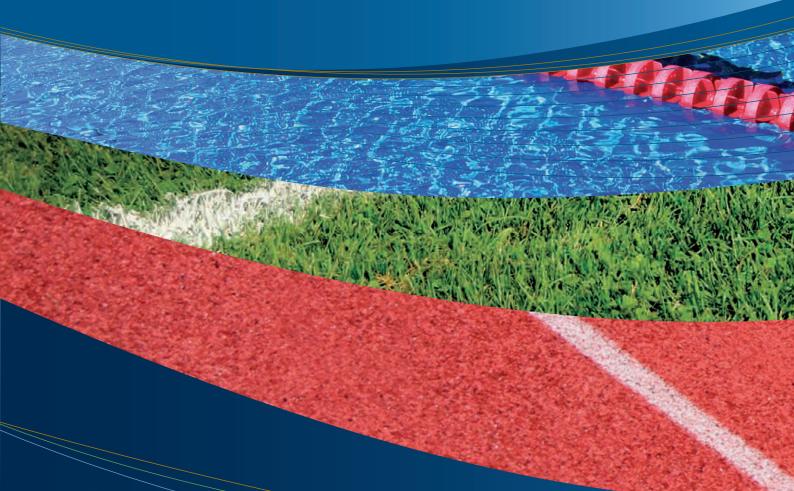
# SPORTS TRIBUNAL of New Zealand

# ANNUAL REPORT 2013/14



## Mission of the Sports Tribunal of New Zealand

The mission of the Sports Tribunal is to ensure that national sport organisations, athletes and other parties to a sports dispute have access to a fair, objective and just means of resolving sports disputes within the Tribunal's jurisdiction that is also affordable, timely and efficient.

## Period covered by this Annual Report

The 2013/14 Annual Report of the Sports Tribunal reports on activities and cases decided during the time period 1 July 2013 to 30 June 2014. Cases heard during this time but not decided as at 30 June 2014 will be reported on in the Annual Report for the following year.

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## CHAIRMAN'S FOREWORD

Although the volume of work has not been high, the need for speedy processes creates its own pressures on the Tribunal both administratively and in its adjudicative role.

The make-up of the New Zealand team for the Commonwealth Games in Glasgow not surprisingly led to some hearings. The need for NSOs to comply strictly with their nomination protocols is vital, to ensure that athletes know what is expected of them and what they must achieve.

There was a moderate number of anti-doping violations. Despite the time and effort which Drug Free Sport New Zealand (DFS) puts into athlete education about the anti-doping regime, we continue to be surprised at the number of athletes who are insufficiently conscious of the obligations they are under and the responsibility they have to ensure an understanding of the rules and strict compliance with them. The need will be heightened with the introduction of a new World Anti-Doping Agency (WADA) Code from 1 January 2015.

Again the Tribunal had involvements in some internal disputes with both mediation and adjudication being required.

The Tribunal continues to ensure that, as soon as alleged violations or disputes are presented to it, we immediately respond. The timely disposal of cases is a fundamental requirement if the process is to be effective and enjoy general confidence.

Anna Richards, who was appointed to the Tribunal in May 2008, retired in December 2013 when she moved to live in Hong Kong and coach its national women's sevens rugby team. Both her outstanding sporting career as New Zealand's most capped female rugby player during more than 20 years and her professional skills as a lawyer were of great assistance.

Two new appointments to the Tribunal have been made. Georgina Earl is a former New Zealand rower and double Olympic gold medallist. Paula Tesoriero is a former New Zealand Paralympics racing cyclist and Paralympics gold medallist. Georgina and Paula will bring valuable experience to our deliberations.

After a decade of excellent work, Brent Ellis continues to provide reliable and valued administrative direction in all our activities.

Hon Sir Bruce Robertson KNZM

Chairman

# DISPUTES WHICH THE SPORTS TRIBUNAL HEARS AND DECIDES

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

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

# STATISTICAL ANALYSIS OF CASES DEALT WITH BY THE TRIBUNAL IN 2013/14

## Cases received by the Tribunal in 2013/14

14 substantive cases were received by the Tribunal in 2013/14. Compared to previous years this is:

- More than in 2012 (13 substantive cases received)
- More than in 2011 (10 substantive cases received)
- Fewer than in 2010 (26 substantive cases received).

#### 14 cases received were:

- 4 anti-doping cases
- 4 Commonwealth Games appeals against NSO decisions
- 5 appeals against other NSO decisions (2 also involved regional bodies)
- 1 other matter.

A further appeal against non-selection for the Commonwealth Games was received in early July 2014, which is outside the time period covered by this report.

If provisional suspension applications are added in:

• 20 applications were received by the Tribunal.

