono lawyers appeared	No. of cases where pro-bono lawyers appeared
Doping	4	3	3	0
Selection appeal	2	1	1	0
Disciplinary/ other appeal	0	0	0	0
<b>TOTALS</b>	<b>6</b>	<b>4</b>	<b>4</b>	<b>0</b>

Note: Pro-bono lawyer scheme not established in 2004.

2003 Summary Table

Type of case	No. of cases	No. of cases where legal representation	No. of cases where non pro-bono lawyers appeared	No. of cases where pro-bono lawyers appeared
Doping	1	0	0	0
Selection appeal	0	0	0	0
Disciplinary/ other appeal	0	0	0	0
<b>TOTALS</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>

Legal Representation Summary Table for 2003 –2009

Type of case	No. of cases	No. of cases where legal representation	No. of cases where non pro-bono lawyers appeared	No. of cases where pro-bono lawyers appeared
Doping	53	20	14	10
Selection appeal	11	10	8	6
Disciplinary/ other appeal	16	13	10	6
Mediation	1	1	0	1
<b>TOTALS</b>	<b>81</b>	<b>44</b>	<b>32</b>	<b>23</b>

## Appendix 4: International Comparison

Table 4: International Comparison - Jurisdiction

Country and organisation	Eligibility	Scope of disputes	Decisions / Appeals/ Enforcement
<p><b>Australia</b></p> <p>State Sport Dispute Centre (SSDC) in South Australia</p>	<p>Members of Sport SA who enter into a Memorandum of Agreement with SSDC and ensure that their rules and by-laws are consistent with the process of the SSDC are eligible to use the service. There are currently 34 members.</p> <p>Categories of membership include:</p> <p><u>Full Membership</u> is available to:</p> <ul style="list-style-type: none"> <li>• All State Sporting Organisations</li> <li>• Significant umbrella or sporting industry bodies</li> </ul> <p><u>Associate Membership</u> is available to:</p> <ul style="list-style-type: none"> <li>• Significant sporting organisations not recognised as the state body</li> <li>• Commercial organisations involved in or associated with sport or the sporting industry</li> </ul> <p>Once sports are members, whether arbitration is voluntary or mandatory is determined by members' constitutions, policies and procedures.</p>	<p>The Centre can handle a diverse range of disputes, including, but not limited to, the following:</p> <ul style="list-style-type: none"> <li>• Issues relating to disciplinary hearings, drugs in sport, selection/non-selection for ether teams/squads or in appointment of coaches/managers and officials</li> <li>• Member complaints of harassment, equal opportunities and discrimination or similar grievances under Member Protection Policy or volunteering screening</li> <li>• Disputes in the workplace between colleagues, or between staff and management, or between staff and the Board</li> </ul>	<p>Arbitrator decisions are binding. Parties are compelled to adhere to decisions.</p> <p>In terms of appeals from the SSDC, parties are only able to pursue the matter through the courts, which is always available to them.</p> <p>There could also be an appeal against the process in terms of natural justice.</p> <p>The policy on publication of arbitration decisions is determined by the member of Sports SA who engaged the services of SSDC, while the principle of confidentiality applies to mediations between parties.</p>

Country and organisation	Eligibility	Scope of disputes	Decisions / Appeals/ Enforcement
<p><b>Canada</b></p> <p>Sport Dispute Resolution Centre of Canada (SDRCC)</p>	<p>All members of the Canadian sport community who are involved in a dispute with a national sport organisation (NSO) or a multisport organisation (MSO) subsidised by Sport Canada are eligible to use the dispute resolution services of the SDRCC. The types of members include:</p> <ul style="list-style-type: none"> <li>• Athletes;</li> <li>• Coaches;</li> <li>• Officials;</li> <li>• Affiliated sport organisations;</li> <li>• Managers and administrators;</li> <li>• Volunteers;</li> <li>• and any other Person as defined by the Canadian Sport Dispute Resolution Code.</li> </ul> <p>Disputes involving international organisations or disputes at the provincial, municipal and local levels currently fall outside the jurisdiction of the Dispute Resolution Secretariat. The SDRCC is investigating whether to expand its services to sport organisations not subsidised by Sport Canada, such as provincial sport organisations, colleges, and universities.</p> <p>Mediations are always voluntary. Arbitrations can be voluntary, but are also mandatory under specific circumstances. The Government of Canada, under the Funding Policies and Terms of Sport Canada's Sport Support Program, mandates as a condition of funding for national organisations that these organisations make accessible, to their athletes and coaches, the dispute resolution services of the SDRCC. Those funded organisations are required to have an internal appeal process which needs to be exhausted or, if both parties agree, waived prior to go before the SDRCC.</p>	<p>Decisions rendered by a national sport organisation (NSO) or, multisport organisation (MSO) affecting its members can be appealed before the SDRCC.</p> <p>The most common type of disputes filed with the SDRCC relate to:</p> <ul style="list-style-type: none"> <li>• National team selection or selection to an international event;</li> <li>• Athlete assistance program funding;</li> <li>• Doping violation assertions;</li> <li>• Eligibility;</li> <li>• Discipline;</li> <li>• Harassment;</li> <li>• Interpretation of an agreement;</li> <li>• Field of play decision;</li> <li>• Sponsorship.</li> </ul>	<p>The arbitrator's decision is final and binding. The only exceptions concern decisions of the Doping Tribunal, which can be appealed either to the Court of Arbitration for Sport or to the Doping Appeal Tribunal, as applicable.</p> <p>In agreeing to arbitration, parties waive their rights to request further or alternative relief or remedies from:</p> <ul style="list-style-type: none"> <li>• The courts of any provincial or federal jurisdiction of Canada;</li> <li>• The domestic courts of any country;</li> <li>• Any international court or any other judicial body to which an appeal may be otherwise made.</li> </ul> <p>If one of the parties fails to comply with the agreement or decision, the injured party can ask a court to confirm (ratify) it. When the court confirms (ratifies) the agreement or decision, it becomes enforceable, just as if it had been handed down by the court itself.</p>

