SPORTS TRIBUNAL of New Zealand

ANNUAL REPORT 2010/11

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.

978-1-877356-43-8

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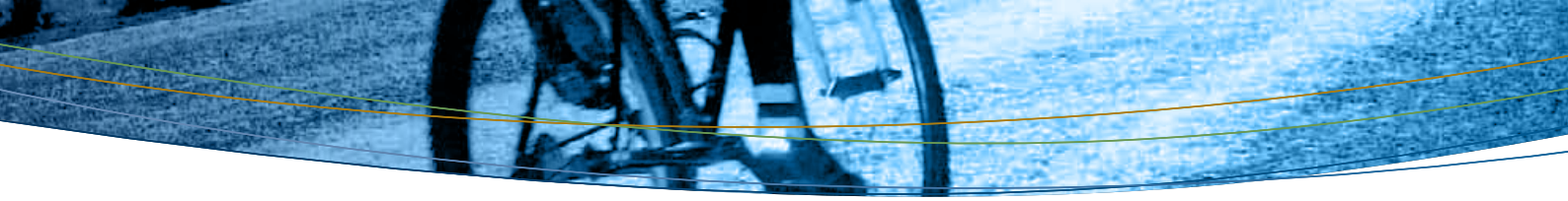


CHAIRMAN'S FOREWORD

On the basis of cases determined, the year under review was the Tribunal's busiest year to date. It issued 22 substantive decisions and in addition made 15 provisional suspension orders under the Sports Anti-Doping Rules (the rules).

The rules now contain a mandatory provision requiring a National Sports Organisation (NSO), on receiving a notice of an alleged anti-doping rule violation, to refer to the Tribunal the question of whether to impose a provisional suspension. These applications are given urgent hearings, as often an athlete is planning to compete within a few days of the Tribunal receiving the application. Provisional suspensions were imposed in all 15 cases.

Eighteen of the 22 decisions were in the Tribunal's anti-doping jurisdiction. There were 16 athletes involved as three separate decisions were issued in respect of one athlete. In two cases, the Tribunal found that an anti-doping violation had not been committed.

Approximately 40% of the anti-doping violations involved recreational drugs, although cannabis, as the prohibited substance, did not figure as prominently as it has done in previous years. Recreational drugs, being Specified Substances on the Prohibited List, carry a sanction of two years' suspension unless the athlete establishes by credible evidence how the substance entered the athlete's body and that it was not taken for performance-enhancing purposes. Some athletes initially elect to admit the violation and to not take part in the hearing, until reminded by the Tribunal of the mandatory two year suspension if they take that course. In one case, a two year suspension was imposed when the athlete elected not to produce evidence to establish the factors which may have entitled him to a lesser sanction.

An athlete who is able to satisfy the Specified Substance reduction requirements faces an effective suspension of four months, before aggravating and mitigating factors are taken into account. Because violations often occur at the end of a season, it is sometimes necessary to impose a longer suspension to make the sanction effective.

There were two cases involving methylhexaneamine, a prohibited substance which has begun to appear in cases both in New Zealand and worldwide. A recent report from Australia noted that there had been 16 such cases in Australia in a 12 month period.

The source of methylhexaneamine is usually a supplement. The Tribunal foresees that some athletes will have difficulty in satisfying "the not intended to enhance sports performance test", if supplements are the source of the substance.

A cyclist who was a potential member of the New Zealand Commonwealth Games team was suspended for two years for the attempted use and possession of Prohibited Substances. As the cyclist had been a member of a sprint team and had competed in relays, it was necessary for the Tribunal to consider how the suspension affected previous results. This was a case which highlighted the co-operation between Drug Free Sport and the Customs Department. This co-operation, which is now quite universal, is leading to more non-analytical doping violations being detected.

The four non-doping cases were two appeals against non-selection and two appeals against other decisions of other appeal bodies of NSOs. One of the two non-selection appeals succeeded, while the other was dismissed. One of the other appeals was dismissed on jurisdictional grounds and the other succeeded. In the latter case, the effect of the decision was that the athlete is still entitled to have his appeal heard by the appropriate appeal body.

Further details of all cases, except the two decisions determining that there had not been an anti-doping violation, appear later in this report. The rules prevent publication of details of a non-successful anti-doping violation application unless the athlete agrees.

There were changes in the composition of the Tribunal during the year. Since the passing of the Sports Anti-Doping Act 2006, appointments to the Tribunal are made by the Minister for Sport and Recreation. The Minister adopts the Cabinet guidelines, which provide that generally a member is entitled to only two terms on any particular tribunal. This rule has meant that Tim Castle and Carol Quirk, both inaugural members of the Tribunal, have ceased to be members of the Tribunal this year as their terms have expired. They have been replaced by Rob Hart and Chantal Brunner, both New Zealand representatives in their respective sports of cricket and athletics. They are also both lawyers.