## Hearings of the Tribunal in 2013/14

There were 13 hearings:

- 7 substantive hearings (several heard under urgency)
- 2 jurisdiction hearings
- 4 provisional suspension hearings (no formal provisional suspension hearing was held in one other provisional suspension application by consent).

## Cases decided by the Tribunal in 2013/14

The Tribunal issued 14 decisions in 2013/14 as follows:

- 7 substantive decisions
- 2 jurisdiction decisions
- 5 provisional suspension decisions (all imposing provisional suspension).

## Decisions by application type

Of the 7 substantive decisions issued by the Tribunal:

- 3 were anti-doping cases
- 3 were Commonwealth Games selection or nomination appeals
- 1 was an appeal against another type of decision of an NSO.

The Tribunal decided five provisional suspension applications in 2013/14. The provisional suspension decisions all involved anti-doping cases. Provisional suspension was imposed in all five cases.

In one other case, there was an application for provisional suspension which was opposed by the athlete. The Tribunal decided it was not appropriate to order provisional suspension but instead scheduled an expedited substantive hearing.

## Analysis of anti-doping cases

There were three anti-doping cases decided by the Tribunal.

In one case, the Tribunal decided an alleged "whereabouts" anti-doping violation had not been established.

Violations in the other two cases involved:

- 1-Phenylbutan-2-amine (PBA) and N, alpha-diethyl-benzeneethanamine (DEBEA)
- Failure or refusal to provide a sample.

## Sanctions imposed, and sports involved, in anti-doping cases

There were two anti-doping cases where the Tribunal found an anti-doping violation had been committed by an athlete. Below are the sports these athletes were competing in and the sanctions imposed, arranged by the anti-doping violation:

## 1-PHENYLBUTAN-2-AMINE (PBA) AND N, ALPHA-DIETHYL-BENZENEETHANAMINE (DEBEA)

Cricket 1 case 6 months' suspension

#### FAILURE OR REFUSAL TO PROVIDE SAMPLE

Rugby League 2 years' suspension

## Appeals against decisions of NSOs or the NZOC

There were four appeals against decisions of NSOs.

#### NOMINATION/SELECTION APPEALS

In the 2013/14 period, the Tribunal decided three appeals against decisions of NSOs not to nominate athletes for the 2014 Commonwealth Games.

In two appeals, the NSO challenged whether there was jurisdiction for the Tribunal to hear the appeals. The Tribunal held jurisdiction hearings and issued decisions concluding that there was jurisdiction to hear these cases.

The Tribunal heard all three appeals. The Tribunal dismissed all the appeals.

## OTHER APPEALS

The Tribunal heard and decided an appeal against a decision of an NSO declaring a player transfer null and void and stripping a club of competition points.

The Tribunal upheld that appeal.

## Mediation Assistance and other support

The Sports Tribunal provided formal mediation and other assistance to parties in four cases.

# REVIEW OF CASES DECIDED **DURING THE YEAR**

## Anti-doping cases

The number of anti-doping cases dealt with this year was relatively low.

Four cases were received during the 2013/14 year. Three of these were resolved by 1 July 2014. There were also five provisional suspension decisions in this time.

In contrast to previous years, there were no cases involving positive tests for recreational drugs. Particularly noticeable was that there were no cases involving cannabis. This is somewhat surprising given that anti-doping violations involving positive cannabis tests comprise nearly half (45%) of the antidoping cases the Tribunal has heard and decided since its inception.

The Tribunal is unsure why there have not been any cannabis violations coming before it. It would be good if the message has got through to athletes that using cannabis is prohibited in sport and athletes are respecting this. The Tribunal suspects that the reason may be more related to the fact that World Anti-Doping Agency (WADA) recently raised the threshold level in drug testing for cannabis and that a higher reading for cannabis than previously needed is now required to trigger a positive sample result.

In one of the three anti-doping cases the Tribunal decided, it concluded that an anti-doping violation had not been established on the evidence before it. This involved Kris Gemmell, who had represented New Zealand in Triathlon but was no longer competing although still subject to anti-doping compliance requirements. It was alleged he committed a "whereabouts" anti-doping violation by committing two missed tests and a filing failure within 18 months. The Tribunal concluded on the facts that in one of the alleged missed tests reasonable efforts had not been made by the doping control officer to contact Kris Gemmell at the address he nominated, which he was present at during the required time. As one of the missed tests had not been established on the facts, the Tribunal did not need to consider the other two incidents and held that an anti-doping violation had not occurred. The Tribunal maintained its approach of resolving cases quickly and efficiently and issued its decision within a few days of the hearing in February.