Country and organisation	Eligibility	Scope of disputes	Decisions / Appeals/ Enforcement
<p><b>Ireland</b></p> <p>Just Sport Ireland (JSI)</p>	<p>Voluntary &amp; Mandatory</p> <ol style="list-style-type: none"> <li><b>Mandatory:</b> Claimants can use JSI if their sport federation, governing body, club, association or other sports-related body provides for the resolution of a dispute under the JSI Arbitration rules, or by JSI or where resolution for JSI is provided for in a contract etc.</li> <li><b>Voluntary:</b> Alternatively, where resolution of a dispute is not provided for in the rules of a sports-related body, parties to a sports related dispute may elect to submit the dispute to JSI provided all parties to the dispute are in agreement</li> </ol>	<p>The range of disputes heard include:</p> <ul style="list-style-type: none"> <li>• Selection</li> <li>• Registration issues</li> <li>• Inter National Governing body, Branch, Club disputes</li> <li>• Disputes arising under a sponsorship agreement</li> <li>• Disputes relating to the administration of discipline in sport</li> </ul> <p><b>Excluded disputes</b></p> <p>JSI does not deal with disputes about doping</p>	<p>The Arbitral award is final, binding and enforceable in favour of and/or against the parties.</p> <p>The only instance in which an appeal against an arbitral award can be made is where the rules of a sporting organisation make provision for an appeal to the Court of Arbitration for Sport in Lausanne.</p> <p>An award will only be published in full where all parties to a dispute agree that it can be published. JSI do however reserve the right to publish an award with the identity of the parties withheld.</p>
<p><b>New Zealand</b></p> <p>The Sports Tribunal</p>	<p>The members of any National Sports Organisation or the New Zealand Olympic Committee is entitled to appeal to the Tribunal against the decisions of those bodies provided the relevant body has given jurisdiction to the Tribunal in its constitution and/or rules, and the grounds for appeal are consistent with those rules.</p>	<p>The range of disputes that the Tribunal hears includes:</p> <ul style="list-style-type: none"> <li>• Anti-doping violations</li> <li>• Appeals against decisions of NSOs or the New Zealand Olympic Committee (NZCO) – so long as the rules of the NSO or NZOC allows for an appeal to be made to the Tribunal. Such appeals could include: <ul style="list-style-type: none"> <li>– Appeals against disciplinary decisions</li> <li>– Appeals against not being selected for a NZ team or squad</li> </ul> </li> <li>• Other sport-related disputes</li> <li>• Matters referred to the Tribunal by the board of SPARC</li> </ul>	<p>In general, the decisions of the Tribunal are final and binding and cannot be questioned in any New Zealand court of law. Decisions and orders of the Tribunal may be enforced through the District Court.</p> <p>However, a further right of appeal to the International Court of Arbitration for Sport may be possible where the rules or policies of the relevant NSO or International Federation provide for this.</p> <p>After the Tribunal has released the decision to the parties, the Tribunal will issue a media statement on its decision and post the decision on its website. In exceptional circumstances it can decide not to publish to protect confidentiality.</p>