It is appropriate to note at this stage that since the end of the year under review, the terms of Nick Davidson QC and Adrienne Greenwood have also come to an end. Bruce Robertson, a retired Court of Appeal Judge, has been appointed a Deputy Chairman of the Tribunal and Dr Lynne Coleman has also been reappointed for a second term.

The Tribunal is indebted to the four members who have retired, as all four were members of the Tribunal when it was initially set up. With their departure, the Tribunal loses considerable experience. Nick Davidson has fulfilled the role of a Deputy Chairman with distinction. Tim Castle, Carol Quirk and Adrienne Greenwood have each made considerable contributions to the work of the Tribunal. All four are thanked for their valuable contributions.

Brent Ellis has once again admirably fulfilled his obligations as Registrar. On behalf of the Tribunal, he is thanked.

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 Sports 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 and Recreation New Zealand (formerly SPARC, now Sport New Zealand).

STATISTICAL ANALYSIS OF CASES DEALT WITH BY THE TRIBUNAL IN 2010/11

Cases decided by the Tribunal in 2010/11

The Tribunal issued 37 decisions in 2010/11. These were made up of:

- 22 substantive decisions
- 15 provisional suspension decisions.

Cases by application type

Of the 22 substantive decisions issued by the Tribunal:

- 18 were anti-doping
- 2 were appeals against disciplinary decisions of NSOs
- 2 were appeals against non-nomination or non-selection.

The Tribunal heard and decided 15 provisional suspension applications in 2010/11. The provisional suspension decisions all involved anti-doping cases. Provisional suspension was imposed in all 15 cases.

Analysis of anti-doping cases

Three anti-doping decisions related to one case.

The 18 anti-doping decisions involved:

- 5 cases of cannabis
- 2 cases of dimethylpentylamine 1-3, also known as methylhexaneamine
- 2 cases of refusal or failure to provide a sample
- 1 case of canrenone
- 1 case of morphine
- 1 case of methamphetamine
- 1 case of 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 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)
- 2 cases where the Tribunal found there had been no anti-doping violation (details of both cases are confidential).

Anti-doping cases by substance and sport

There were 14 anti-doping cases where the Tribunal found an anti-doping violation had been committed by an athlete. Below are the sports these athletes were involved in, arranged by the prohibited substance(s) or other anti-doping violation:

CANNABIS

- Basketball 3 cases
- Rugby league 1 case
- Touch 1 case

DIMETHYLPENTYLAMINE 1-3, ALSO KNOWN AS METHYLHEXANEAMINE

- Powerlifting 1 case
- Swimming 1 case

CANRENONE

- Athletics 1 case

MORPHINE

- Triathlon 1 case

METHAMPHETAMINE AND AMPHETAMINE

- Rugby league 1 case

NUMEROUS VIOLATIONS (T/E RATIO > 4:1; OXYMESTERONE; METABOLITES OF METHANDIENONE; METABOLITES OF METHYLTESTOSTERONE; METABOLITES OF OXYMETHOLONE; 19-NORANDROSTERONE)

- Powerlifting 1 case

ATTEMPTED USE AND POSSESSION OF PROHIBITED SUBSTANCES (EPO, HCG AND PREGNYL SOLVENT)

- Cycling 1 case

REFUSAL OR FAILURE TO PROVIDE A SAMPLE

- Rugby league 1 case
- Powerlifting 1 case

Sanctions in anti-doping cases

CANNABIS CASES

Sanctions imposed in the five cannabis cases were all suspensions. The suspensions were for the following periods:

- 2 months
- 3 months
- 4 months
- 8 and a half months (approximately)
- 2 years.

ANTI-DOPING CASES INVOLVING OTHER SUBSTANCES

There were 9 anti-doping cases of violations involving substances other than cannabis.

Suspensions were imposed in eight of these cases as follows:

- 3 months – Canrenone
- 6 months – Dimethylpentlyamine 1-3 (methylhexaneamine)
- 12 months – Dimethylpentlyamine 1-3 (methylhexaneamine)
- 1 year and 9 months – Failure/refusal to provide a sample
- 2 years – Failure/refusal to provide a sample
- 2 years – Methamphetamine and amphetamine
- 2 years – Violations relating to numerous prohibited substances
- 2 years – Attempted use and possession of prohibited substances.

In the remaining case:

- no penalty was imposed as the Tribunal found the athlete had no fault for the violation.