Although outside the time period covered by this Annual Report, we note for completeness that the case was subsequently appealed to the Court of Arbitration for Sport, which reached a different view on the facts in a decision issued in December 2014.

A new WADA Code will be introduced on 1 January 2015 and under the new regime the period in which the three missed tests and/or filing failures need to occur for a whereabouts violation has been reduced to 12 months. If that regime had been in place at the relevant time, anti-doping proceedings could not have been brought against Mr Gemmell as his three incidents did not occur within 12 months.

One of the other cases involved an athlete refusing or failing to provide a sample for drug testing by leaving the drug testing area before providing a sample. While athletes chosen for drug testing may feel frustrated or anxious about having to wait around to provide a sample straight after a match, it is vital for the anti-doping system to function that athletes put aside personal inconveniences and comply with sample requests. It is not acceptable for athletes to lose patience and walk off without providing a sample. It would take rare and exceptional circumstances for an athlete who walks off without providing a sample to show no significant fault. The athlete in the case decided by the Tribunal fell well short of showing this and the mandatory suspension of two years was imposed.

The remaining anti-doping case generated substantial media and public interest as the athlete who committed the violation was high-profile cricketer Jesse Ryder.

Mr Ryder tested positive to prohibited substances, which he admitted but said was due to him taking a dietary supplement to lose weight on the advice of a friend and he was unaware it contained prohibited substances. Mr Ryder searched the Internet and asked others about it but didn't discover anything that made him think it contained prohibited substances. However, he did notice the label on the product stating it may contain ingredients banned by organisations. Even though he saw the warning, and as a professional cricketer had received anti-doping education about the need to be cautious about taking supplements, he failed to contact DFS to check about the product and this was where he was mostly at fault. The Tribunal suspended him for six months. This case highlights the extreme caution athletes need to exercise in taking supplements. Ultimately the athlete is responsible to ensure what they take doesn't contain prohibited substances.

## Appeals against decisions of NSOs

The Tribunal dealt with several appeals by athletes against not being nominated for the Commonwealth Games.

There were separate appeals by two shooters, neither of whom had achieved the mandatory criteria for selection. Both failed to achieve the minimum qualifying score at one of a number of key international events specified by the NSO. Both sought to be nominated on the basis of extenuating circumstances, that the NSO failed to set fixed and certain minimum qualifying score standards during the qualifying period. While the Tribunal had sympathy for both shooters, who were amateur athletes and not receiving funding, it was their responsibility to choose which key events they attended in their attempts to qualify and they had the opportunity to attend these events. While the Tribunal had concerns about delays by the NSO in setting the minimum scores, these weren't sufficient to alter the original decisions and the appeals were dismissed.

Another appeal was against a decision of Judo New Zealand not to nominate a competitor for the Games. This was made on the basis of various alleged procedural flaws by the selectors. The crucial questions that the selectors had to decide was whether the competitor was capable of a top six finish and whether her track record was sufficient to demonstrate she would be competitive and perform credibly at the Games. While she was a fine competitor, the Tribunal wasn't satisfied there were fundamental failures in the selection process.

The Tribunal decided other Commonwealth Games appeals in July 2014, which falls outside the time period covered by this report. These will be detailed in the next Annual Report.

The Tribunal also allowed an appeal against a decision of Volleyball New Zealand declaring a player transfer null and stripping a volleyball club of competition points.

All the above cases are summarised in more detail later in this Report.

## **Urgency**

The Tribunal continued this year to process cases efficiently and speedily, handle urgent applications at short notice and frequently sit outside normal hours when needed.

For example, the three Commonwealth Games appeals were heard and decided in one week.

On one particular day, the Tribunal heard various proceedings in five different cases. Provisional suspension applications, which are filed under urgency, were processed, heard and decided in short periods. When required, proceedings were arranged and/or heard over weekends and in evenings.



# SUMMARIES OF CASES DECIDED BY THE TRIBUNAL IN 2013/14

## Anti-doping cases

#### WHEREABOUTS ANTI-DOPING VIOLATION

## Drug Free Sport New Zealand v Kris Gemmell

(ST 08/13) Decision 12 February 2014

Proceedings were brought by DFS alleging former New Zealand triathlon representative Kris Gemmell committed a "whereabouts" anti-doping violation due to two missed tests and one filing failure. Any combination of three missed tests and/or filing failures within an 18 month period constituted an anti-doping violation under the Sports Anti-Doping Rules. A missed test arises when an athlete is not available, at an address during a one hour period that the athlete has specified for each day, for drug testing.

The Tribunal found that one of the alleged missed tests had not been established. The Tribunal found on the facts that reasonable efforts had not been made to contact Mr Gemmell, who was inside the address. As a result the matter had to be dismissed and the other two incidents did not need to be looked at in these circumstances.