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

**Table 5: International Comparison - Structure, funding and administration**

Country and organisation	Establishment and structure	Membership and expertise
<p><b>Australia</b></p> <p>State Sport Dispute Centre (SSDC) in South Australia</p>	<p>The SSDC was established in 2005 and prior to this Sport SA provided a mediation service for members. SSDC is jointly funded by the Office for Recreation and Sport and Sport SA to provide a confidential and impartial mediation and dispute resolution service for the South Australian Sporting Community. The SSDC is managed by Sport SA which is a not for profit organisation.</p> <p>SSDC is overseen by an Advisory Management Committee comprising of Sport SA Director and staff, mediators, state sporting organisation representatives, Office for Recreation and Sport nominee, supported by a panel of trained member Protection Information Officers, Mediators and Arbitrator.</p> <p>SSDC provides 6 main services:</p> <ul style="list-style-type: none"> <li>• Independent advice – SSDC provides advice to assist individuals or organisations to resolve disputes themselves. Advice might extend to policy, procedures, dispute-handling or constitution changes.</li> <li>• Referral service – where deemed inappropriate for the SDCC to deal with a specific issue, referral is made to a suitable agency (e.g. Equal Opportunities Commission, Industrial Relations Commission, South Australian Police)</li> <li>• Member Protection Information Officers (MPIOs)– SDCC trains people to be the first point of contact within sporting organisations for any person making a complaint under the Member Protection Policy. MPIOs provide confidential, impartial and timely information about the local complaint resolution options available to address the individual’s concerns. MPIOs are not advocates but they may elect to accompany complaints, if requested, to talk with someone else</li> <li>• Independent Chair – the provision of a trained and independent person to chair a Tribunal, Disciplinary Hearing or Appeal.</li> <li>• Mediation Service and the provision of trained mediators</li> <li>• Arbitration and the provision of qualified arbitrators</li> <li>• Policy development. Assistance can be provided to sporting organisations to develop grievance policies and procedures, hearing guidelines and appeal processes.</li> </ul>	<p>The CEO of Sport SA manages the SSDC and the list of arbitrators, of whom there are currently 4 on the list.</p> <p>Arbitrators are appointed to the list on the basis of their experience and expertise in sports law and the sports industry.</p> <p>Arbitrators are recommended to members by Sports SA. The arbitrator must be approved by the Board of the organisation using the service.</p> <p>Arbitrators are assigned cases depending on their availability.</p>

Country and organisation	Establishment and structure	Membership and expertise
<p><b>Canada</b></p> <p>Sport Dispute Resolution Centre of Canada (SDRCC)</p>	<p>The SDRCC was established in June 2003, under Federal statutes, by the Physical Activity and Sport Act of Parliament, Bill C-12. The funding is provided by Sport Canada. In 2008-2009 the total grant for the SDRCC was \$847,500 (in Canadian dollars).</p> <p>The affairs and business of the SDRCC are managed by a Board of Directors consisting of the Executive Director of the SDRCC, who is an ex officio director, and 12 other directors. Board membership is not remunerated but directors are entitled to reimbursement of travel and expenses. The directors are appointed by the minister responsible for sport. Guidelines were created in consultation with the sport community for these ministerial appointments.</p> <p>The appointed Board of Directors comprises men and women who:</p> <ul style="list-style-type: none"> <li>(a) are committed to the promotion and development of sport;</li> <li>(b) have the experience and capability to enable the SDRCC to achieve its objectives;</li> <li>(c) are representative of the sport community (minimum 3 current or recently retired athletes; 1 representative of a NSO and 1 of a MSO; 1 coach);</li> <li>(d) are representative of the diversity and linguistic duality of Canadian society (no more than eight members can be of the same gender)</li> </ul> <p>The SDRCC is a not-for-profit organisation. It is not an agent of Her Majesty, a departmental corporation or a Crown corporation. The SDRCC head office is located in Montreal with arbitrators and mediators located across the country, specifically in 6 of 10 provinces and 1 of 3 territories. The SDRCC is <b>not</b> a government organisation; it is also not a federal board, commission or other tribunal within the meaning of the Federal Courts Act.</p> <p>In addition to the well-known alternative dispute resolution processes of mediation and arbitration, the SDRCC also offers the following services:</p> <ul style="list-style-type: none"> <li>• Resolution facilitation: It is a voluntary, confidential, and informal process to help parties to a potential dispute discuss their options and consider a settlement. It can be used to prevent disputes when requested early, as soon as a disagreement or a misunderstanding occurs. Resolution facilitation can also be mandatory: all parties opting to go directly to arbitration (as opposed to mediation or med/arb) must take part in a mandatory three-hour resolution facilitation session.</li> <li>• Med/arb: It is a dispute resolution process that combines mediation and arbitration. Initially, the parties try to reach a settlement through mediation. If there are issues that are not resolved through mediation, the mediator then becomes the arbitrator and renders a final and binding decision.</li> </ul>	<p>The SDRCC maintains a list of mediators and arbitrators (as of March 2009, there are 44). The SDRCC deems these individuals to:</p> <ul style="list-style-type: none"> <li>• have appropriate training;</li> <li>• possess recognised competence with regard to sport and alternative dispute resolution procedure;</li> <li>• have the requisite experience in conducting such matters;</li> <li>• be a fair representation of the different regions, cultures, genders and bilingual character of Canadian society.</li> </ul> <p>Mediators and arbitrators are mutually agreed upon by the parties. When parties cannot agree, arbitrators are assigned by the SDRCC on a rotational basis.</p> <p>In the case where a panel of three arbitrators is required, the claimant and the respondent will each appoint one; the two selected arbitrators will appoint the third arbitrator who then acts as chairperson.</p>