Appeals against decisions of National Sports Organisations (NSOs)

There were four appeals against decisions of NSOs.

SELECTION APPEALS

There were two appeals against decisions of NSOs not nominating or selecting athletes:

- 1 appeal was upheld (relating to non-nomination as a coach for the Olympics)
- 1 appeal was dismissed (relating to non-selection for a New Zealand team).

APPEALS AGAINST OTHER DECISIONS

There were two appeals against other decisions of NSOs. Of these two appeals:

- 1 appeal was upheld – this was 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 was dismissed on jurisdictional grounds – this was an 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).

REVIEW OF CASES DECIDED DURING THE YEAR

2010/11 was the busiest year ever for the Sports Tribunal. The Tribunal issued 37 decisions (including provisional suspension decisions) over this period. By comparison, in 2009/10, the Tribunal issued 19 decisions.

Some of the cases heard and decided over 2010/11 involved complex, challenging and novel issues. Some of the highlights of cases decided are noted below.

Anti-doping cases

FIRST CASE OF ATTEMPTED USE AND POSSESSION OF PROHIBITED SUBSTANCES

The majority of anti-doping violations heard by the Tribunal involve athletes testing positive to prohibited substances. This year the Tribunal had its first case involving the anti-doping violations of attempted use and possession of prohibited substances.

The case attracted significant media attention as it involved Adam Stewart, who had been selected as a member of the New Zealand cycling team for the upcoming Commonwealth Games, and who admitted to importing prohibited substances which had been intercepted by New Zealand Customs. The case was heard under urgency by the Tribunal due to the timing of the Games.

At the hearing he admitted to attempting to use the prohibited substances EPO, hCG and pregnyl solvent by ordering, purchasing and arranging for their delivery to a PO Box number and to being in possession of hCG. Although the Tribunal could have imposed a suspension of up to four years, it decided to impose the minimum suspension of two years to recognise Mr Stewart's prompt admission and co-operation with authorities. The two year suspension meant Mr Stewart lost his place in the team to compete in the Commonwealth Games, a very severe consequence in itself. In a subsequent decision, the Tribunal also disqualified Mr Stewart's results in certain competitions as a consequence of the violation.

TRIBUNAL FINDS ATHLETE NOT AT FAULT FOR MORPHINE VIOLATION CAUSED BY POPPY SEEDS IN BREAD

The other case that attracted significant media attention was that of a triathlon competitor who returned a positive test to morphine. The athlete did not dispute the positive test but claimed it must have been due to poppy seeds contained in loaves of gluten free poppy seed bread he had been eating prior to, and on, the day of the competition. While this may sound like an extraordinary proposition, there is a significant amount of medical and scientific literature concerning this in recent years. While this may not have arisen in the context of sports law, this issue has arisen in other contexts such as work-place drug testing and in the "drugs courts" in the USA, where persons who are subject to orders not to take illicit drugs are tested for the presence of drugs. Poppy seeds have been clearly identified in these contexts as sources of false positive drug results for morphine. As an interesting aside (not presented in evidence nor considered by the Tribunal) this effect was also investigated and confirmed in a 2003 episode of the popular television series "MythBusters", where eating poppy seed bagels was shown to cause positive opiate tests.

The Tribunal heard and accepted expert scientific evidence that morphine may be produced from poppy seeds and that the variables present in this product, such as the source of the poppy seeds (there are studies showing that opiate content of poppy seeds is very variable and can vary greatly between different countries) and the specifics of the baking process, may have inflated the morphine

concentration in this case. On the scientific evidence presented, the Tribunal accepted that the morphine concentrations in the athlete's samples were a possible or likely consequence of consuming the poppy seed bread. The Tribunal was satisfied, upon seeing and hearing the athlete and other witnesses, that the source of the morphine was the poppy seed bread. The Tribunal considered that the athlete could not reasonably have anticipated that eating this commercial bread product could result in a positive test for morphine and therefore found he was not at fault for the violation. Therefore no penalty was imposed for the violation (although the athlete's competition result was automatically disqualified as required under the rules as there had still been a violation).

TRIBUNAL DECIDES ANTI-DOPING VIOLATIONS NOT COMMITTED

For the first time ever, the Tribunal made rulings in cases this year that anti-doping violations were not committed. The Tribunal has found on rare occasions that an athlete is not at fault for committing an anti-doping violation (such as in the case described above). However, it has never previously decided, after hearing anti-doping proceedings, that a violation was not committed.

The Tribunal heard two completely separate and unrelated cases this year where anti-doping violations were alleged to have been committed but the Tribunal decided in both cases (for different reasons) that no anti-doping violation, under the Sports Anti-Doping Rules, was committed.

