SPORTS TRIBUNAL of New Zealand

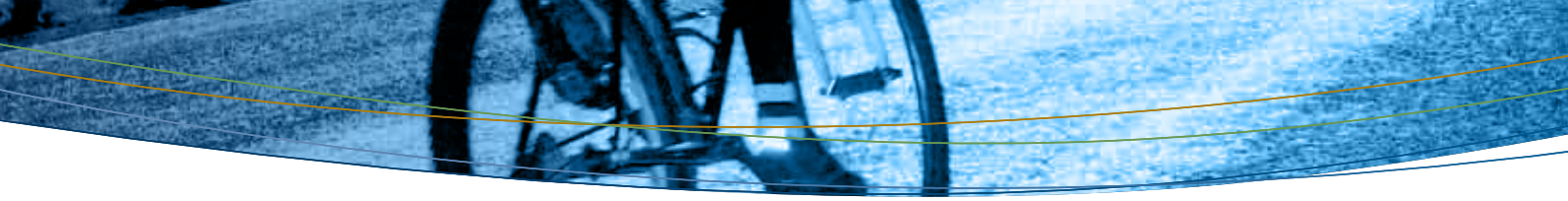
ANNUAL REPORT 2009/10

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.

978-1-877356-27-8 WEB

CONTENTS



CHAIRMAN'S FOREWORD

This annual report sets out in detail the Tribunal's activities during the year under review.

There were fourteen substantive matters resolved during the year either by decision or mediation. In addition the Tribunal made five provisional suspension orders under the Sports Anti-Doping Rules (the rules).

The rules now provide that in cases of certain alleged anti-doping rule violations, the NSO is required to refer the matter to the Tribunal to consider whether to impose provisional suspension. Such applications are required to be made urgently and it is usual for an order to be made within three days of the receipt of the application. The rules require a decision on a provisional suspension application to be notified to the parties but to otherwise remain confidential until publication of the final decision from the substantive hearing. While the Tribunal has a discretion in the interests of the NSO and its members to publicly report a provisional suspension decision, it has not been asked to do so and has not made public these orders. If adverse findings are made in the five cases in which provisional suspension orders have been made, details of those cases will appear in next year's annual report.

Five of the substantive cases were anti-doping cases brought under the provisions of the rules by Drug Free Sport. The most serious was that of an international athlete, tested out of competition in the USA, who tested positive for Erythropoietin (EPO). This athlete acknowledged the violation and received the mandatory sanction of a 2 year period of suspension.

One other doping case related to Furosemide. Furosemide is a specified substance and the Tribunal accepted that the athlete took the substance for therapeutic purposes as prescribed for by a doctor and not for the purposes of enhancing performance. This is the third case in recent years where a doctor has prescribed a prohibited substance to an athlete subject to the anti-doping regime. The athlete was suspended for an effective period of 5 months.

The three other doping cases involved cannabis. Cannabis is also a specified substance and the minimum period of 2 years' suspension can be reduced if the athlete satisfies the Tribunal to its comfortable satisfaction on how the drug entered into the athlete's system and it was not taken for performance enhancing purposes. In two of the cannabis cases the athlete satisfied the Tribunal that cannabis was not taken for performance enhancing purposes and suspension of three months and six weeks respectively were imposed. In the other case the athlete was on his third violation involving cannabis and in accordance with the provisions of the rules, which are based on the WADA Code, a 10 year suspension was imposed.

While there were seven appeals against decisions of NSOs, four of those related to one incident where the four man New Zealand bowling team had been found guilty of misconduct during an international match overseas. These four appeals were resolved by mediation by a member of the Tribunal. The terms of the resolution remain confidential. The Tribunal now has power to mediate in disputes such as this and in this case mediation produced a result.

Three of the other appeals involved disciplinary decisions of the Kartsport judicial committee, one amounted to an appeal against the New Zealand Olympic Committee (NZOC) and the other was a cost award arising from the previous year. In the appeal against the NZOC the Tribunal determined it had discretion to hear the matter, not as an appeal, but under a provision of its rules where sports-related disputes can be brought to the Tribunal by agreement of the parties. Under that provision it has a discretion as to whether or not it determines the matter. In this case it declined to exercise its discretion to hear the matter as it was of the view that the dispute was moot and it could not give practical relief. The issue involved which of two Handball organisations should be recognised as the NSO for that sport in this country. Although it did not accept jurisdiction, the Tribunal was of the view that the allegations against the NZOC were groundless and it should not have been brought into the dispute by the appellant.

Summaries of the various cases appear later in this report.

The report also comments on the educative role of the Tribunal. While this role remains limited, a number of activities were undertaken this year.

The Registrar, Brent Ellis, has once again performed his duties admirably and I thank him on behalf of the Tribunal. I express my gratitude to the Tribunal members for their willingness to sit on hearings, often at very short notice, as is the case in anti-doping cases.

Hon B J Paterson QC
Chairman

TYPES OF DISPUTES THE SPORTS TRIBUNAL HEARS AND DECIDES

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

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

STATISTICAL ANALYSIS OF CASES DEALT WITH BY THE TRIBUNAL IN 2009/10

Cases decided by the Tribunal in 2009/10

The Tribunal issued decisions, or conducted successful mediations, in 19 cases in 2009/10.

- This figure includes 5 anti-doping cases where urgent applications for provisional suspension were made and heard in June 2010. Provisional suspension orders were made in each case. The substantive hearings in these cases were to take place after 1 July 2010 and therefore these cases will be reported upon in the 2010/2011 Annual Report.

Cases by application type

As noted above, 5 of the 19 cases were anti-doping cases that were received at the end of 2009/10 where provisional suspension orders were made but the cases were continuing into the 2010/2011 year.

Of the remaining 14 cases considered by the Tribunal:

- 5 were anti-doping
- 7 were appeals against disciplinary decisions of NSOs
- 1 was an appeal against a decision of the NZOC
- 1 was a costs decision.

Analysis of anti-doping cases

As noted above, the Tribunal gave decisions in 10 anti-doping cases, 5 of which were still continuing into the next year.

Of the 5 anti-doping cases decided by the Tribunal, there were:

- 3 cases of cannabis
- 1 case of erythropoietin (EPO)
- 1 case of furosemide.

In 4 of these 5 cases, the Tribunal held provisional suspension hearings and issued decisions provisionally suspending the athlete, as well as holding substantive hearings and issuing final decisions.

Anti-doping cases by substance and sport

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

CANNABIS

- Rugby League 2 cases
- Touch 1 case

ERYTHROPOIETIN (EPO)

- Athletics 1 case

FUROSEMIDE

- Boxing 1 case

Sanctions in anti-doping cases

CANNABIS CASES

Sanctions imposed in the 3 cannabis cases were suspensions.

Two cases involved first violations and the sanctions were:

- 3 months' suspension
- 6 weeks' suspension

The other case involved an athlete's third violation involving cannabis. His sanction was:

- 10 years' suspension.

