

BETWEEN **DRUG FREE SPORT NEW ZEALAND**
Applicant

AND **RICHARD BROUGHAM**
Respondent

AND **HOCKEY NEW ZEALAND**
Interested Party

**DECISION OF SPORTS TRIBUNAL
26 JULY 2018**

Tribunal Dr James Farmer QC (Deputy Chairman)
Paula Tesoriero
Ruth Aitken

Participants Paul David QC, counsel for Applicant
Lisa Grace, Drug Free Sport NZ
Richard Brougham, Respondent
Sam Fellows, counsel for Respondent
Colin French, Hockey New Zealand

Registrar Neela Clinton

Background

1. Richard Brougham, the respondent, played and coached hockey at the time of the alleged breaches in 2014. He is now residing in Australia.
2. This is the Tribunal's sixth case arising from the Medsafe investigation. During 2015 Medsafe commenced an investigation into *NZ Clenbuterol*, a website operated by Joshua Townshend who was subsequently convicted and jailed for two years for selling steroids via the internet. Around September or October 2015 Medsafe contacted Drug Free Sport New Zealand (DFSNZ) advising they had a significant number of emails which might be of relevance for DFSNZ. Medsafe passed information from the website's database to DFSNZ relating to athletes who had purchased prohibited substances online.
3. DFSNZ reviewed the names provided by Medsafe and found approximately 107 athletes who were registered as members of New Zealand sports organisations. These athletes are subject to the Sports Anti-Doping Rules (SADR). In 2016 Medsafe provided DFSNZ with full details of athletes' internet purchases of clenbuterol and other anabolic steroids from *NZ Clenbuterol*.

Proceedings

4. Mr Brougham, was identified in the Medsafe investigation and DFSNZ filed Anti-Doping Rule Violation proceedings against him on 8 June 2018. DFSNZ alleged Mr Brougham purchased prohibited substances clenbuterol, nandrolone and dianabol from the *NZ Clenbuterol* website in breach of 2014 SADR 3.2 and 3.6.
5. A teleconference was convened by the Tribunal Chairman on 13 June 2018 to consider the provisional suspension application. Mr Brougham requested that it be rescheduled due to his work commitments. On 19 June 2018 a rescheduled teleconference was convened where Mr Brougham opposed the making of a provisional suspension order. In the circumstances the Chairman did not consider it appropriate to impose a provisional suspension order and directed an expedited substantive hearing. The matter was set down for a hearing on 23 July 2018.
6. On 6 July 2018 Mr Brougham filed his Form 2 admitting the violation so the Tribunal was only required to determine the penalty to be imposed.

7. Clenbuterol, dianabol and nandrolone are prohibited at all times under the Prohibited List 2014. Under SADR 14.2 the sanction is a two year period of ineligibility. SADR 14.9.1 and 14.9.2 enables the Tribunal to commence the period of suspension earlier than the hearing date where there have been substantial delays and/or timely admission by the athlete.
8. On 20 July 2018 counsel filed a joint memorandum in relation to sanction which recorded the relevant facts and jointly proposed an appropriate sanction. A copy of the memorandum is annexed.
9. The Tribunal having considered all available material is satisfied it is able to accept the proposed sanction without the need for a hearing and makes the orders proposed. The circumstances here are similar to those in other cases determined by the Tribunal.

Orders

10. Mr Brougham's suspension will be for a period of two years backdated to commence from 20 September 2017.

Dated: 26 July 2018



Dr James Farmer QC
Deputy Chairman

ANNEXURE:

BEFORE THE SPORTS TRIBUNAL OF NEW ZEALAND

ST 09/18

BETWEEN DRUG FREE SPORT NEW ZEALAND

Applicant

AND RICHARD BROUGHAM

Respondent

AND HOCKEY NEW ZEALAND

Interested Party

**JOINT MEMORANDUM ON AGREED SANCTION
20 July 2018**

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Introduction

1. The parties have conferred and have reached an agreement on the sanction for the violations which have been admitted by the Respondent. They have agreed that a period of ineligibility of 2 years under SADR 14.2 should be imposed with the starting date back dated by 10 months under SADR 14.9.1 and 14.9.2, in accordance with other decisions by the Tribunal on cases arising from the NZ Clenbuterol investigation. They ask that the Tribunal gives a decision on sanctions in accordance with their agreement.
2. The Applicant, DFSNZ, alleged violations of use or attempted use and possession in breach of SADR 2014 3.2 and 3.6 by ordering and purchasing and using or attempting to use prohibited substances, clenbuterol, nandrolone, and dianabol, from NZ Clenbuterol, in September and October 2014. It also alleged that there were aggravating circumstances under SADR 14.6.
3. The Respondent, Mr Brougham, has admitted the purchase of clenbuterol and admits the attempted use of dianabol and nandrolone. Clenbuterol, dianabol and nandrolone are prohibited in and out of competition as anabolic agents under the Prohibited List 2014. At all material times, Mr Brougham was bound to the SADR 2014 by his affiliation and registration with Hockey Manawatu.

Summary of facts in relation to violations

4. After initial inquiries to the NZ Clenbuterol website about purchasing "clen" Mr Brougham placed an order for 20 ml of clenbuterol on 16 September 2014 and asked for account details for the payment. He then asked "what would be better for bulking Tren acetate or tren enathanate". NZ Clenbuterol replied "Ethanate bro" and provided banking details for the payment for the clenbuterol.

5. On 18 September 2014 Mr Brougham emailed asking whether "nandrolone and dbol would be a good option for a stack..." and said he would give on order tonight. On 19 September 2014 he placed an order for 80 dbol and 2 x 10 ml nandrolone and confirmed his mailing address and said that he would make the payment that night.
6. On 27 October 2014 Mr Brougham emailed about the \$60 spray bottle of clenbuterol (20 ml) and made payment to NZ Clenbuterol after being given the payment information.

Parties' agreement on sanctions

7. Mr Brougham accepts that he received the clenbuterol but says that he did not use it. He says that he did not make the purchase of the dianabol and nandrolone but accepts that his conduct was an attempt to use under SADR 3.2.
8. In circumstances where Mr Brougham admits violations of possession and attempted use in relation to the substances, and DFSNZ cannot establish payment or receipt of the dianabol or nandrolone, DFSNZ does not wish to pursue an increase in the sanction for aggravating circumstances under SADR 14.6.
9. This means that the applicable period of ineligibility is 2 years under SADR 14.2 because the admitted violations are treated as one violation for the purposes of imposing sanction under SADR 14.7.4
10. Mr Brougham agrees to the imposition of the 2 year period of ineligibility under SADR 14.2. He accepts that the no significant fault defence under SADR 14.5.2 is not available in the circumstances of the violations.

11. Mr Brougham admitted violations when he filed his submissions and statement. DFSNZ accepts that SADR 14.9.2 can properly be applied as a result of this admission. In addition, as with other cases arising from the NZ Clenbuterol investigation, Mr Brougham is entitled to 4 months backdating for delay which is not attributable to him under SADR 14.9.1.
12. The parties have agreed that the period of 2 years ineligibility should be backdated on account of timely admission (SADR 14.9.2) and delay (SADR 14.9.1) by a period of 10 months so that the period of ineligibility of 2 years will end on 19 September 2019. As noted, this accords with the approach in other cases arising from the NZ Clenbuterol investigation. The Respondent has not been subject to a provisional suspension.
13. The parties ask the Tribunal to make orders as to sanctions in accordance with their agreement and that the hearing date of 23 July 2018 be vacated.



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Sam Fellows
Counsel for Richard
Brougham



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Paul David QC
Counsel for DFSNZ