Both of these cases were very complex and time consuming and raised challenging and novel issues that had not been dealt with before by the Tribunal. In both cases, the Tribunal issued comprehensive reasons for their decisions to the parties.

However, the Tribunal is unable to publicly report these decisions. Under the Sports Anti-Doping Rules, the Tribunal is only able to publicly report decisions where it decides no anti-doping violation has been committed with the consent of the athlete concerned. In both cases the athletes, as is their right, did not consent to the public reporting of the decisions in any form.

FIRST METHYLHEXANEAMINE CASES DECIDED

In recent times, there has been a significant number of overseas athletes testing positive for dimethylpentylamine 1-3 or methylhexaneamine as it is probably better known. In many of these overseas cases, the athletes took dietary/fat burning/energy supplements that they claimed they were unaware contained the prohibited substance methylhexaneamine. This was also the situation in two cases heard by the Tribunal in 2010/11.

In the first case, the athlete was a powerlifter who worked in a health shop selling the supplement that resulted in her positive test. She made inquiries to the distributor concerning whether it contained any prohibited substances and was told that the manufacturer had advised it did not. This advice was apparently wrong as the product contained geranium seed extract, which methylhexaneamine can be a product. Although she had made her own inquiry to the distributor, she had failed to check with Drug Free Sport's advisory service (which she was aware of due to previous anti-doping education) and had a degree of fault. A suspension of 6 months was appropriate in the circumstances.

In the second case, a national level swimmer also tested positive to methylhexaneamine due to taking a supplement he had bought online, which he thought was an energy drink and safe to take because he knew of other athletes who did. This case was considered more serious than the other case where the powerlifter made some attempt to identify the ingredients and get reassurance from the distributor. Here the athlete took no steps to check the product except for his interpretation of the product label and relying on some informal assurances. The appropriate penalty was 12 months' suspension.

In both cases, the athletes were able to satisfy the test under the specified substances rule that they did not take the substance with the intent of enhancing their sport performance. (Methylhexaneamine's classification changed to that of a specified substance in January 2011 and in light of this the Tribunal treated it as a specified substance in both cases.) The Tribunal noted the powerlifter took it for the purpose of lifting her mental state rather than for performance enhancing reasons and noted she was the only competitor in her class in the competition. In the swimmer's case, the Tribunal was more troubled over this question and found "by a narrow margin" that he had established that he hadn't intended to enhance sports performance but was focused on overcoming work tiredness. This test can raise difficult issues for athletes. Many supplements now are explicitly marketed for the purpose of enhancing performance, burning fat and providing energy, and presumably many athletes take them with the intention of improving their performance in their sport (e.g. by increased energy). Given these factors, it is conceivable that athletes who take such products, and test positive for a prohibited substance as a result, may face significant barriers in convincing a Tribunal that they didn't take the products with the intention of enhancing sports performance (regardless of whether they were aware the product contained a specific prohibited substance) and may be liable for a mandatory two year ban.

ATHLETE TOOK MEDICALLY PRESCRIBED PROHIBITED SUBSTANCE – ATHLETES HAVE RESPONSIBILITY TO CHECK WHETHER SUBSTANCES ARE PROHIBITED

In recent years, the Tribunal has heard and decided a number of cases of athletes committing an anti-doping violation due to taking a prohibited substance contained in medication prescribed to them. This continued this year in a case where a runner tested positive for canrenone due to her taking spironolactone that she had been prescribed to treat a medical condition. She had been prescribed, and had been taking, this substance for five or six years. She had taken up running in the last two or three years and in 2010 achieved regional and national placings. She had told her doctor that she was competing in running but did not tell her that she was competing at national level. Her doctor was unaware of this, otherwise she would have advised her to apply for a therapeutic use exemption. The athlete did not turn her mind to whether her medication may contain a prohibited substance and she did not check this with her doctor.

The Tribunal had considerable sympathy for the athlete, who was clearly not a "drugs cheat". However, as noted in previous Annual Reports, such cases highlight that it is the athlete who has the ultimate responsibility to ensure 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. An athlete cannot claim to satisfy the "duty of utmost caution" to avoid taking banned substances by simply "leaving it" to the doctor.

RECREATIONAL DRUG USE – CANNABIS AND METHAMPHETAMINE CASES

Once again, the most common anti-doping violation was for testing positive to cannabis. As in previous years, athletes gave evidence that the cannabis was predominantly taken in social situations such as parties and/or used for stress relief. Cannabis was used by some athletes, who were aware that it is prohibited, only days before the tournament or match in which they tested positive.