ANTI-DOPING CASES INVOLVING OTHER SUBSTANCES

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

- 5 months' suspension - Furosemide
- 2 years' suspension - Erythropoietin (EPO)

Appeals against decisions of National Sport Organisations (NSOs)

APPEALS AGAINST DISCIPLINARY DECISIONS

The Tribunal dealt with 7 appeals against disciplinary decisions:

- 4 appeals were resolved in mediation proceedings conducted by the Tribunal
- 1 appeal was upheld
- 1 appeal was dismissed
- 1 appeal was dismissed for lack of jurisdiction

These were:

- Four appeals by New Zealand bowling representatives against suspension. The Tribunal conducted mediation proceedings with the parties and as a result the parties resolved their differences by agreement and the appeals to the Tribunal were withdrawn.
- Appeal against a decision of an NSO finding a Kart Driver had breached rules during a race by overtaking under a yellow flag. The Tribunal allowed the appeal and overturned the finding of a breach and a penalty of a fine.
- Appeal against a decision of an NSO finding a Kart driver finished second in a race when electronic systems initially indicated that he was first. The Tribunal dismissed the appeal.
- Appeal against a decision of an NSO was dismissed as the appellant had not complied with necessary procedures under the NSO's rules to give the Tribunal jurisdiction to hear the matter.

Appeal against decision of the New Zealand Olympic Committee (NZOC)

There was one appeal against a decision of the NZOC.

One of two rival NSOs appealed against a decision of the NZOC to suspend that NSO from membership of the NZOC. The NZOC challenged whether the Tribunal had jurisdiction to hear the matter. The Tribunal issued two decisions in this matter concluding:

- The Tribunal had jurisdiction to hear the matter (as due to rules previously adopted by the parties it was effectively a sports related dispute referred by agreement)
- The Tribunal declined to exercise its discretion to hear the matter as there was no practical relief the Tribunal could give in the circumstances.

COSTS DECISION

There was one decision relating to a costs application brought after an appeal against a decision of an NSO was partially upheld.

- The NSO sought a costs order as the appeal was only upheld in part.
- The Tribunal dismissed the application.

REVIEW OF CASES HEARD DURING THE YEAR

Anti-doping cases

TRIBUNAL HEARS AND DECIDES FIRST EVER CASE OF ATHLETE COMMITTING A THIRD CANNABIS ANTI-DOPING VIOLATION

Cannabis is the most common prohibited substance in the anti-doping cases that the Tribunal has heard since its inception in 2003. Since then, in each one of the 32 cases of an athlete committing a first time cannabis anti-doping violation, the Tribunal has been at pains to stress to the athlete the more severe penalties they will face if they commit further violations. Of these 32 athletes, there have been only three athletes who have disregarded this warning and committed a second cannabis violation and received suspensions of two years in two cases and 18 months in one. These athletes were all warned of the consequences of a third cannabis violation which, depending on the circumstances of the offending, could have them facing a suspension ranging from a minimum of 8 years up to a lifetime ban.

In the 2009/10 year, one of the three players who had two previous cannabis violations, referred to above, tested positive for cannabis for the third time. Canterbury representative rugby league player Vince Whare tested positive to cannabis after a match. Whare had been suspended by the Tribunal in 2005 and 2006 for cannabis violations.

As far as the Tribunal is aware, this was the first case ever of a player committing three cannabis violations. The prescribed penalty for a third anti-doping violation is a lifetime ban. However, in the case of "specified substances", such as cannabis, the Sports Anti-Doping Rules allow the Tribunal to impose a lesser penalty (of between 8 years' suspension and a lifetime ban) if the athlete can establish how the substance entered into their system and that they did not take it to enhance sports performance.

The Tribunal accepted evidence that Whare had taken cannabis in a social setting with no intention to enhance his performance. The Tribunal considered his deliberate breaching of the rules by taking cannabis again while still competing in sport, despite the previous warnings by the Tribunal, was inexcusable. Whare at one stage claimed he was addicted to cannabis but then gave evidence contradicting this and so the Tribunal did not need to consider the relevance of addiction. The Tribunal considered Whare was, on the evidence, a social user of cannabis who deliberately took the risk that he would not get drug tested and get caught. A penalty of more than the minimum of 8 years' suspension was called for.

The Tribunal also considered difficult questions of the relevance, in determining fault and seriousness of the anti-doping violation, of the nature of cannabis as a recreational drug used in a social setting with no intention of enhancing sports performance. For example, should there be any difference in assessing fault between a third time "drug cheat" who has deliberately taken performance enhancing drugs and who will receive a mandatory lifetime ban and that of an athlete who has deliberately breached the rules for a third time by taking drugs like cannabis for social recreational reasons but not for any performance enhancing reasons and who could also potentially face a lifetime ban? The Tribunal considered it was able to take into account the nature of cannabis and its use, in determining fault and appropriate penalty. Taking into account all the circumstances of the case including his deliberate breaching of the rules despite previous warnings, the need for deterrence, his personal circumstances including the effect of suspension, and the nature of cannabis and its social use, the Tribunal considered a penalty of 10 years' suspension was appropriate here.

It is interesting to note that since the period covered by this report, one of the other New Zealand athletes who committed two cannabis violations committed a third cannabis violation in Australia where he is based. He received a lifetime ban from the Australian authorities.

The other two cases of cannabis use decided by the Tribunal, in the period covered by this report, involved first offenders with cannabis. Both athletes received suspensions.

NEW ZEALAND OLYMPIC MARATHON RUNNER SUSPENDED FOR EPO VIOLATION

The anti-doping case that attracted the most media interest involved New Zealand Olympic marathon representative Liza Hunter-Galvan testing positive for the prohibited substance EPO (erythropoietin). That interest was no doubt compounded by the fact that Ms Hunter-Galvan had previously brought a successful appeal to the Tribunal against her non-nomination for the 2008 Olympics.

Ms Hunter-Galvan admitted she had deliberately and knowingly taken EPO. The only issue was therefore when the mandatory suspension of two years should commence. Ms Hunter-Galvan's admission was made only some months after her positive A sample result, her provisional suspension hearing, her requesting a B sample analysis which was also positive and her obtaining packaging of both samples (presumably to check procedural requirements). Ms Hunter-Galvan had every right to go through these procedures but the Tribunal did not consider she had promptly admitted the violation. The Tribunal therefore rejected her request, pursuant to the Sports Anti-Doping Rules, that the suspension should be backdated to the date of the sample collection as she made a "prompt" admission. The mandatory two year suspension was to commence from the date of her provisional suspension.

The Tribunal also noted that there had been considerable media speculation and comment about this case, including that the Tribunal and the parties had refused to confirm any details of the case while it was pending. Such confidentiality is required by the Sports Anti-Doping Rules. The Tribunal discussed the privacy and confidentiality requirements of the rules and explained the rationale behind these.