Country and organisation	Establishment and structure	Membership and expertise
<p><b>Ireland</b></p> <p>Just Sport Ireland (JSI)</p>	<p>Established by the Federation of Irish Sport. Just Sport Ireland is a company, limited by guarantee, created to establish and oversee the operation of an Irish sports dispute resolution service. The Board of Directors are composed of legal and sporting representatives.</p> <p>The Federation of Irish Sports received financial assistance from the Irish Sports Council in respect of the establishment of Just Sport Ireland. Pro bono advice was received from A&amp;L Goodbody Solicitors and the Bar Council of Ireland. Each of these parties remain key partners of Just Sport Ireland.</p> <p>Just Sport Ireland has been operating since October 2007. It provides mediation, arbitration as well as general advices to sporting bodies regarding the making of provision for Just Sport Ireland.</p> <p>Just Sport Ireland is funded by the Federation of Irish Sports. This financial assistance is made possible by the grant aid sport received by the Federation from the Irish Sports Council. The operating budget is however small and is €15,000 approx from 2008/2009.</p>	<p>All arbitrators and/or mediators are:</p> <ul style="list-style-type: none"> <li>• entirely independent</li> <li>• are accredited arbitrators/mediators</li> <li>• have some interest in sport.</li> </ul> <p>The list of arbitrators is managed by the Registrar of Just Sport Ireland who is a full time employee of the Federation of Irish Sports. The arbitrators are appointed on approval of the board. The selection criteria are as follows:-</p> <ul style="list-style-type: none"> <li>• professional qualification</li> <li>• experience</li> <li>• sporting interest &amp; experience</li> </ul> <p>The arbitrators are assigned cases on the basis of availability and the absence of any conflict. There are currently 27 arbitrators on the Panel.</p>
<p><b>New Zealand</b></p> <p>The Sports Tribunal</p>	<p>The Sports Tribunal is a statutorily based independent body that determines certain types of disputes for the sports sector. It was established in 2003 by the Board of Sport and Recreation New Zealand (SPARC) and continued under Section 29 of the Sports Anti-Doping Act 2006.</p> <p>In accordance with a Memorandum of Understanding between the Minister for Sport and Recreation, the Sports Tribunal and SPARC, SPARC provides the Sports Tribunal with accommodation and administrative support, and provides the Minister with advice relating to the Sports Tribunal.</p> <p>A Registrar conducts the day-to-day administration and management of the Tribunal.</p>	<p>The Tribunal consists of between 5 and 9 members including one Chairperson and at least one Deputy Chairperson. Each member is appointed by the Governor-General on the recommendation of the Minister made after consultation with the Board of Sport and Recreation New Zealand.</p> <p>The Tribunal comprises a mix of people with experience in the judiciary, as lawyers, sports administrators and athletes.</p> <p>For hearings, a panel of 3 tribunal members is normally formed and usually involves at least one lawyer (usually the Chair or a Deputy Chair of the Tribunal) who chairs the panel, with a mix of other members as suits the case and the availability of the members.</p>

Country and organisation	Establishment and structure	Membership and expertise
<p><b>UK</b></p> <p>Sport Resolutions UK</p>	<p>Sport Resolutions UK is the principal organisation in the UK for delivering independent sport-specific dispute resolution, offering arbitration, mediation and tribunal appointment and administration services. It is also the independent provider of the National Anti-Doping Panel (NADP) and Tribunal Service for sport in the United Kingdom.</p> <p>Sport Resolutions UK is a not-for-profit company, established by sport to meet the needs of sport in the UK. Current members of the company include:</p> <ul style="list-style-type: none"> <li>• The British Athletes Commission</li> <li>• The British Olympic Association</li> <li>• The British Paralympic Association</li> <li>• The Central Council of Physical Recreation (CCPR)</li> <li>• The Professional Players Federation</li> <li>• The European Sponsorship Association</li> <li>• The Northern Ireland Sports Forum</li> <li>• The Scottish Sports Association</li> <li>• The Welsh Sports Association</li> </ul> <p>Sport Resolutions UK is funded through a grant from UK Sport, case fees, commercial contracts, and the contract to operate the UK National Anti-Doping Panel and Tribunal Service..</p> <p>As a not-for-profit company any surplus generated by Sport Resolutions UK will be used for the promotion of good practice and education in Sport.</p> <p>Sport Resolutions UK maintains close links with other dispute resolution organisations including the Court of Arbitration for Sport, based in Lausanne, which deals with sports disputes at the international level and National Sports Dispute organisations in Canada, New Zealand and Ireland.</p> <p>Sport Resolutions has a three tiered structure:</p> <ul style="list-style-type: none"> <li>• An experienced Management Board and Board of Directors to determine the overall strategy, direction and management of the service;</li> </ul>	<p>The service has recently been reviewed and restructured. At the present time there are 6 panels:</p> <ul style="list-style-type: none"> <li>• Panel of Arbitrators – Chairpersons list (42 members),</li> <li>• Panel of Arbitrators – Commercial list (12)</li> <li>• Panel of Arbitrators – Lay list (30)</li> <li>• Panel of Arbitrators – Professional List (7)</li> <li>• Panel of Mediators (25 members)</li> <li>• National Anti-Doping Panel (15 members)</li> </ul> <p>The experience of different panel varies. All panel members are required to demonstrate expertise in both dispute resolution and sport.</p> <p>They offer a broad level of experience and specialisation across a full range of areas including discipline, anti-doping, selection, child welfare, personal injury, intellectual property, commercial, employment and professional negligence.</p> <p>The National Anti-Doping panel consists of a President, 8 lawyers, 3 doctors and 3 former athletes. The doctors and athletes sit alongside the legally qualified chairmen where appropriate.</p> <p>Selection to the Panel of Arbitrators and Mediators are made on recommendation of a sub-committee of the Sport Resolutions UK Board called the Panel Appointments and Review Board (PARB). Appointments are made for a three year term in accordance with published selection criteria (see attached). The Sport Resolutions UK Secretariat manages the list.</p>