DFS lodged an appeal to the Court of Arbitration for Sport (CAS), which reached a different view on the facts of the first incident and went on to find the other incidents occurred so an anti-doping violation was established. It suspended Mr Gemmell for 15 months (commencing from 12 February 2014).

## FAILURE OR REFUSAL TO PROVIDE SAMPLE

#### Drug Free Sport New Zealand v Rocky Masoe

(ST 07/13) Decision 20 December 2013; Provisional Suspension Decision 2 December 2013

The Tribunal suspended rugby league player Rocky Masoe from participating in sport for two years for refusing or failing to provide a sample for drug testing.

On 7 October 2013, Rocky Masoe played in a Pirtek National Rugby League match for the Wellington Orcas at Mount Smart Stadium in Auckland. After the match, he was requested by doping control officials to provide a urine sample for testing. Although initially cooperating with the officials, he failed to comply fully and left the doping control station.

Mr Masoe admitted the violation. In explaining why he left the doping control station before providing the sample, he referred to getting anxious and frustrated and feeling tired, cold and hungry after waiting for a while. He left the doping control area and went for a shower, despite officials warning him of the consequences of leaving the area before providing a sample.

The Sports Anti-Doping Rules provide that the penalty for refusing or failing to provide a sample without compelling justification is a suspension of two years, unless there is no fault or negligence or no significant fault or negligence on the part of the athlete.

There is a substantial threshold to be met by any athlete seeking to avoid a two year suspension for this type of violation and serious consequences must follow a breach except in very limited circumstances. This was not a case of "no significant fault or negligence". In the Tribunal's view the facts in this case came nowhere near meeting that hurdle and a two year suspension was imposed (commencing from 2 December 2013, which was the date on which he was provisionally suspended).

# 1-PHENYLBUTAN-2-AMINE (PBA) AND N, ALPHA-DIETHYL-BENZENEETHANAMINE

#### **Drug Free Sport New Zealand v Jesse Ryder**

(ST 02/13) Decision 19 August 2013; Provisional Suspension Decision 19 April 2013

The Tribunal suspended cricketer Jesse Ryder for six months for an anti-doping violation.

Jesse Ryder was tested at a Ford Trophy Wellington Firebirds game against the Northern Knights on 24 March 2013. He returned a positive test for 1-Phenylbutan-2-amine (PBA) and N, alpha-diethylbenzeneethanamine (DEBEA), both of which are banned in competition.

The mandatory penalty for this violation is two years' suspension. However the suspension can be shorter if the athlete establishes how the prohibited substances got in his system and that the taking of the prohibited substance was not intended to enhance his sport performance.

Mr Ryder admitted the violation and said he had been using a dietary supplement to lose weight and took two capsules five days before being tested. The supplement didn't list any prohibited substances on its label. After testing positive, he engaged a forensic analyst to test the product. She gave evidence that her analysis confirmed the presence of prohibited substances in the product and the analytical findings were consistent with his evidence of when he took the capsules. The Tribunal was satisfied that the supplement was the source of the positive test.

The Tribunal accepted Mr Ryder took the supplement to lose weight and was satisfied that his taking of the two capsules five days before the cricket game was not intended to enhance his sports performance in the game.

As he was able to establish how the substances got in his system, and that he didn't intend to enhance his sports performance, he was eligible for a lesser penalty. The Tribunal therefore had to assess his degree of fault in the circumstances. It noted that the anti-doping regime imposes a duty of utmost caution on athletes to avoid taking prohibited substances.

Mr Ryder took the supplement on the advice of a friend who had success losing weight using it. He made some enquiries on his own about the product, including Internet searches and asking the strength and conditioning specialist he worked with about it, who also did some searches. Mr Ryder concluded it didn't contain any prohibited substances and requested his manager to order it.

When Mr Ryder received the product he noticed it contained a warning on its label stating it may contain ingredients banned by certain organisations. He made Internet searches on two of the ingredients but didn't contact DFS to check about the product even though the product contained a warning. As a professional cricketer he had been subject to anti-doping education, including attending DFS presentations during the previous season, and had received information about the need to be cautious about taking supplements. Failing to contact DFS, having seen the warning on the label, was the most substantial factor of fault on the part of Mr Ryder.

The Tribunal considered this case was similar to an earlier case where it had imposed a six month suspension. Neither athlete intended to enhance their sports performance. Both had international experience, both had received drug education, both took supplements which were not for the purpose of enhancing sports performance, both supplements did not list the banned ingredients and both made enquiries which were reasonable to make but which fell short of the expected standard of making an enquiry to DFS.