PROHIBITED SUBSTANCE FUROSEMIDE PRESCRIBED TO BOXING CHAMPION – ATHLETE HAS A RESPONSIBILTY TO CHECK WHETHER A SUBSTANCE IS PROHIBITED

New Zealand boxing champion Dawn Chalmers tested positive to the prohibited substance furosemide after winning her weight division at the New Zealand Boxing Championships. Her doctor had prescribed her furosemide for a medical condition and mistakenly told her not to take it "close to" or "around competition" when in fact it is prohibited at all times in sport. She accepted the doctor's advice, and confirmed it with a pharmacist, but did not take any other steps to check this (such as checking with Drug Free Sport New Zealand or clarifying just "what close to" or "around competition" meant). While the Tribunal had sympathy for Ms Chalmers, and commended her openness and prompt admission, she had responsibility to check that she was not taking a prohibited substance. While the doctor's advice was mistaken, he had still alerted her that there was an issue with the drug around sport and despite knowing this, she failed to clarify just what it was. For this reason, the Tribunal considered this case was more serious than other cases last year where athletes had been mistakenly prescribed prohibited substances and suspended her for five months.

While the Tribunal has considerable sympathy for athletes who are mistakenly prescribed prohibited substances, this case, as well as previous Tribunal cases, highlights that it is athletes who have the ultimate responsibility to ensure that they do not take prohibited substances and they are under a number of duties to show they have complied with this and are not at fault.

Appeals against Decisions of NSOs or the NZOC

There were no appeals to the Tribunal by athletes against non-nomination or non-selection in the 2009/10 year. All the appeals against NSO decisions related to disciplinary decisions. There was one appeal by an NSO against a decision of the NZOC.

FOUR APPEALS BY NEW ZEALAND REPRESENTATIVE BOWLERS RESOLVED IN MEDIATION CONDUCTED BY TRIBUNAL

There was extensive media interest and publicity concerning four New Zealand representative bowlers who were suspended and fined by Bowls New Zealand for alleged misconduct during a match. There was wide publicity that the four players who made up the New Zealand team had been found guilty of allegedly manipulating the result of an international match by deliberately losing an end and thereby losing the match. Each of the four players appealed to the Tribunal.

With the agreement of the parties, the Tribunal conducted formal mediation proceedings. The mediation proceedings were successful and as a result, the parties agreed to resolve their differences and the appeals were withdrawn. All details of the mediation and the agreement reached are confidential to the parties. The parties subsequently issued a joint media release concerning some of the details of their agreement and the text of this is recorded below in the case summaries section of this Report.

Tension between parties had been focussed upon in the media coverage prior to the mediation. The outcome of this mediation shows how effective mediation proceedings can be in successfully resolving sports disputes and in saving save time and cost and possibly preventing animosity and potential damage to the sport.

APPEALS AGAINST DECISIONS IN RACES

The Tribunal heard two appeals against NSO decisions relating to Kart races. The Tribunal upheld one appeal by a driver who had been found to be in breach of rules by overtaking under a yellow flag. It appeared on the evidence that the driver passed two other karts as a result of these two karts sliding on the damp track and drifting to the outside of the track. The driver took avoiding action to prevent an accident and found himself in front rather than deliberately overtaking in breach of the rules. The Tribunal concluded that this was not an “overtaking” within the meaning of the rules. In the other appeal, a driver appealed not being awarded first place in a race during a close finish when the electronic timing system had displayed he was first but four race officials on the finish line all saw the result differently and declared he was second. The Tribunal concluded that under the relevant rules, the timing system was not conclusive and when there was a dispute about the result, as there was here, then the result would be decided “manually”.

TRIBUNAL DECLINES TO HEAR APPEAL AGAINST NZOC

There was one appeal by an NSO, Handball New Zealand, against a decision of the NZOC suspending it from NZOC membership. This appeal arose in the context of there being two rival NSOs in New Zealand in the sport of Handball, neither of which are NZOC members although the other NSO has been recognised by the International Federation. The NZOC challenged whether there was any jurisdiction for the Tribunal to hear the appeal. The Tribunal concluded there was jurisdiction on an analysis of agreements that both parties had previously entered into which made the matter a sports-related dispute referred to the Tribunal by agreement. However, before the Tribunal decided whether it should exercise its discretion whether to hear the matter or not, it adjourned the matter for a period to see if there was any prospect that the two NSOs could resolve to form a united organisation for the sport in New Zealand. Unfortunately, at the end of this period there was no realistic likelihood of this happening in the near future. The Tribunal ultimately declined to hear the matter as, on an interpretation of the relevant rules, the Tribunal would not be able to resolve the underlying dispute or provide any practical relief and to carry on would incur unnecessary cost.

TRIBUNAL SETS OUTS OUT PRINCIPLES FOR COSTS AWARDS IN THE SPORTS TRIBUNAL

The Tribunal had the opportunity to review its previous cases and practices in making costs orders in a decision relating to a costs application by an NSO against an appellant whose appeal had been partially successful. The appellant had been represented by his father who was not a lawyer and the NSO, who was represented by a lawyer who was a QC, claimed that the manner in which the father had acted had made the case unnecessarily lengthy and costly. Costs were sought on the same basis as would be awarded in the High Court.

The Tribunal rejected that costs should be awarded in the Tribunal under the same rules as in the High Court. Those rules assume that costs will normally be awarded to a successful party and set out a fixed scale. The Tribunal operates under its own Rules and these do not contain any presumption that costs will be awarded. While there were some arguments in favour of a modest costs award in this case due to the conduct of the father, there were other factors weighing against this such as the appeal had some merit and had been partly successful. The Tribunal declined to award costs in this case. The decision set out the principles that guide the Tribunal and discussed that the practice of the Tribunal is to award costs only in exceptional cases.

There are good reasons for the Tribunal's approach including that: the Tribunal is a less formal institution than the courts; unlike in the courts, parties were not necessarily expected to have legal representatives; and the Tribunal was established to be a more accessible and affordable alternative to the courts. The Tribunal stated the following:

We repeat that one of the aims of the Sports Tribunal is to be accessible and affordable. The Tribunal was established as an alternative to the courts for those who are involved in sports disputes. Part of the reason is to ensure access to justice for these people who may otherwise be put off pursuing a resolution by the potentially formidable costs, delays and legal complexities they might have to face if they had to go through the formal proceedings of the courts.

There is no requirement to have a legal representative and parties may represent themselves or be represented by a friend or family member as Tim chose to do here…

SUMMARIES OF CASES DECIDED BY THE TRIBUNAL IN 2009/10

Anti-Doping Cases

CANNABIS

Drug Free Sport New Zealand v Vince Whare

(ST 11/09) - Decision 1 March 2010; Provisional Suspension Decision 20 October 2009

The Tribunal suspended Canterbury representative rugby league player, Vince Whare, from participating in sport for 10 years due to his third anti-doping violation involving cannabis. This was the first case before the Tribunal of a player committing a third anti-doping violation.

Cannabis is a prohibited substance under the World Anti-Doping Code (WADA Code) and the Sports Anti-Doping Rules (the SADR), based on the WADA Code. The SADR rules apply in this case.

In 2005, Mr Whare was warned and fined by the Tribunal for testing positive to cannabis after a match. In 2006, Mr Whare appeared before the Tribunal again on a similar violation involving cannabis and the Tribunal suspended him from sport for two years. That suspension ended in 2008. On each occasion, the Tribunal warned him of the likely penalty if he offended again.

Mr Whare tested positive to cannabis again after playing for Canterbury against Taranaki on 13 September 2009. The Tribunal subsequently provisionally suspended him.