Country and organisation	Establishment and structure	Membership and expertise
	<ul style="list-style-type: none"> <li>• An expert standing Panel of Arbitrators and Mediators to resolve disputes as they arise;</li> <li>• A full time Secretariat to undertake the day to day management and operation of the service</li> </ul> <p>Sport Resolutions (UK) has an operating budget of c £600,000.</p>	<p>Arbitrators are allocated strictly on qualification and relevant experience, to fit the budget specified by the parties i.e. Sport Resolutions (UK) does not operate a quota or rota system for case allocation. The Executive Director of Sport Resolutions (UK) appoints arbitrators and mediators to specific cases or selects a shortlist for the parties to select from.</p> <p>In National Anti-Doping Panel cases the NADP President selects the Panel with the Board of Directors of Sport Resolutions UK. The President is solely responsible for appointing a chair and wing members to specific anti-doping tribunals.</p>

**Table 6: International Comparison - Accessibility**

Country and organisation	Information	Cost	Geographical
<p><b>Australia</b></p> <p>State Sport Dispute Centre (SSDC) in South Australia</p>	<p>Information is available through:</p> <ul style="list-style-type: none"> <li>• Sport SA website</li> <li>• Sport SA membership meetings and newsletters</li> <li>• The Office for Recreation and Sport also promote SSDC through their network</li> <li>• Presentations have been made at seminars for sport and recreation organisations</li> <li>• The SSDC maintains links with ANZSLA and LEADR</li> </ul>	<p><b><u>Cost to parties</u></b></p> <ul style="list-style-type: none"> <li>• Independent Chair - \$125 for up to 3 hours</li> <li>• Arbitration fees at market rates – this is negotiated between the parties and varies significantly according to the nature of the matter</li> <li>• Travel expenses</li> <li>• Long distance calls, couriers</li> <li>• Room hire fees</li> <li>• There is no filing or application fee</li> <li>• SSDC meets the costs of initial advice, management and coordination of the process</li> </ul>	<p>State-level body.</p> <p>Generally, matters are heard at Sport SA premises on a face to face basis.</p> <p>Telephone conferences are used where necessary.</p>
<p><b>Canada</b></p> <p>Sport Dispute Resolution Centre of Canada (SDRCC)</p>	<p>The SDRCC dispute prevention and resolution services are promoted through a website, a newsletter, promotional and educational publications, and participation at sport organisations' events with workshops, presentations, or displays (kiosk). The primary target groups for the promotion of its services include athletes, sports organisations, coaches, and officials.</p> <p>In addition to providing dispute resolution services, the SDRCC also has a growing commitment to helping the members of the Canadian sport community prevent the occurrence of disputes by improving their practices in policy-making and decision-making. Access to the SDRCC is encouraged not only in response to a dispute, but also in anticipation or in prevention of a dispute.</p>	<p><b><u>Cost to parties</u></b></p> <ul style="list-style-type: none"> <li>• As of March 2009, a filing fee of \$250 (in Canadian dollars) per request, payable by the claimant;</li> <li>• The cost of their own legal representation (if they choose to be represented);</li> <li>• Travel costs to attend hearings in person for parties and witnesses, if applicable.</li> </ul> <p><b><u>Cost reduction/ recovery</u></b></p> <p>The arbitrator has the authority to compel a party to reimburse fees and expenses incurred by another party.</p>	<p>In consideration of potential costs to parties, arbitration hearings and mediation sessions are generally held via teleconference, but they can also be held in person, by videoconference or any combination of these formats. In some certain circumstances and when the arbitrator deems it appropriate, a hearing can take the form of a documentary review.</p> <p>In-person arbitrations and mediations can be conducted in any province or territory agreed upon by the parties.</p>