While many question whether cannabis should be a prohibited substance, the fact remains that it is prohibited and has been prohibited for a number of years. Athletes subject to the drug testing regime are well educated about this and well aware that cannabis is banned in sport. Those athletes that choose to take cannabis risk damaging their sporting careers.

The Tribunal took a tougher approach to sanctions for cannabis this year and is now using a starting point of four months' suspension for a first-time violation. The previous starting point was between one and two months' suspension. Apart from one case where the new approach did not yet apply, all sanctions imposed this year were higher than the previous usual upper limit of two months' suspension.

Under the Sports Anti-Doping Rules, an athlete can only get a reduced sanction for cannabis if they provide evidence of how the cannabis got in their system and that it was not used with the intention of enhancing sports performance, and can provide corroborating evidence from a witness. If they cannot do this, they will receive a mandatory two year suspension. These requirements are strict. In one case, an athlete decided for personal reasons that he was unable to provide the evidence of a corroborating witness and did not participate in the hearing. The Tribunal understands that athletes may find it difficult to provide corroborating evidence but without this evidence the Tribunal has no choice but to impose a suspension of two years. In this case, as the athlete did not participate in the hearing, the Tribunal had neither his evidence nor that of a witness.

There was one case of an athlete who used methamphetamine recreationally. While the Tribunal was sympathetic to submissions made about his personal circumstances and a perceived need for more drug education in Northland, where he lived, the Tribunal had no discretion under the rules to impose anything but the mandatory penalty of two years' suspension.

One case that was cannabis related, but not actually a cannabis violation, involved an athlete who failed to provide a urine sample. He had a conversation with the drug testing chaperone about the consequences of cannabis use before leaving and not completing the test. It appears the athlete may have mistakenly thought he would only get a penalty of a few months' suspension, as is commonly imposed in cannabis cases, if he acknowledged cannabis use before walking out. However, the mandatory penalty for refusing or failing to provide a sample is two years' suspension and the fact that he had smoked cannabis had no relevance.

Appeals against decisions of NSOs

There were four appeals against decisions of NSOs. Two involved appeals against non-selection or non-nomination and the other two involved appeals against other matters.

SELECTION APPEAL UPHELD ON NATURAL JUSTICE PRINCIPLE THAT NO-ONE CAN BE A JUDGE IN THEIR OWN CAUSE

A well-known natural justice principle formed the basis of the Tribunal's decision in an appeal by a table tennis coach against his not being nominated as a coach at the Youth Olympic Games. The two person selection panel drew up a long list of candidates for the coaching position, including themselves as candidates on the long list but not the appellant. One of the panel members was ultimately nominated by Table Tennis New Zealand (TTNZ) as the coach. The Tribunal allowed the appeal on the basis of the long established natural justice principle that a person cannot be a judge in their own cause. As both panel members who drew up the long list of candidates were themselves candidates for the role, the Tribunal took the view that they were acting as judges in their own cause and there had been a breach of natural justice. The Tribunal referred the matter back to TTNZ for determination in accordance with the appropriate selection criteria and emphasised it was not indicating any preference as to who should be nominated as coach which was a matter for TTNZ when they reconsidered the nomination decision.

SELECTION APPEAL DISMISSED – ASSESSMENT OF RELATIVE PERFORMANCE OF ATHLETES COMPETING IN DIFFERENT COMPETITIONS GENERALLY FOR SELECTORS; TRIBUNAL WILL NOT INTERVENE UNLESS THERE ARE CLEAR ERRORS

The other appeal against non-selection was by a fencer who appealed his non-selection for a New Zealand fencing team. This case highlighted the well-known problems of assessing relative performance of athletes who compete in different events against a different field of competitors. The appellant was ranked third in New Zealand, based on points earned in various competitions, and contended that should have justified his inclusion in the team. He complained that not all of those selected ahead of him had competed in all the competitions counting towards selection and one of the selected fencers was living in Australia and his selection was based on Australian competition results. Fencing New Zealand argued that there were deficiencies in their points ranking system that resulted in skewed ranking results, leading to the appellant being ranked higher than his competition results might have warranted, and that in any case the selection policy required more than consideration of rankings, including an assessment of relative performance between fencers and predictions of potential performance in the upcoming championships.

The Tribunal agreed that although rankings and results in some competitions were the primary selection criteria, they were not the only factors that could be looked at in deciding relative performance under the policy and that weighing up of the various competition results, including the Australian ones, and prediction of future performance was also allowed to be considered. Generally it is a matter for selectors what weighting they put on various competition and events results and how they assess and compare them. The Tribunal would have to identify clear errors in the selection process before it would intervene and here found that there was no obvious failure by the selectors but a judgement call on relative performance that they were entitled to make. While not successful, the appellant had raised valid concerns, including matters wanting in the selection policy. The Tribunal gave some guidance as to what should be contained in a selection policy.