The SADR state that the penalty for a third violation is a lifetime ban. However, in the case of "specified substances", such as cannabis, the SADR allow a lesser penalty if the athlete can establish how the substance entered into their system and that they did not take it to enhance sports performance. If this is established, the Tribunal has the discretion to impose a suspension from a minimum of 8 years to a maximum lifetime ban.

Mr Whare admitted the third violation. Mr Whare and a witness provided evidence which satisfied the Tribunal that he smoked cannabis socially, and not with the intention of enhancing his sports performance.

The Tribunal assessed Mr Whare's degree of fault. At one stage he alleged he was addicted to cannabis but subsequently gave evidence contrary to this and therefore the issue of whether addiction would be relevant factor in assessing fault did not need to be considered. The breach was inexcusable but the Tribunal took into account all the circumstances of the case (including his deliberate breaching of the rules despite previous warnings, his personal circumstances including the effect of suspension, and the nature of cannabis and its social use). The Tribunal decided that a penalty greater than the minimum of 8 years' suspension but less than the maximum lifetime ban met the intent of the Rules.

The Tribunal therefore suspended Mr Whare from participation in sport for 10 years (commencing from the date of the provisional suspension).

Drug Free Sport New Zealand v Greig Dean

(ST 12/09) Provisional Suspension Decision 29 October 2009; Decision 8 December 2009; Reasons for Decision 14 December 2009.

The Tribunal suspended Wellington rugby league player, Greig Dean, from participating in sport from 28 October 2009 to 29 January 2010 due to Mr Dean committing an anti-doping violation relating to cannabis. Mr Dean tested positive for cannabis after representing Wellington against Auckland. He was provisionally suspended by the Tribunal from 28 October 2009.

Mr Dean admitted the violation and gave corroborated evidence that the cannabis was used at a party to celebrate his club team winning its competition. The Tribunal considered that Mr Dean was aware that cannabis was prohibited in sport. His statement that, at the time of his cannabis use, he did not think he would be chosen to represent his provincial team was no excuse. The Tribunal considered that there were no mitigating circumstances.

The Tribunal noted that Mr Dean was active in a number of sports apart from rugby league and that the suspension would prevent him participating in rugby league and other sports.

Drug Free Sport New Zealand v George Playle

(ST 06/09) Decision 22 July 2009

The Tribunal suspended touch player, George Playle, from participating in sport for six weeks because of an anti-doping violation involving cannabis. Mr Playle tested positive to cannabis after competing for Bay of Plenty at the 2009 New Zealand Open Touch Nationals. Mr Playle admitted the violation. The Tribunal accepted evidence he took cannabis in a social setting at a birthday party and that the cannabis was not used for sports performance enhancing purposes.

The Tribunal considered that, unlike some recent cases, there were some mitigating factors. Mr Playle had not initially been selected for the team and was called up at relatively short notice. The Tribunal accepted evidence that at the time he used the cannabis he did not anticipate that he would be playing and that he would not have used cannabis if he had been selected for the team. The Tribunal also accepted that in the hurried circumstances of his call up into the team he had received no, or limited, information on Touch's anti-doping policy and his anti-doping obligations before taking part in the tournament.

The Tribunal however stated that cannabis is on the World Anti-Doping Agency Prohibited List and its use is banned in and around competitive sport. Athletes have an obligation to be aware of, and comply, with anti-doping rules. A penalty must be imposed. The Tribunal considered a penalty of six weeks' suspension was appropriate in the circumstances. The Tribunal noted that this suspension would prevent him participating in rugby, which he was currently playing competitively, as well as Touch.

ERYTHHROPOIETIN (EPO)

Drug Free Sport New Zealand v Liza Hunter-Galvan

(ST 07/09) Provisional Suspension Decision 29 May 2009; Decision 28 August 2009

The Tribunal suspended New Zealand representative marathon runner, Liza Hunter-Galvan, from participating in sport for two years because of an anti-doping violation involving the prohibited substance erythropoietin (EPO).

Ms Hunter-Galvan underwent an out-of-competition drug test on 23 March 2009. A laboratory report of 21 May confirmed her "A" sample had tested positive for EPO. On 26 May, Athletics New Zealand applied to the Tribunal requesting that the Tribunal consider provisionally suspending Ms Hunter-Galvan. The Tribunal provisionally suspended Ms Hunter-Galvan on 29 May. Ms Hunter-Galvan then requested that her "B" sample be analysed. A laboratory report of 29 June confirmed that the B sample had also returned a positive test for EPO. Drug Free Sport filed an application for anti-doping rule violation proceedings with the Tribunal on 2 July. On 11 August, Ms Hunter-Galvan filed her notice of defence with the Tribunal in which she admitted taking the EPO. The Tribunal heard the matter on 27 August and issued its decision on 28 August.

The Tribunal rejected her submission that the suspension should be backdated to the date of sample collection in March as she had made a "prompt" admission of the violation. The Tribunal did not find her admission to be prompt in the circumstances. She did not admit the violation until her B sample was analysed and she had obtained packaging of samples. While she was entitled to take those steps, the Tribunal considered an athlete who has knowingly taken EPO does not "promptly" admit the violation by requesting that her B sample be analysed. The mandatory sanction of 2 years' suspension was imposed, commencing from date of the provisional suspension 29 May 2009.

The Tribunal also discussed confidentiality and privacy obligations in the Sports Anti-Doping Rules which prevent the Tribunal and parties to anti-doping proceedings publicly disclosing information before the Tribunal has made and publicly issued a final decision.

FUROSEMIDE

Drug Free Sport New Zealand v Dawn Chalmers

(ST 13/09) - Decision 11 March 2010

The Tribunal suspended New Zealand boxing champion Dawn Chalmers from participating in sport due to an anti-doping violation involving furosemide. Mr Chalmers tested positive to furosemide after winning her weight division at the New Zealand Boxing Championships in October 2009. The Sports Tribunal provisionally suspended her on 21 December 2009.

Ms Chalmers admitted the violation and gave evidence that she had consulted her doctor about a medical condition and he prescribed furosemide to treat this. The doctor misstated the status of furosemide when he had advised her not to take it "close to" or "around competition" when in fact furosemide is a prohibited substance in sports not to be taken in or out of competition. Ms Chalmers accepted this advice and confirmed it with a pharmacist but took no further steps to check this advice with Drug Free Sport New Zealand (DFS) or clarify what were the parameters of "close to" or "around competition".

Furosemide reduces fluid retention and can reduce weight and potentially has performance enhancing consequences for a boxer trying to fit in a certain weight division. However, the Tribunal accepted Ms Chalmers' evidence that this was not the case and the furosemide was taken to treat her medical condition and was not intended to enhance her sports performance.

Ms Chalmers is a senior athlete who had received appropriate drug education, and been supplied with educational material, on these matters by DFS. She had the principal responsibility to ensure she did not take a prohibited substance and failed in her obligation by not checking further the status of furosemide with DFS. While the doctor had given her mistaken advice about furosemide, she had been explicitly alerted that it should not be taken close to or around competition but did nothing to clarify what this meant. On the positive side, the Tribunal took into account her openness and prompt admission of fault, that she knew she was likely to be tested if she won, and that she received mistaken advice from her doctor and pharmacist.