Country and organisation	Information	Cost	Geographical
	<p>The SDRCC acts as the final appellate body of sports-related disputes of NSOs and MSOs in Canada. It is also available to assist those organisations with designing sound policies and establishing fair decision-making processes, which in turn reduce the risks of disputes.</p>	<p><b><u>Costs met by the SDRCC</u></b></p> <p>The SDRCC will pay for costs related to the process itself, including arbitrator and mediator fees and expenses, translations of documents, dispute secretariat personnel salaries, and meeting logistics (such as facilities rental, toll-free conferencing services, videoconferencing equipment), as may be required.</p>	
<p><b>Ireland</b></p> <p>Just Sport Ireland (JSI)</p>	<p>The Federation of Irish Sports promotes Just Sport Ireland to it's members.</p> <p>JSI advertises it's services through a website.</p> <p>The Irish Sports Council is asked to promote JSI – we are seeking to include a question on the grant application form as to whether a sporting body has provided for alternative dispute resolution with in its rules.</p> <p>Just Sport Ireland seeks to facilitate the adoption by NSO's of JSI's services within their rules and provides advices in this regard.</p>	<p><b><u>Cost to parties</u></b></p> <ul style="list-style-type: none"> <li>• €250 filing fee for arbitration</li> <li>• Estimated at €1,000 per party, per day plus VAT and outlay for use of a mediator or arbitrator, administrative and</li> </ul> <p><b><u>Cost reduction/ recovery</u></b></p> <ul style="list-style-type: none"> <li>• The Bar Council of Ireland encourages and supports the involvement of qualified members of the Bar to act as advocates on a pro bono basis to represent parties who are without the resources to afford legal representation and where such representation may be necessary</li> <li>• The Arbitrator may determine a contribution towards cost of arbitration should be provided by one party to another.</li> <li>• The Federation of Irish Sports is located at Sport HQ where there are meeting rooms etc available to host mediations/arbitrations thereby reducing the mediation/arbitration costs to the time of the arbitrators only</li> </ul>	<p>Arbitrations are generally staged at Sport HQ, Park West, Dublin 12. Arbitrations can however be held anywhere in the country although this may incur additional costs.</p>

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

Country and organisation	Information	Cost	Geographical
<p><b>UK</b></p> <p>Sport Resolutions UK</p>	<p>The primary avenue for information about Sport Resolution is through their website.</p> <p>Sport Resolutions UK produces a monthly newsletter, advertises its services in industry publications, publishes an annual report and supports and speaks at industry conferences and events.</p> <p>Sport Resolutions UK is there to support NSO's, athletes and sports personnel who need an independent, sport-specific body to settle disputes quickly and cost effectively.</p> <p>Sport Resolutions UK is referenced in over 130 rules and regulations of UK sporting organisations as the body to whom disputes needs to be referred.</p>	<p><b><u>Cost to parties</u></b></p> <ul style="list-style-type: none"> <li>• A non-refundable deposit due at notice of appeal</li> <li>• Legal fees</li> <li>• Travel costs</li> <li>• Arbitration fees</li> <li>• Hire of venue</li> <li>• Management of case</li> </ul> <p>Fees are case specific and confirmed to the parties at the outset.</p> <p>All requests for arbitration made to the National Anti-Doping Panel are managed through to conclusion without charge to the parties. In non-doping cases Sport Resolutions UK charges a arbitrator/mediator fee and a case management fees at cost to the parties. Sport Resolutions UK's aim is to provide affordable arbitration and mediation to the UK sport industry and offers a flexible fee structure.</p> <p><b><u>Cost reduction/ recovery</u></b></p> <p>The cost of the Tribunal is equally shared between the parties unless otherwise agreed or directed by the Tribunal. The parties do not incur any tribunal costs in making requests for arbitration to the National Anti-Doping Panel.</p>	<p>Office is located in central London.</p> <p>The seat of the Arbitration will be in London unless otherwise determined by the Tribunal.</p> <p>Sports Resolution provides services in England, Scotland, Wales, and Northern Ireland.</p> <p>Arbitrations can be held by telephone conference if necessary to overcome geographical restrictions. Sport Resolutions UK's panel members are drawn from all parts of the country making it possible in most cases to hold hearings and mediations at a location which is of convenience to the parties.</p>

**Table 7: International Comparison - Procedure**

Country and organisation	Prerequisites / timeframe	Steps in the process	Representation
<p><b>Australia</b></p> <p>State Sport Dispute Centre (SSDC) in South Australia</p>	<p>The Constitution, policies and procedures of the organisation need to be in place.</p> <p>The timeframe to be met is not prescribed and is determined by the parties.</p>	<p>The steps in the process are dependent on the procedures outlined in the organisation's documents.</p>	<p>Whether parties can have legal representation is determined by the panel.</p>
<p><b>Canada</b></p> <p>Sport Dispute Resolution Centre of Canada (SDRCC)</p>	<p>A dispute can be filed before the SDRCC if: 1) the internal appeal process of the NSO or MSO involved is completely exhausted 2) if all parties agree to waive the internal appeal process of the NSO or MSO or 3) if there exists an agreement between the parties to have their dispute resolved by the SDRCC.</p> <p>Unless otherwise provided in a NSO or MSO appeal policy, the time limit to file a request is 30 days following:</p> <ul style="list-style-type: none"> <li>• The date on which the claimant becomes aware of the existence of the dispute;</li> <li>• The date on which the claimant becomes aware of the decision being appealed;</li> <li>• The date on which the last step in attempting to resolve the dispute occurred, as determined by the SDRCC.</li> </ul>	<p>The procedural rules of the SDRCC are found in the Canadian Sport Dispute Resolution Code. There are 5 general steps to the dispute resolution process:</p> <ul style="list-style-type: none"> <li>• <b>Step 1: Request.</b> Using a standard form, a written request must be made to the Dispute Resolution Secretariat to initiate mediation, med/arb, arbitration.</li> <li>• <b>Step 2: Administrative Procedures by the Secretariat.</b> Upon receipt of the request, the SDRCC informs the respondent. The SDRCC holds a preliminary administrative meeting by telephone conference call to discuss preliminary matters (such as communication protocol, language of proceedings, resolution process to be used, choice of mediator or arbitrator, scheduling and other administrative procedures). If parties cannot agree on the type of resolution process, the default is arbitration.</li> <li>• <b>Step 3: Resolution Facilitation.</b> Barring exceptional circumstances, parties requesting an arbitration hearing must first participate in an informal resolution facilitation meeting (at least 3 hours). This meeting will allow the parties to express their comprehension of the dispute, to clarify the issues and to analyse possible path of solutions in order to avoid, if possible, having to participate in the arbitration hearing. This meeting is confidential and without prejudice.</li> <li>• <b>Step 4: The Hearing or Mediation Session.</b> The parties meet with the arbitrator or mediator in an attempt to resolve the dispute. In arbitration, each party will have the opportunity to make its case. The arbitrator will be presented with the facts and evidence, and will hear arguments. In the presentation of facts and evidence, parties have the right to call witnesses. At any time during the arbitration process, if both parties agree, the arbitration can be adjourned to allow for mediation to be pursued. If no agreement is reached, the arbitration process will resume.</li> </ul>	<p>Parties have a right to be represented or accompanied by a person (parents, coaches, friends, guardians, team-mates, lawyers), but it is not mandatory.</p> <p>Most parties take part in SDRCC proceedings without legal representation.</p>