The Tribunal concluded a penalty of six months' suspension was also appropriate in this case. As the Tribunal is required to credit any period of provisional suspension against the total period of ineligibility, the six months' suspension applies from the date of provisional suspension of 19 April 2013 and Mr Ryder was suspended until 19 October 2013.

## Appeals against Decisions of NSOs

#### NOMINATION/SFI FCTION APPEALS

Scott Wilson v New Zealand Shooting Federation and Paul Wilson v New Zealand Shooting Federation

#### Jurisdiction hearings and decisions

(ST 05/14 and 06/14) Jurisdiction Decision 21 May 2014

Scott Wilson and Paul Wilson both filed appeals against not being nominated for the Commonwealth Games. The New Zealand Shooting Federation (NZSF) challenged the validity of both appeals on the grounds they were filed out of time. After a hearing to decide those claims, the Tribunal rejected NZSF's challenges and ruled that the Tribunal had jurisdiction to hear both appeals.

### Substantive hearings and decisions

(ST 05/14 and 06/14) Substantive Decision 5 June 2014

The Tribunal heard and decided the appeals separately. However, as both appeals raised similar issues, and were heard urgently, the Tribunal issued one written decision deciding both appeals the day after

Scott Wilson and Paul Wilson lodged separate appeals to the Tribunal against decisions of NZSF not to nominate them in the Double Trap (Clay Target) and Skeet events respectively at the 2014 Commonwealth Games. The nomination criteria for the Games required shooters to meet a Minimum Qualifying Score (MQS) during the qualifying period in any one of a number of key international events nominated by NZSF.

While both achieved the MQS in some New Zealand competitions, neither achieved the MQS in a key international event, and therefore they didn't meet the mandatory criteria to be nominated. Both appealed on the grounds that they should have been nominated under the "extenuating circumstances" provision as NZSF failed to set MQS standards that were certain and fixed throughout the qualifying period.

The relevant MQS for Scott Wilson's event changed from 136 to 129 in the last quarter of the qualifying period. Scott complained he was left in a state of uncertainty for most of the qualifying period. As he thought 136 was a very high standard, this affected his decision as an amateur athlete not to attend certain international events and he may have decided to attend more international events if the MQS was 129, which was more achievable. However, he did not achieve 129 at a key international event he attended after the MQS changed.

In Paul Wilson's event, the MQS was set by NZSF at 118 but was said to be subject to change during the qualifying period. However, it didn't change and this wasn't confirmed by NZSF until late in the qualifying period. Paul complained he was not given a reasonable opportunity to satisfy the MQS as NZSF failed to confirm the MQS until a time when it was no longer possible for him to attend an international event and that one event he would have attended was removed by NZSF from key international event status.

NZSF explained the delay was due to changes in format by the International Shooting Federation resulting in the need to wait until various international events were completed to assess what the appropriate MQS standard should now be. The Tribunal expressed concerns about the delay in setting the MQS standards and commented it was good practice for there to be certainty about what an athlete who is seeking to qualify for a Games Event needs to do in order to achieve that end. However, this criticism by itself didn't decide the appeals.

The Tribunal has considerable sympathy for the difficulties faced by amateur athletes who do not receive funding. However, both shooters had the opportunity over the full qualifying period to attend international events of their choosing from the key events list and it was their responsibility to make the choice of which events and how many events they would attend.

Both shooters claimed that it was important to have a certain standard at which to "aim" and that they were disadvantaged by not knowing what that standard was with certainty. However, the Tribunal was not convinced that, in the case of shooting, having a fixed target score was essential to perform to the athlete's optimum capability on the day.

Although the athletes were fine sportsmen, the Tribunal dismissed both appeals.

#### Joy Williams v Judo New Zealand

(ST 07/14) Decision 4 June 2014

Joy Williams appealed to the Tribunal against a decision by Judo New Zealand (JNZ) not to nominate her for the 2014 Commonwealth Games. The Tribunal heard the appeal urgently and issued its decision dismissing the appeal the next day.

Ms Williams appealed on a number of grounds including that: JNZ didn't properly follow or implement the nomination criteria; she wasn't given a reasonable opportunity by JNZ to satisfy the criteria; and there was no material on which the decision could reasonably be based.

The crucial test JNZ selectors had to decide under the criteria was her capability of achieving a top six finish and whether her track record was of sufficient quality and depth to demonstrate that she would be competitive and perform credibly at the Games. The selectors decided she didn't meet these criteria.