APPEALS INVOLVING JURISDICTIONAL ISSUES OF WHICH BODY WITHIN A SPORT OR AN NSO CAN HEAR AN APPEAL

The other two appeals against decisions of NSOs involved consideration of interesting jurisdictional issues such as who was the correct body, if there was any, to hear an appeal. One case involved an NSO judicial body refusing jurisdiction to hear an appeal. The other case involved NSO bodies hearing matters they had no jurisdiction to hear.

In the first case, a bowler made a protest to his club, complaining about the appointment of an allegedly inexperienced official for a championship match and seeking a re-match. His protest was rejected. He was subsequently incorrectly advised by the NSO to appeal to the regional body instead of the club judicial committee. The regional body, after hearing the appeal, ruled it had no jurisdiction as it was not the right body to hear the appeal and that the appellant's appeal rights had now been exhausted. The appellant then appealed to the NSO judicial committee, who decided it had no jurisdiction to hear the appeal as the appellant had only had one appeal right and it had been exhausted by the regional body's decision that it had no jurisdiction. While the Tribunal agreed he had only one appeal right under the relevant rules, it considered the appellant's appeal had not actually been heard yet. The appellant had been incorrectly led to the wrong appeal body, who decided they had no jurisdiction, and this could not count as his one appeal. The Tribunal ordered that the appeal be sent back to the club judicial committee to hear.

In the other case, a kart driver protested to stewards about a rule preventing him from competing in a race class due to the type of fuel he uses. The stewards heard and dismissed his protest and he appealed to the NSO Appeal Board. The appellant did not have a right to make a protest or appeal, as he was not a "competitor" in that class as required under the rules nor did the stewards have jurisdiction to hear the protest under the rules. However, in trying to be fair to the appellant, the Appeal Board decided to hear the appeal anyway as the stewards had already considered his complaint. The appellant appealed the Appeal Board's decision, dismissing his claim, to the Tribunal. The Tribunal can only hear an appeal from the Appeal Board that arose from legitimate protests but the protest here was not legitimate under the rules. The Appeal Board had exceeded its jurisdiction by hearing the appeal from the protest. The fact that the Appeal Board elected to hear the matter could not somehow "validate" the protest nor give the Tribunal jurisdiction to hear it when the Appeal Board had no jurisdiction to hear it.

SUMMARIES OF CASES DECIDED BY THE TRIBUNAL IN 2010/11

Anti-doping cases

CANNABIS

Drug Free Sport New Zealand v Jermaine Green

(ST 05/11) Decision 14 June 2011; Provisional Suspension Decision 8 June 2011

The Tribunal suspended basketball player Jermaine Green for three months as a result of a positive cannabis test while playing for the Nelson Giants.

Mr Green admitted the violation. He was a professional basketballer based in the USA who had not secured a contract with any team in the 2010/11 season and had not expected to do so. He gave evidence that he used cannabis with friends at the end of March, when he thought there was no prospect of him competing. His agent then secured him a contract with the Giants in New Zealand. He played his first game on 16 April and was drug tested after it. After the test he immediately told his coach there was a possibility he would fail the test because of his prior cannabis use in the USA. As a result of this voluntary statement, the Giants terminated his contract and he returned to the USA. The Tribunal noted that if he had not made this voluntary statement he would have played more games, and earned income, before the positive test result was known.

Four months' suspension is now the starting point, in the Tribunal, for a penalty for a cannabis violation. This may be increased or reduced depending on aggravating and mitigating factors. An aggravating factor was that he took a risk in playing when he knew there could be problems due to his cannabis use a few weeks earlier. Mitigating factors included:

- that his cannabis use in March 2011 was not in breach of the World Anti-Doping Agency (WADA) Code or the Sports Anti-Doping Rules as he was not contracted at that time (although he was in breach later when testing positive in competition)
- his honesty in voluntarily disclosing to the coach that he might fail the drug test, his explanation why, and his subsequent openness and co-operation with Drug Free Sport
- the significant adverse impact on him of his voluntary disclosure, which led to the immediate termination of his contract with the Nelson Giants.

Other factors noted by the Tribunal were that a long suspension could result in him losing the prospect of obtaining an international contract for the upcoming season and his honesty and openness during this matter. Given the mitigating factors (particularly the voluntary admission immediately after the test and the consequences), the Tribunal was prepared to take into account the effect of his voluntary admission and effective suspension from 17 April in deciding the appropriate penalty. The Tribunal imposed a further four week period of suspension from the date of hearing, resulting effectively in a total period of suspension of 12 weeks.