Country and organisation	Prerequisites / timeframe	Steps in the process	Representation
	<p>An agreement needs to exist between both parties to go to arbitration; however such agreement may be explicit, or tacit in one of the parties' policies, funding contracts or other legally binding documents.</p>	<ul style="list-style-type: none"> <li>• <b>Step 5: Agreement or Decision.</b> If the mediation was successful, parties are required to write and sign a settlement agreement and provide a copy to the SDRCC. If the dispute was resolved through arbitration, the arbitrator has seven days to render a short decision, and will have fifteen days after the hearing to provide a decision with reasons. Arbitral decisions are final and binding.</li> </ul> <p>Disputes are usually heard by panels of a single arbitrator, but in some exceptions 3 arbitrators may be appointed: for doping appeals (appeals of decisions rendered by the Doping Tribunal) or when the complexity of the case justifies a panel of 3 arbitrators.</p> <p>SDRCC arbitrations are based on an adversarial approach. While the arbitrator is not responsible for fact finding, some arbitrators will adapt their procedures to be less rigid when dealing with unrepresented parties.</p>	
<p><b>Ireland</b></p> <p>Just Sport Ireland (JSI)</p>	<p>Parties must agree to use go to arbitration</p> <p>Dispute must be sports-related and not be related to a doping matter.</p>	<p>JSI operates a 4 step process:</p> <ul style="list-style-type: none"> <li>• <b>Step 1: Agreement to submit to Arbitration.</b> Parties must agree to mediate /or arbitration</li> <li>• <b>Step 2: Notice of Appeal.</b> The appropriate forms to include notice of appeal, statement of appeal and reply must be completed by the parties.</li> <li>• <b>Step 3: Appointment of Arbitrator.</b> The parties agree on an arbitrator from the JSI panel of arbitrators. Where the parties can not reach an agreement, the JSI Register will appoint an arbitrator.</li> </ul> <p>Where it has been agreed that a dispute is to be heard by a 3 person arbitration panel, each party appoints one arbitrator with the third person who shall act as Chairperson of the panel appointed by the JSI registrar.</p> <ul style="list-style-type: none"> <li>• <b>Step 4: Conduct of Arbitration.</b> The proceedings will be carried out in a manner seen fit by the arbitrator. As a general rule, an oral hearing shall be held. The decision of the arbitrator shall be delivered in writing and with reason.</li> </ul> <p>The rules provide that there be a single arbitrator save where a party requests that the matter be heard by a three party panel. A three party panel will be appointed in such circumstances where the other party agrees. Where there is a dispute between the parties as to the number of arbitrators to sit on a panel the Registrar has the discretion in light of the circumstances to determine the number of arbitrators on the panel. Arbitrations are based on an adversarial approach.</p>	<p>Parties need not be represented by lawyers.</p>