She complained the selectors put too much emphasis on the strength and quality of her opponents in contests leading up to the Games and the importance of this hadn't been properly communicated to her when she decided which competitions to enter. The Tribunal considered it was open to the selectors to consider the strength and quality of opposition as an important factor in determining the competitiveness of a candidate. It was part of the total package of factors the selectors had weighed but it was not predominant. While the Tribunal wasn't unsympathetic to the argument that athletes need to know what is expected and required of them, the Tribunal considered it had been sufficiently signalled to her in correspondence with JNZ officials in January that the quality of opponents in head to head results would be taken into account.

The Tribunal also rejected the argument that she was treated differently from another athlete who had been nominated. That athlete's record and history were significantly different and there were extenuating circumstances in that case which didn't exist in her case. Another issue raised was that the selectors relied upon incomplete information containing errors, but the Tribunal was satisfied the selectors had all the relevant information available to them and she hadn't been disadvantaged.

The Tribunal wasn't satisfied that there was any fundamental failure in the process or that the selectors didn't have available all the relevant information necessary to make their decision or that the decision reached wasn't reasonably available to the selectors on the evidence. The Tribunal therefore dismissed the appeal.

#### OTHER APPEALS

#### Harbour Raiders Volleyball Club v Volleyball New Zealand

(ST 05/13) Decision 1 August 2013

Harbour Raiders Volleyball Club appealed a decision of Volleyball New Zealand (VNZ) declaring a player transfer null and void and stripping them of competition points.

VNZ officials approved the transfer of a player from another club to the Raiders and the player competed for the Raiders in four matches before being transferred to a different club.

Another club complained about the player representing the Raiders under a short term transfer. VNZ's Matchplay Committee made recommendations that the transfer be declared null and void. VNZ adopted the recommendations and stripped the Raiders of competition points, which were awarded to opposition teams.

Some parties at the hearing argued that the Raiders took a different approach from normal past practice in the way they made the transfer application (by first notifying a VNZ official about the intended transfer and obtaining his opinion rather than applying directly to the Operations Manager) and that normal internal practices at VNZ were not followed including that not all of the usual officials were consulted, who may have objected to the transfer. It was suggested adverse implications could be drawn against the Raiders by this deviation from normal practice and that the spirit of "fair play" was violated as the Raiders' path was more likely to result in the transfer being approved, when in their opinion it should not. However, nowhere in the Transfer Rules is this "normal" practice and procedure specifically set out or required.

VNZ's position was that it accepted the transfer documents had been signed off by the relevant clubs and entered on VNZ registration records by VNZ staff and therefore ostensibly the transfer documentary formalities were met and VNZ would abide by the Tribunal's decision as to the consequences of that.

A transfer was sought, granted by VNZ and publicised. The Raiders were entitled to rely upon that even if it turns out in retrospect that other people might have been involved who may have asked questions or taken a different view. The applicable rules did not make their input essential. It was not open to VNZ to find fault with its own internal processes and visit the consequences upon the Raiders. If there were problems in the internal operation of the transfer regime, that does not make the decision "null and void" in all the circumstances.

The Tribunal allowed the appeal, quashed VNZ's decision and ordered that the Raiders be returned to the position they were in before.

## Mediation assistance and other support

The Tribunal provided formal mediation services and/or other assistance in four cases. All of these involved disputes between NSOs and athletes. Specific details of these cases are confidential.

# CASES DEALT WITH BY THE TRIBUNAL FROM 2003 TO 2014

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

## Statistical analysis of cases dealt with by the Tribunal from 2003 to 2014

As at 30 June 2014, there were 150 decisions (or records of settled cases) on the Sports Tribunal website.

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

The above figure does not include provisional suspension decisions. Since the Sports Anti-Doping Act 2006, the Tribunal is usually the body that decides provisional suspension applications, which are usually referred by NSOs. In nearly every anti-doping case since then, the Tribunal has also had to decide a provisional suspension application, which has required a separate hearing and decision. In 2013/14, the Tribunal heard and decided five provisional suspension applications.

Anti-doping cases make up approximately two-thirds of the Tribunal's cases. Of the 150 substantive decisions on the website, 98 (approximately 65%) are anti-doping cases.

The remaining cases have been appeals against decisions of NSOs, and, on occasion, the NZOC. While the Tribunal can also hear and decide other "sports-related" disputes referred by agreement, all of these heard so far have essentially been appeals against decisions of NSOs or the NZOC.

## ANTI-DOPING CASES HEARD BY THE TRIBUNAL

As at 30 June 2014, the Tribunal has issued 98 substantive decisions in 96 anti-doping cases.