The Tribunal regarded this case as more serious than other cases it had dealt with concerning prohibited substances being mistakenly prescribed because of Ms Chalmers' explicit knowledge that there was an issue about Furosemide and her failure to clarify the position. Ms Chalmers had been provisionally suspended for approximately two months at the date of the hearing. The Tribunal suspended her for a further three months from the hearing date, making an effective suspension of 5 months.

APPEALS AGAINST DECISIONS OF NSOS

Gary Lawson v Bowls New Zealand *(ST 01/10);*
Shannon McIlroy v Bowls New Zealand *(ST 02/10);*
Shayne Sincock v Bowls New Zealand *(ST 03/10); and*
Jamie Hill v Bowls New Zealand *(ST 04/10)*

Resolved by agreement of parties in Mediation conducted by Sports Tribunal on 18 March 2010. Appeals withdrawn on 19 March 2010.

New Zealand representative bowlers Gary Lawson, Jamie Hill, Shayne Sincock and Shannon McIlory appealed to the Sports Tribunal against decisions of the Judicial Committee of Bowls New Zealand finding them guilty of misconduct during an international match.

The Sports Tribunal, through member Tim Castle acting as mediator, conducted a formal mediation with the parties on 18 March 2010 resulting in the four players resolving their disputes with Bowls New Zealand and withdrawing their appeals to the Tribunal.

All details relating to the mediation agreement are confidential to the parties. The parties subsequently issued the following joint statement in an agreed media release:

AGREED MEDIA RELEASE

Bowls NZ and the Men's Fours players, Gary Lawson, Shayne Sincock, Jamie Hill, and Shannon McIlroy, have reached an agreement as a result of mediation bringing the dispute between them to an end. The players have withdrawn their appeals to the Sports Tribunal and accepted the decisions of the Bowls NZ Judicial Committee.

Gary Lawson, skip of the Men's Fours team, said:

"The decisions and findings of the Bowls NZ Judicial Committee are accepted. We accept that our actions were contrary to the Rules. This has been a difficult time for both Bowls NZ and the players and we all want to move on from this matter and work together with Bowls NZ for the good of the sport."

Bowls NZ and the players believe this is a good basis to work together in the future. Jamie Hill, Shayne Sincock and Shannon McIlroy will be considered for selection to the national team for international events this year including the Commonwealth Games in accordance with the applicable selection criteria. For personal reasons Gary Lawson has withdrawn from consideration for selection to the national team to the Commonwealth Games, and will make a decision about his future in the game at the beginning of next season.

Bowls NZ has agreed to waive the recovery of the fines imposed by the Bowls NZ Judicial Committee on all the players.

There will be no further comment by Bowls NZ or any of the players involved in this matter.

Brook Reeve v KartSport New Zealand

(ST 08/09) Decision 12 October 2009

The Tribunal dismissed an appeal by Brook Reeve (Brook), a junior kart driver, against a decision of KartSport New Zealand (KartSport).

Brook appealed against being placed second in the Junior 100 CC Yamaha race at KartSport's National Sprint Championships 2009. The karts were fitted with transponders and an electronic timing system was used. Initial result screens linked to the timing system showed that Brook had won the race. A public announcement was made that Brook had won the race. However, the Finish Line Judge and three lap scorers at the finish line saw the matter differently and they all considered the driver of another kart (kart 20) had finished first. When the official result was later declared, kart 20 was declared the winner.

Under KartSport's rules the winner of a race was determined by who crossed the finish line first and not by who crossed the transponder loop first (as measured by the electronic system) which was positioned not on the finish line but a short distance before the finish line. Usually the result will be the same but in the case of a very close finish, as in this race, it may not necessarily be so.

The issue was whether, under the rules applying to this race, the Finish Line Judge was entitled to declare a different result to that shown by the electronic system. The Tribunal noted that there were some inconsistencies in the rules which made them difficult to interpret.

The Tribunal concluded that the combined effect of the rules applying to this race was that transponders and the electronic system were to be used but in the event of either equipment failure or a dispute, the manual system was to be reverted to. In the Tribunal's view, there was a "dispute" in this case as there was a dispute between what all four officials saw and what the result screens showed. In the circumstances, the Finish Line Judge was entitled to determine there was a dispute and adopt the manual system and declare a different result to that shown by the electronic system.

Under the rules, the final result must be signed by the Chief Steward and the initial finishing order on the screen is not the final result. The Chief Steward, on the determination of the Finish Line Judge, determined kart 20 was the winner. On the facts, the Tribunal considered this determination was correct and dismissed the appeal.

Brook Reeve v KartSport New Zealand

(ST 09/09) Order as to Jurisdiction 13 August 2009

This was an appeal by the same kart driver as in the case above against a different decision of KartSport New Zealand (KartSport). The Tribunal ruled it did not have jurisdiction to hear this particular appeal pursuant to KartSport's rules. Those rules require an appeal to Sports Tribunal to be preceded by a KartSport Appeal Board hearing and decision. The appellant had intended to appeal to KartSport Appeal Board but his filing fee was received by KartSport after the time limit stipulated in their rules had expired. KartSport was not prepared to extend the time limit and hold a KartSport Appeal Board hearing. As there had been no KartSport Appeal Board hearing and decision, the Tribunal had no jurisdiction to consider the appeal.

Christopher Cox v KartSport New Zealand

(ST 16/08) Decision 7 August 2009

The Sports Tribunal allowed an appeal by Christopher Cox (Christopher), a junior kart driver, against a decision of KartSport New Zealand (KartSport).

An official lodged a protest that Christopher breached KartSport rules during a Spirit of the Nation Mainland Series race by overtaking two other competitors after a yellow flag was shown. Stewards decided that there was a breach of the rules and imposed a relegation penalty on Christopher. Christopher appealed to the KartSport Appeal Board who upheld the finding of breach of the rules but overturned the relegation penalty which it thought unsuitable and imposed a fine instead. Christopher appealed to the Sports Tribunal on a number of grounds against the finding of breach and the penalty.

A yellow flag was shown during the race due to another kart going off the track and Christopher acknowledged the flag. The Tribunal emphasised that it cannot question whether a yellow flag should have been shown or not in these circumstances and the fact a competitor thinks it should not have been shown is irrelevant. However, this did not dispose of the issue of whether there was an overtaking in breach of the rules.

Evidence was given to, and accepted by, the Tribunal that Christopher passed two other karts as a result of these two karts sliding on the damp track and drifting to the outside of the track. Christopher gave evidence he took avoiding action to prevent a potential accident and simply found himself in front rather than deliberately overtaking in breach of the rules. The Tribunal concluded that this was not an "overtaking" within the meaning of the rules.

The Tribunal stated it was for KartSport to establish that there had been a breach of the rules and in order to do so they had to establish all elements of the breach. One of these elements was that there had been an "overtaking" within the meaning of the rules. KartSport did not establish that before the Tribunal. The Tribunal considered KartSport did not properly address or consider this aspect at the KartSport appeal hearing, which was a breach of natural justice. While the Tribunal has the power to remedy procedural breaches in earlier hearings into the same matter, here KartSport was unable to establish before the Tribunal one of the required elements, namely that there had been an "overtaking". Christopher acknowledged the yellow flag and, in order for there to be a breach of the rules, there had to be a finding that having done so, he ignored it. This was not adequately determined in the KartSport processes.