Drug Free Sport New Zealand v Joshua Poasa

(ST 21/10) Decision 4 February 2011; Provisional Suspension Decision 18 November 2010

The Tribunal suspended rugby league player Joshua Poasa for four months due to a cannabis anti-doping violation. He tested positive to cannabis after playing a representative match for Northern.

Mr Poasa admitted the violation at the hearing, stated he had made a mistake and expressed remorse. He, and a witness, gave evidence that after playing the last game of the season for his club several players went to a house warming party, where there were also players from other clubs, and at the party he shared a cannabis joint with a group of older players, which caused the positive test. Evidence suggested he may have taken the cannabis due to peer pressure.

The Tribunal noted he was an 18 year old who made a mistake and there were mitigating factors. He may have been let down by his environment. Evidence suggested there may be a culture of cannabis smoking in rugby league in Northland and that peer pressure was brought to bear on an 18 year old. He had been provisionally suspended since 18 November 2010 and had not been able to play other sports that he would normally play and this may also be a mitigating factor. However, an aggravating factor was that the week before the party he attended a training camp where he received formal anti-doping education, including information that cannabis was prohibited. When he smoked cannabis at the party, he knew it was prohibited.

The normal starting point in the Tribunal for penalties for cannabis violations is now four months' suspension (provided the athlete can demonstrate how the cannabis got in their system and that it was not taken for performance-enhancing reasons). Aggravating and mitigating factors are then considered in deciding the penalty. Here the Tribunal considered mitigating factors equated with aggravating factors and four months' suspension was appropriate. The Tribunal was required to publicly report the decision and his request for name suppression was not granted.

Drug Free Sport New Zealand v Bruce Kake

(ST 05/10) Decision 31 August 2010

The Tribunal suspended touch player Bruce Kake because of a cannabis violation. He tested positive to cannabis after the final of the 2010 New Zealand Touch National Championships.

Mr Kake admitted the violation. He left the championships the day before the match to be with family upon learning his grandmother had passed away and smoked cannabis that night for comfort purposes. He intended to go to the tangi but changed his mind, upon talking to family, and decided to return to the tournament the next day as he thought that was what his grandmother would have wanted. He was also captain of the team, which was down on numbers, and he wanted to help out. The Tribunal took the bereavement into account and that when he smoked the cannabis he had intended to go to his grandmother's tangi and did not intend to return to the tournament.

However, there were aggravating circumstances including that he was an experienced international player who was aware of the anti-doping rules, including those concerning cannabis, and who made a deliberate decision to return to participate in the competition knowing that he had smoked cannabis the night before and hoped he would not get caught. His team did not win but would have been disqualified if it had, as a result of his violation. The Tribunal considered a deterrent and meaningful suspension was called for.

The touch season had finished and he had been suspended by Touch New Zealand (TNZ) on a different disciplinary matter from 1 November until 31 December 2010 in the new season. TNZ requested that the suspension imposed by the Tribunal commence from 1 January 2011 in order to be effective. However, the Tribunal does not have any power under the Sports Anti-Doping Rules to impose a suspension commencing on a future date.

The Tribunal considered it must have the power to impose a meaningful and effective sanction. The appropriate sanction in every case depends on the circumstances of that particular case. In the circumstances of this particular case, the Tribunal decided a meaningful and effective suspension would be one that does not expire until after the next touch season has finished. In imposing the penalty, the Tribunal took into account that he was already suspended by TNZ from 1 November to 31 December on a different matter. The Tribunal therefore suspended him from the hearing date on 29 June 2010 until 16 March 2011, when the next touch season was due to finish.

Drug Free Sport New Zealand v Kavossy Franklin

(ST 10/10) Provisional Suspension Decision 23 June 2010; Decision 18 August 2010

The Tribunal suspended basketball player Kavossy Franklin for two years because of a cannabis violation. He tested positive to cannabis after playing for the Harbour Heat in a National Basketball League match.

Under the Sports Anti-Doping Rules, the penalty for an anti-doping violation involving a prohibited substance is two years' suspension. However, in the case of specified substances, such as cannabis, the athlete can receive a lesser penalty under the rules, but only if the athlete:

- establishes how the cannabis got in their system
- establishes it was not taken with the intention of enhancing their sports performance
- produces corroborating evidence in addition to his or her own word, which means that the athlete has to provide a witness to back up his or her evidence about the above.

Mr Franklin admitted the violation in email correspondence. The Registrar of the Tribunal informed Mr Franklin on several occasions by email and telephone about the requirements of the rules including the need to have a witness to corroborate his evidence. The hearing was held by teleconference as Mr Franklin had moved to the USA. Mr Franklin had difficulty connecting and the hearing was adjourned for a week. He failed to participate in the rescheduled hearing and made no further contact to explain why. The Tribunal was satisfied that he had been made fully aware of the requirements under the rules.