#### ANALYSIS OF ANTI-DOPING CASES HEARD BY THE TRIBUNAL

Of the 98 anti-doping substantive decisions by the Tribunal, there were:

- 44 cases of Cannabis, when not used in conjunction with another prohibited substance
- 8 cases of a failure or refusal to provide a sample
- 6 cases of Dimethylpentylamine 1 3, also known as Methylhexaneamine
- 3 cases of Methamphetamine/Amphetamine
- 3 cases of Probenecid
- 2 cases of BZP (Benzylpiperazine)
- 2 cases of Ephedrine
- 2 cases of Terbutaline
- 2 cases of Clenbuterol
- 2 cases of Furosemide
- 2 cases of Morphine
- 2 cases of athletes participating in sport while suspended
- 1 case of Methamphetamine/Amphetamine/Cannabis
- 1 case of synthetic Cannabis (JWH-08)
- 1 case of Canrenone
- 1 case of Nandrolone
- 1 case of EPO (erythropoietin)
- 1 case of Stanozol/Hydrochlorothiazide/Amiloride
- 1 case of Stanozol/Nandrolone/Furosemide
- 1 case of Boldenone and Testosterone
- 1-Phenylbutan-2-amine (PBA) and N, alpha-diethyl-benzeneethanamine (DEBEA)
- 1 case of the following numerous violations (T/E ratio > 4:1; Oxymesterone; Metabolites of Methandienone; Metabolites of Methyltestosterone; Metabolites of Oxymetholone; 19-norandrosterone)
- 1 case of attempted use and possession of prohibited substances (EPO, hCG and pregnyl solvent)
- 1 case of numerous violations involving: possession, use and attempted use of various prohibited substances; failure or refusal to provide a sample; and participating in sporting activity while suspended
- 1 decision concerning jurisdiction (relating to the attempted use and possession case)
- 1 decision disqualifying results (this also related to the attempted use and possession case)
- 3 cases where the Tribunal found there had been no anti-doping violation (details of both cases are confidential)
- 3 cases where the Tribunal ruled it had no jurisdiction to hear the case.

## CANNABIS CASES BY SPORT

The sports that the athletes were playing when tested in each of the 45 cases involving cannabis (either by itself or with other substances) were:

•	rugby league	15 cases
•	basketball	10 cases
•	touch	8 cases
•	softball	7 cases
•	boxing	2 cases
•	powerlifting	2 cases
	wrestling	1 case

## SANCTIONS IN CANNABIS CASES

Sanctions imposed in the 45 cases involving cannabis were:

•	suspension	32 cases
•	warning and reprimand	9 cases
•	deferred suspension (education programme)	1 case
	fine and warning	2 cases

In one case, the Tribunal found the athlete was not at fault and did not impose a penalty.

#### FIRST CANNABIS VIOLATIONS:

Suspensions imposed for first cannabis violations have generally been in the range of one to two months. However, in 2010 the Tribunal adopted an increased starting point of four months for first cannabis violations.

#### SECOND CANNABIS VIOLATIONS:

There have been three cases of athletes committing their second anti-doping violation involving cannabis.

- Two received the then mandatory suspension of 2 years for a second offence.
- In the third case, a suspension of 18 months was imposed.

## THIRD CANNABIS VIOLATIONS:

There has been one case (in 2010) of an athlete who committed his third cannabis violation.

10 years' suspension was imposed on this athlete.

#### APPEAL CASES HEARD BY THE TRIBUNAL

#### APPEAL CASES BY APPLICATION TYPE

There are 52 decisions listed on the Tribunal website as at 30 June 2014 involving appeals against decisions of NSOs and/or the NZOC. This includes two costs decisions. These appeal cases can be categorised as follows:

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

These are broken down into more detail in the next sections:

### **DISCIPLINARY APPEALS**

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

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

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

There have been 19 cases relating to athletes or coaches appealing their non-nomination or non-selection for a New Zealand team or squad:

- 7 appeals against non-nomination or non-selection for the Olympic Games
- 4 appeals against non-nomination or non-selection for the Commonwealth Games
- 2 appeals by a coach against non-nomination or non-selection for the Youth Olympic Games
- 6 appeals against not being selected for a New Zealand team

There were also two decisions relating to jurisdiction to appeal non-nomination for the Commonwealth Games.

## OTHER APPEALS

There have been nine cases relating to appeals of "other" decisions (that is, appeals other than nonnomination/non-selection or disciplinary appeals):

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

#### APPEAL CASES UPHELD

The Tribunal has upheld, or partially upheld, approximately 32% of the appeals it has heard (if jurisdictional and costs decisions and appeals settled with mediation or other assistance from the Tribunal are discounted).