The Tribunal upheld the appeal, quashed the finding of breach, overturned the fine and ordered KartSport to pay Christopher half of his appeal filing fees.

APPEAL AGAINST DECISION OF NZOC

Handball New Zealand v New Zealand Olympic Committee

(ST 05/09) - Decision on challenge to jurisdiction 13 July 2009; Decision on whether to accept matter for determination 9 June 2010

Handball New Zealand (HNZ) appealed a decision of the New Zealand Olympic Committee (NZOC). NZOC challenged whether the Tribunal had jurisdiction to hear the matter. The Tribunal issued two decisions in this matter finding it did have jurisdiction to hear the matter but declining to hear it as there was no practical relief it could give in the circumstances.

From 2004, there were two rival NSOs within the sport of handball in New Zealand. In 2006, NZOC suspended HNZ, the appellant NSO, from its membership. Neither HNZ nor its rival NSO, New Zealand Handball Federation (NZHF), were currently members of NZOC. In subsequent years there were various apparently unsuccessful meetings concerning possibility of combining the two NSOs into one NSO. There was also a mediation between NZOC and HNZ which did not settle. HNZ then appealed to the Tribunal against the NZOC decision concerning its suspension. NZOC challenged jurisdiction of the Tribunal to hear the matter.

The Tribunal held it had jurisdiction. HNZ wrongly brought the matter as an appeal but due to the mediation procedures previously adopted by parties, the Tribunal was able to treat the matter as a sports-related dispute referred by agreement under Part D of the Tribunal Rules and s38(b)(i) of the Sports Anti-Doping Act.

Although the Tribunal had jurisdiction to hear the matter, it had a discretion whether to exercise that jurisdiction in such matters. After calling for submissions from parties whether it should exercise that discretion, Tribunal adjourned the matter until 31 May 2010 in the hope that HNZ and NZHF could resolve their differences and form a united organisation. By 31 May there was no immediate prospect of this happening. NZOC rules require a member NSO to demonstrate wide recognition as the governing body for that sport and recognition by an International Federation of that sport that is recognised by the International Olympic Committee. On the evidence, HNZ could not establish it had wide recognition as the governing body for handball in NZ. In June 2009 the International Handball Federation (IHF) resolved to accept NZHF as a full member. Whether IHF was entitled to register NZHF as a member was not a matter for the Tribunal. Even if the Tribunal could consider the validity of the NZOC decision to suspend HNZ, the Tribunal could not make a decision leading to reinstatement of HNZ as member of the NZOC because HNZ is not recognised by IHF. There was no practical relief the Tribunal could give. To proceed further would incur cost and not resolve the underlying dispute. Therefore the Tribunal declined to exercise its discretion to hear the matter.

COSTS DECISION

Tim Curr v Motorcycling New Zealand Inc

(ST 01/08) Costs decision 14 October 2009

Tim Curr had appealed against disciplinary decisions of Motorcycling New Zealand (MNZ). The Tribunal allowed his appeal against penalties imposed but upheld that he had breached rules of the sport (see 2008/09 Annual Report of the Tribunal for a full summary of this decision). MNZ sought a cost order against Tim Curr as he had only been partly successful in his appeal. Tim had been represented by his father who was not a lawyer and MNZ claimed the conduct of the father in representing his son made the case unnecessarily protracted and difficult and caused MNZ unnecessary cost.

MNZ sought a costs order in accordance with the High Court costs rules which sets out certain scales of costs. However, the Tribunal does not operate under the High Court Rules but its own Rules, and rejected that the High Court costs rules were relevant.

While the Tribunal has made costs decisions in the past, this was the first decision in which that the Tribunal has carried out a comprehensive review of costs awards in the Sports Tribunal. The Tribunal reviewed its previous costs decisions, discussed the Tribunal's Rules relating to awarding costs and set out the principles for awarding costs in the Sports Tribunal.

The Tribunal identified that its practice has been to award costs only in exceptional circumstances. The Tribunal is not limited to consideration of any particular factors in deciding whether to award costs but is likely to consider the following factors: the outcome of the proceeding; whether the proceeding was without merit; the way parties conducted themselves in the proceedings and any other factors that the Tribunal thinks just.

The Tribunal noted that the present case was finely balanced and difficult. There was an argument for making a modest costs award in favour of respondent on the basis of the appellant's father's conduct as a representative. However, other factors (including that the appeal was partly successful and was not without merit) weighed against this. The Tribunal decided costs were to lie where they fall and dismissed the costs application.

CASES DEALT WITH BY THE TRIBUNAL FROM 2003 TO 2010

The Tribunal was established in 2003 and dealt with only one case in that year. Over time, the Tribunal has dealt with an increasing number of cases and there have been no appeals against any of its decisions since 2004. Through its decisions, the Tribunal believes it has built up a significant body of accessible and understandable sports law that helps provide athletes and sports organisations with certainty and guidance around sports disputes.

Statistical analysis of cases dealt with by the Tribunal from 2003 to 2010

As at the end of the 2009/10 year, on 30 June 2010, there were 98 decisions (or records of settled cases) on the Sports Tribunal website, representing cases the Tribunal has decided or otherwise helped parties formally resolve since its inception. This figure does not include provisional suspension decisions.

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

Of the 98 cases on the website, 60 (approximately 61%) relate to anti-doping cases. The remaining cases relate to appeals against decisions of national sports organisations (NSOs), and, on occasion, the New Zealand Olympic Committee (NZOC). Although some appeals against a decision by an NSO have been referred to the Tribunal by agreement between the parties when no jurisdiction has been provided in the relevant NSO's constitution or rules, the Tribunal has yet to receive any other "sports-related" disputes referred by agreement that are not essentially appeals against decisions of NSOs or the NZOC.

ANTI-DOPING CASES HEARD BY THE TRIBUNAL

Since its inception, the Tribunal has decided 59 anti-doping cases (this figure does not include a 2003 case that appears on the website, for which the Tribunal released a decision ruling it had no jurisdiction or two other anti-doping cases where the Tribunal ruled it did not have jurisdiction but the Tribunal did not publicly release the rulings in these cases).