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

Country and organisation	Prerequisites / timeframe	Steps in the process	Representation
		<ul style="list-style-type: none"> <li>• <b>Step 4: The hearing.</b> The hearing gives all involved parties the opportunity to present their case to the Tribunal. The Tribunal follows the principles of 'natural justice'. This means that all parties have a fair opportunity to understand the issues, to consider all the relevant material and to prepare and to present their evidence. Each hearing is heard by usually 3 Tribunal members – the chairperson or one of the lawyers, and two others – and tends to follow an inquisitorial approach.</li> <li>• <b>Step 5: The Tribunal decision -</b> The Tribunal aims to make decisions that are not only fair and well reasoned, but also speedy and timely. Some cases, such as appeals against not being selected for a New Zealand team, will often require urgency. If appropriate, the Tribunal may make an oral decision at the end of the hearing. In some cases, the Tribunal will need further time to consider the matter and will “reserve” its decision. This means it will let the parties know its decision at a later date. The Tribunal always releases a written decision, which includes an explanation of the reasons for the decision, to all the parties. Decisions are generally published on the Tribunal's website.</li> </ul>	
<p><b>UK</b></p> <p>Sport Resolutions UK</p>	<p>Parties must agree to use the service.</p> <p>In the absence of a time-limit set in the regulations of the sports body concerned or of a previous subsisting agreement, the time limit for the receipt by Sport Resolutions is 21 days from the date of the decision from which the appeal is made or to be made.</p>	<p>Sport Resolutions UK operates a 3 step process:</p> <ul style="list-style-type: none"> <li>• <b>Step 1: Notice of Appeal.</b> The appropriate forms must be completed by the parties. The claimant must write a statement of appeal explaining the dispute. The respondent can then write a written reply setting out the facts as they see it. If they do not reply he Tribunal may nevertheless proceed with the arbitration and deliver its award.</li> </ul> <p>Written Counterclaims are possible under the Full Arbitration Procedure.</p> <ul style="list-style-type: none"> <li>• <b>Step 2: Formation of the Tribunal.</b> Any dispute will be decided by a one or three member tribunal appointed by Sport Resolutions UK. The decision is made depending on all the circumstances and in discussion with the parties.</li> </ul> <p>Where parties agree that the Tribunal will consist of one arbitrator, either the parties agree on an arbitrator or one is appointed.</p> <p>Where it has been agreed that a dispute is to be heard by a 3 person arbitration panel, each party is permitted to nominate one arbitrator. If either party fails to nominate an arbitrator in accordance with the rules they will be chosen by Sports Resolution.</p>	<p>Parties need not be represented by lawyers, although many parties choose to have legal representation at their own expense.</p>

Country and organisation	Prerequisites / timeframe	Steps in the process	Representation
		<ul style="list-style-type: none"> <li>• <b>Step 3: Conduct of Arbitration.</b> The Tribunal conducts the proceedings of the arbitration in the manner it considers fits and may follow any arbitral procedure agreed by the parties if it is in the Tribunal's opinion reasonably practicable so to do.</li> </ul> <p>Any party requesting an oral hearing has the right to be heard in front of the Tribunal. In the absence of any such request, the Tribunal shall endeavour to reach a decision without a hearing on the basis of written evidence.</p> <p>As a general rule, an oral hearing shall be held. The decision of the arbitrator shall be delivered in writing and with reason.</p> <p>Arbitrations are determined in the manner determined by the contractual clause under which the arbitration is being conducted. Generally the approach tends towards inquisitorial rather than adversarial.</p>	

**Table 8: International Comparison - Efficiency**

Country and organisation	Volume of cases and speed of resolution
<p><b>Australia</b></p> <p>State Sport Dispute Centre (SSDC) in South Australia</p>	<p>In 2007/08, SSDC conducted 10 mediations and 3 arbitrations. It trained 8 Member Protection Information Officers. It provided independent chairs for disputes processes in 4 cases. It dealt with approximately 70 other matters, such as provision of advice and referrals.</p> <p>The operating budget for SSDC for 2008/09 is \$35,000. Additional costs are negotiated with each action in terms of panel member, mediator and arbitrator expenses.</p>
<p><b>Canada</b></p> <p>Sport Dispute Resolution Centre of Canada (SDRCC)</p>	<p>In 2007/09, 38 sports-related disputes were filed with the SDRCC, including 22 doping cases.</p> <p>Of the 16 non-doping cases, 12 were resolved through arbitration, 3 were resolved by a settlement between the parties in either mediation or resolution facilitation, and 1 request was withdrawn by the claimant.</p> <p>The average duration of cases was just under 28 days.</p> <p>For the 2008/09 fiscal year, the YTD number of cases is 47, which is a record high since the establishment of the SDRCC.</p>
<p><b>Ireland</b></p> <p>Just Sport Ireland (JSI)</p>	<p>Designed to be a fast system – especially in instances where a decision is needed before an athlete can compete in an up coming sporting event</p> <p>There was one mediation and one arbitration in 2007/2008. The matter was resolved within 6 weeks of the Notice of Appeal being served. There was a preliminary meeting which was followed by the hearing lasting 4/5 hours. The total cost was €1,500 (including VAT) which was split evenly between the parties.</p>
<p><b>New Zealand</b></p> <p>The Sports Tribunal</p>	<p>In 2007-08 there were 22 disputes, comprising 16 anti-doping, 4 selection appeals and 2 disciplinary matters.</p> <p>Hearings are always conducted in one day and for straightforward anti-doping matters can take less than an hour.</p>
<p><b>UK</b></p> <p>Sport Resolutions UK</p>	<p>During 2007 – 08 97 enquires were received which resulted in 52 case referrals from various sports.</p> <p>3 doping referrals were received, which preceded the establishment of the National Anti-Doping Panel.</p> <p>The average hearing length is one day. The average time to determine a case from referral to conclusion is determined in accordance with the applicable rules.</p>