The Tribunal has upheld, or partially upheld, appeals in 16 cases:

- 5 disciplinary appeals were upheld
- 2 disciplinary appeals were partially upheld
- 3 appeals relating to non-nomination/non-selection for the Olympic Games
- 2 appeals by coaches relating to non-nomination/non-selection for the Youth Olympic Games
- 1 appeal against not being selected for a New Zealand team to compete in a world championship
- 1 appeal relating to non-approval of a roll bar on a car
- 1 appeal against a decision that a bowler had exhausted his appeal rights against a decision not upholding his protest about a match official
- 1 appeal against a decision declaring a player transfer null and void.

## CASES SETTLED WITH MEDIATION OR OTHER ASSISTANCE BY TRIBUNAL

12 cases have been settled with assistance from the Tribunal:

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

## COSTS DECISIONS

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

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

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

# TRIBUNAL CONTINUED TO PROVIDE MEDIATION AND OTHER ASSISTANCE TO HELP PARTIES RESOLVE DISPUTES

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

A new direction for the Tribunal identified in last year's Annual Report was that, in some cases, national sporting organisations requested the Sports Tribunal to mediate and facilitate the resolution of internal disputes. This helped the parties subsequently resolve their disputes.

This continued this year in that in one case an NSO approached and requested the Sports Tribunal to mediate and facilitate the resolution of internal disputes. The Tribunal provided mediation assistance to the parties, which helped them subsequently resolve their dispute.

In some other cases NSOs and athletes have demonstrated a willingness to be assisted by the Tribunal in reaching agreement to resolve their disputes. In two appeal cases, the parties settled their differences with assistance from the Tribunal.

In one case it eventuated that there was no jurisdiction for the Tribunal to hear the appeal. However, after assistance and suggestions from the Tribunal, the NSO decided to meet the appellant to work out a solution.

## **EXPENDITURE**

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

Sport NZ also funds the other operating costs of the Tribunal, which include costs associated with hearing and deciding cases (such as the remuneration paid to Tribunal members, travel, hiring of hearing venues and teleconferencing costs) and producing information resources.

In 2013/14 these other operating costs totalled \$89,861.

# SPORTS TRIBUNAL BIOGRAPHIES

## Current members of the Sports Tribunal



#### CHAIR: HON SIR BRUCF ROBERTSON KN7M

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



## **DEPUTY CHAIR: ALAN GALBRAITH QC**

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



## **DEPUTY CHAIR:** DR JIM FARMER QC

Jim Farmer QC is a barrister and former lecturer in law at Auckland and Cambridge Universities, with a PhD from Cambridge, and Blues awarded by both universities in track and cross country running. He was at one time holder of the New Zealand Universities 3 mile record and winner of the Auckland 6 mile track title. In recent years, he has steered his "Georgia keelboats" to New Zealand Championships and last year was the outright winner of the Geelong Race Week in Australia. He was, until recently, a director of Team New Zealand. He took part in the Targa Motor Rally in October 2013 and remains an active runner.



## CHANTAL BRUNNER

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



## RON CHEATLEY MBE

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



## DR LYNNE COLEMAN

Lynne is a general practitioner and sports doctor who has been involved with elite sport for more than a decade. Initially with North Harbour rugby and netball teams, Lynne is now Medical Director for Basketball NZ, Swimming NZ and the New Zealand women's rugby team (Black Ferns). She also travels as a doctor for the Tall Ferns and Black Ferns teams. Lynne was a doctor for the New Zealand Olympic Health Team at Athens in 2004, co-led the Health Team for the Melbourne Commonwealth Games in 2006 and led the Health Team at the 2008 Beijing Olympics. She is a supervisory "doping" doctor to the international basketball organisation FIBA for Oceania events. Lynne has also been an elected member of the Waitemata District Health Board since 2001.



GEORGINA EARL (FORMERLY GEORGINA EVERS-SWINDELL)

Georgina is a former New Zealand rower. She competed in the double sculls with her sister, Caroline Meyer. Among her many achievements, she is a double Olympic gold medallist, having won at Athens in 2004 and Beijing in 2008.



## **ROB HART**

Rob played cricket for Northern Districts from 1992 to 2004 and for the Black Caps from 2002 to 2004. Until recently he was a Board member of the New Zealand Cricket Players Association and is now currently a Board member of New Zealand Cricket. Rob is also on the Board of the Balloons Over Waikato Charitable Trust. He is a director at Ellice Tanner Hart Lawyers in Hamilton.



#### PAULA TESORIERO MNZM

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

## Recently Retired Member of the Sports Tribunal



## ANNA RICHARDS MNZM

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

## Registrar of Sports Tribunal



## **BRENT ELLIS**

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

## CONTACT INFORMATION

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

#### CONTACT DETAILS:

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Registrar

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