ANALYSIS OF ANTI-DOPING CASES HEARD BY THE TRIBUNAL

Of the 59 anti-doping cases decided by the Tribunal, there were:

- 35 cases of Cannabis, when not used in conjunction with another prohibited substance (that is, 59 % of anti-doping violations were for Cannabis)
- 5 cases of a failure or refusal to provide a sample
- 2 cases of BZP (Benzylpiperazine), which is the active ingredient in certain "party pills" that are now banned in New Zealand but at the time were available to people aged over 18
- 2 cases of Ephedrine
- 2 cases of Terbutaline
- 2 cases of Clenbuterol
- 2 cases of Probenecid
- 2 cases of Furosemide
- 1 case of Morphine
- 1 case of Nandrolone
- 1 case of EPO (erythropoietin)
- 1 case of Stanozol/Hydrochlorothiazide/Amiloride
- 1 case of Stanozol/Nandrolone/Furosemide
- 1 case of methamphetamine/amphetamine/cannabis
- 1 case of boldenone and testosterone

CANNABIS CASES BY SPORT

The sports that the athletes were playing when tested in each of the 36 cases involving cannabis (either by itself or with other substances) were:

- rugby league 13 cases
- softball 7 cases
- touch 7 cases
- basketball 6 cases
- boxing 2 cases
- wrestling 1 case

SANCTIONS IN CANNABIS CASES

Sanctions imposed in the 36 cases involving cannabis were:

- suspension 24 cases
- deferred suspension (education programme) 1 case
- warning and reprimand 9 cases
- fine and warning 2 cases

First cannabis violations:

Suspensions imposed for cannabis are generally in the range of 1 to 2 months for first violations. In 2009/10, one suspension of effectively 3 months was imposed.

Second cannabis violations:

There have been 3 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 March 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 38 decisions listed on the Tribunal website at the end of the 2009/2010 year involving appeals against decisions of NSOs and/or the NZOC. This includes two costs decisions. These appeal cases can be categorised as follows:

- 21 Tribunal decisions relating to athletes or other members of NSOs appealing disciplinary decisions (includes separate costs decisions in two cases).
- 11 Tribunal decisions relating to athletes appealing their non-nomination or non-selection for a New Zealand team or squad
- 6 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

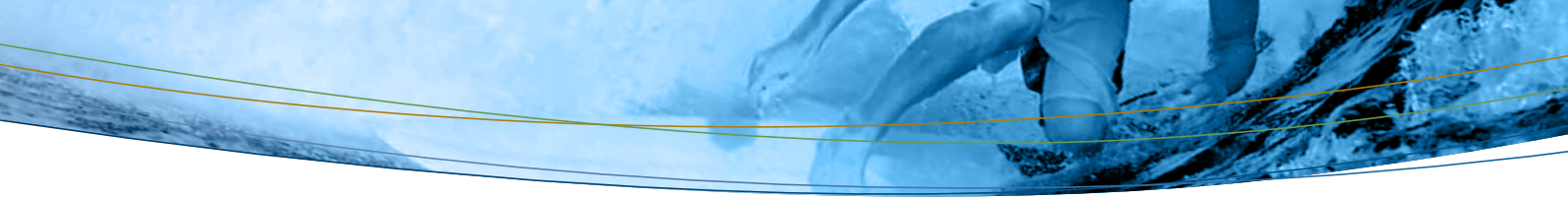
In relation to disciplinary appeals there have been 21 decisions or records of settlement (relating to 18 cases):

- 15 appeals by athletes or officials against being suspended by NSO for misconduct
- 2 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 11 cases relating to athletes appealing their non-nomination or non-selection for a New Zealand team or squad:

- 6 appeals against non-nomination or non-selection for the Olympic Games
- 1 appeal against non-nomination or non-selection for the Commonwealth Games
- 4 appeals against not being selected for a New Zealand team



OTHER APPEALS

There have been 6 cases relating to appeals of "other" decisions (that is, appeals other than non-nomination/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 decision not to grant approval for a roll bar on a racing car
- 1 appeal by an NSO against decision of NZOC to suspend its membership.

APPEAL CASES UPHELD

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

The Tribunal has upheld, or partially upheld, appeals in 10 cases:

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

CASES SETTLED WITH MEDIATION OR OTHER ASSISTANCE BY TRIBUNAL

Six 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.
- 1 other disciplinary appeal was settled with assistance from the Tribunal but did not involve formal mediation.

COSTS DECISION

There have been 2 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.

LEGAL ASSISTANCE PANEL

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

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

In response to this situation, the Tribunal established a Legal Assistance Panel (formerly known as the "pro-bono lawyer" scheme) to help ensure parties have access to high-quality, affordable legal representation if needed. The Tribunal has sought skilled and experienced sports lawyers who have agreed to help athletes and sports organisations involved in cases before the Tribunal on a low-cost, or possibly free, basis. The Tribunal offers a list of the contact details of such lawyers to parties involved in a case. Since establishing the scheme, the Tribunal has received positive comments from parties about the high-quality assistance they have received from these lawyers.

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

MEDIATION

In 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.

As noted earlier in this report, the Tribunal successfully mediated a dispute between four New Zealand representative bowlers and Bowling New Zealand, which had been receiving extensive and high profile media coverage. The Tribunal hopes that offering mediation assistance to parties will continue to be an effective means of settling sports disputes.

TRIBUNAL TAKING A STRONGER EDUCATIVE ROLE

In the 2008/09 Annual Report, the Tribunal reported on an independent report assessing dispute resolution needs in the sport and recreation sector that Sport and Recreation New Zealand (SPARC) contracted research firm Martin Jenkins to undertake. The Report drew very positive conclusions about the Sports Tribunal, its role and how it was operating. The Report stated:

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.

The Report concluded that there were few possible areas for improvement. However, one such possible area identified might be for the Tribunal to take a stronger educative role. The report stated:

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.

In 2009/10, the Tribunal took steps to address this stronger educative role point.

The Chairman of the Tribunal, Barry Paterson QC, gave a number of presentations about the role of the Tribunal in various forums including:

- Australian and New Zealand Sports Law (ANZSLA) 2009 conference in Canberra, Australia in October 2009 to an audience of Australian and New Zealand sports lawyers and sports administrators.
- Legal Research Foundation conference Sports Law: The Changing Game in Auckland in November 2009 to an audience of CEOs of New Zealand national sports organisations and other sports administrators, government officials and lawyers.
- Seminar in 2010 to Auckland University students taking a masters paper in sports law.

The Registrar of the Tribunal, Brent Ellis, was invited to present at the first Arab Sports Law Forum Arab Lex Sportiva in Egypt in April 2010 on the New Zealand experience of establishing, developing and operating a successful sports tribunal and the factors leading to its success. The Sports Tribunal of New Zealand appears to be highly regarded internationally. A Sports Tribunal for Arabic and African countries has been planned and delegates were keen to discover what lessons could be learned from the New Zealand model in setting up and operating their own tribunals. Delegates included academics, sports lawyers, judges, government officials, sports administrators, and tribunal arbitrators and managers from USA, Austria, Germany, Greece, France, Switzerland, Canada, Africa and Arab countries.

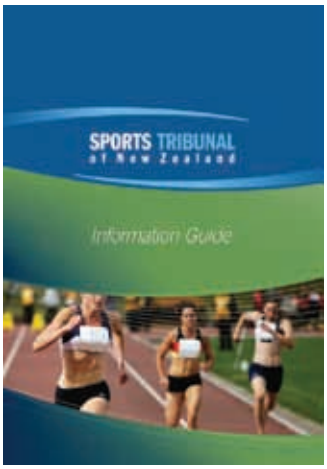
The Tribunal also published new resources and distributed these to the sports sector in order to raise awareness and educate about the Tribunal's role and processes. These included publishing and distributing a new Information Guide to the Sports Tribunal and new and amended Rules of the Sports Tribunal in a new format with revised Forms. These are discussed further elsewhere in this Report.

The Tribunal also reviewed whether revamping its website might also contribute to raising awareness and educating about the Tribunal and its processes. While there have been significant improvements to the content of the website over the years, the Tribunal's website has had the same website design and architecture since its establishment in 2003 and this has limited development of some functionality such as search capability.

Work was carried out in 2009/10 on creating an updated and more modern website that will be more user-friendly and allow for greater search capability. The new website will be completed and launched in the 2010/11 year.

NEW INFORMATION GUIDE TO SPORTS TRIBUNAL PUBLISHED AND DISTRIBUTED TO SPORTS SECTOR

A new and updated Information Guide to the Sports Tribunal was written, designed and published in booklet form in 2009/10. The Information Guide was distributed to key organisations in the Sports Sector.



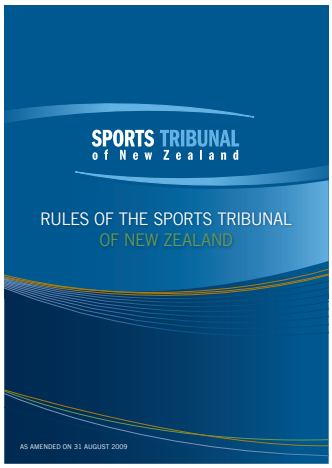
The Information Guide has a colourful and appealing user friendly design and is written in "plain English". It provides easy to read information about the types of disputes heard by the Tribunal and the process the Tribunal follows to resolve them.

It also provides advice and step by step guides on what needs to be done to take an application or dispute to the Tribunal or what to do when a dispute or an application (such as anti-doping proceedings) has been taken against you.

NEW TRIBUNAL RULES PUBLISHED AND DISTRIBUTED TO SPORTS SECTOR

The Sports Anti-Doping Act allows the Tribunal to regulate its own procedures and functions. The Tribunal makes, and operates under, the Rules of the Sport Tribunal of New Zealand. These Rules set out how matters are to be referred to the Tribunal and how the Tribunal will process, hear and determine those matters. The Rules include Forms, which parties use to file their applications and other relevant documents with the Tribunal.

The Tribunal issued new amended Rules on 31 August 2009 and published these.



The new Tribunal Rules were published in a booklet and distributed to key organisations in the sports sector. This booklet contained all the Tribunal's forms which were updated and modified in appearance and content in order to be easier to fill out.

The new printed copies of the Rules are available by contacting the Registrar (see contact information). They are also available from the Tribunal's website at www.sportstribunal.org.nz

Changes to the Sports Tribunal Rules

The new Tribunal Rules contained a number of amendments to the previous Rules. These amendments included:

AMENDMENT TO TIME RULES - RULE 18(C)

This amendment makes clear that Rule 18 (c) of the Time Rules applies to the New Zealand Olympic Committee (NZOC) as well as national sporting organisations (NSOs). The Tribunal cannot alter time periods specified in the constitution or rules of the NZOC or NSOs, unless the parties agree to this.

AMENDMENTS TO PRIVACY RULE - RULE 25

These amendments make it clear that proceedings before the Tribunal are private and confidential, except in certain circumstances listed in this rule.

NEW PROCESS CREATED FOR APPEALS AGAINST DECISIONS DENYING THE GRANTING OF A THERAPEUTIC USE EXEMPTION (TUE) - RULES 36 AND 37 AND FORMS 10 AND 11

An athlete may be able to appeal to the Sports Tribunal against a decision of an organisation denying an athlete a therapeutic use exemption (TUE), depending on the relevant anti-doping policy or rules applying to the athlete.

Most NSOs in New Zealand have adopted the Sports Anti-Doping Rules (2009) as their anti-doping policy. Under those Rules, decisions of Drug Free Sport New Zealand denying therapeutic use exemptions, which are not reversed following a review by WADA, may be appealed to the Sports Tribunal. An athlete who wants to appeal such a decision to the Sports Tribunal has to be an athlete other than an "international-level athlete" (international-level athletes cannot appeal to the Tribunal and they need to instead appeal directly to the Court of Arbitration for Sport).

Rules 36 and 37 were amended to allow for appeals against decisions denying the granting of a Therapeutic Use Exemption (TUE).

Two new Forms were also created to allow for these types of appeals:

- *Form 10* is the form an athlete uses to bring an appeal against the organisation (the respondent) that made the decision denying the athlete a therapeutic use exemption.
- *Form 11* is the form that the respondent uses to file its statement of defence (within seven working days).

EXPENDITURE

Under the Memorandum of Understanding between the Minister for Sport and Recreation, SPARC and the Tribunal, SPARC employs the Registrar of the Tribunal and provides accommodation for the Tribunal office. SPARC also funds the other operating costs of the Tribunal, which for 2008/09 and 2009/10 were as follows:

2008/09 Year			2009/10 Year		
Other operating costs	Number of cases decided	Average cost per case	Other operating costs	Number of cases decided	Average cost per case
$113,526	12	$9,461	$78,595	14	$5,614

The above figures show the average costs per case for the Tribunal for 2008/09 and 2009/10.

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

It will be seen that the total other operating costs fell in 2009/10. The average cost per case in 2009/10 also fell to $5,614 which is slightly more than half of the average cost in the 2008/09 year. This is a pleasing result. While some of the cases in 2008/09 were particularly complex, some of the cases in 2009/10 were also complex. This shows the Tribunal operating in an efficient manner.

It should also be noted that the above “Number of cases decided” figures do not include decisions in provisional suspension cases. There were five of these cases decided in 2009/10 and each required a separate hearing and decision. If these are factored into the 2009/10 year, then the average cost per case is $4,136.

2009/10 Year		
Other operating costs	Number of cases decided including provisional suspensions	Average cost per case
$78,595	19	$4,136

SPORTS TRIBUNAL BIOGRAPHIES

Members of the Sports Tribunal

CHAIR: HON BARRY PATERSON CNZM, OBE, QC

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

DEPUTY CHAIR: NICHOLAS DAVIDSON QC

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

DEPUTY CHAIR: ALAN GALBRAITH QC

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

TIM CASTLE

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

RON CHEATLEY MBE

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

DR LYNNE COLEMAN

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

ADRIENNE GREENWOOD

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

CAROL QUIRK

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

ANNA RICHARDS MNZM

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

Registrar of the Sports Tribunal

BRENT ELLIS

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

CONTACT INFORMATION

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

CONTACT DETAILS:

Brent Ellis

Registrar

Phone: 0800 55 66 80

Fax: 0800 55 66 81

Email: info@sportstribunal.org.nz

Website: www.sportstribunal.org.nz

POSTAL ADDRESS FOR FILING DOCUMENTS:

Brent Ellis

Registrar

Sports Tribunal of New Zealand

PO Box 3338

Wellington 6140

PHYSICAL ADDRESS FOR FILING DOCUMENTS BY COURIER:

Brent Ellis

Registrar

Sports Tribunal of New Zealand

C/- Ground Floor

86 Customhouse Quay

Wellington 6011