The Tribunal was aware from previous discussions between the Registrar and Mr Franklin that Mr Franklin felt unable, for personal reasons, to provide the evidence of a corroborating witness. The Tribunal commented on difficulties athletes may have in some circumstances in providing corroborating evidence but without this evidence the Tribunal has no choice under the rules and has to impose a two year suspension. In this case, as Mr Franklin did not participate in the hearing, the Tribunal had neither his direct evidence nor that of a witness.

The Tribunal therefore suspended Mr Franklin for two years. The suspension applied worldwide, not just in New Zealand.

Drug Free Sport New Zealand v Corey Webster

(ST 09/10) Provisional Suspension Decision 23 June 2010; Decision 21 July 2010.

The Tribunal suspended Tall Black basketball player Corey Webster for two months due to a cannabis violation. Mr Webster tested positive to cannabis after playing for the Harbour Heat in a National Basketball League match.

Mr Webster admitted the violation. The Tribunal accepted evidence that the cannabis was not taken for sports performance-enhancing purposes but used with a friend in a time of personal stress for Mr Webster. The criterion to be considered under the rules is the athlete's degree of fault. The Tribunal acknowledged the agreement entered into, and the laudable steps taken, by Mr Webster and the New Zealand Breakers (who he plays for) since the violation. However, these steps do not have a direct bearing on the athlete's degree of fault. The fact that he is an international athlete did not assist him. Arguably there is a greater responsibility on an international athlete to comply with anti-doping requirements. The Tribunal took into account that he was under stress during the time of use, which was relevant to fault, but this was not a major consideration.

That he knowingly used cannabis two days before an important match, while well aware of the anti-doping rules and Basketball New Zealand's commitment to them, meant he had a reasonable degree of fault. The appropriate sanction in the circumstances was two months' suspension.

While not applying to this case, the Tribunal noted it had reviewed its approach to sanctions for cannabis violations and that the starting point for cannabis violations in future cases would be increased to four months' suspension.

DIMETHYLPENTYLAMINE 1-3 (AKA METHYLHEXANEAMINE)

Drug Free Sport New Zealand v Blair Jacobs

(ST 24/10) Decision 22 June 2011; Provisional Suspension Decision 14 December 2010

The Tribunal suspended swimmer Blair Jacobs for 12 months. He tested positive for the prohibited substance dimethylpentylamine 1-3, also known as methylhexaneamine, at the 2010 National Short Course Swimming Championships.

Mr Jacobs admitted the violation and gave evidence it was due to him taking supplements which he bought online. He did not investigate the ingredients of the products other than referring to their labels and stated he had not been aware methylhexaneamine was prohibited. He believed they were energy drinks that would help him get over being tired from his job and give him energy to train. He was aware of other athletes who took such products and assumed they were safe to take.

Mr Jacobs had not been part of the swimming high performance programme and had not participated in any formal drug free education. However, he acknowledged he was generally aware of the drug testing programme, Drug Free Sport's services and the requirement not to take prohibited substances. He accepted he should have taken more care to fully research the ingredients and to check whether he could take them.

The Tribunal accepted, by a narrow margin, that he had established he had not intended to enhance sports performance but was focused on overcoming work tiredness. Mitigating factors included: the work factor motivating him to take the supplements was extraneous to his swimming; he admitted the violation; and he accepted he was wrong to rely on informal assurances rather than making a proper inquiry.

The WADA Code and Sports Anti-Doping Rules place a high burden on athletes to be responsible for what they put in their body. Some cases refer to a "duty of utmost caution" on athletes to avoid taking prohibited substances. A competitor for a number of years at a national level, even if not in the high performance squad, cannot avoid that obligation. The Tribunal thought the case more serious than the earlier Brightwater-Wharf case, where six months' suspension was imposed for methylhexaneamine. In that case, the athlete made conscious attempts to identify ambiguously labelled product ingredients and sought assurance from the supplier. Here Mr Jacobs took no meaningful steps to obtain assurance the products did not contain banned substances, other than his interpretation of the product label. The appropriate penalty was 12 months' suspension.

Drug Free Sport New Zealand v Rangimaria Brightwater-Wharf

(ST 14/10) Decision 29 November 2010; Provisional Suspension Decision 27 July 2010

The Tribunal suspended powerlifter Rangimaria Brightwater-Wharf for six months because of a violation involving dimethylpentylamine (aka methylhexaneamine). She tested positive for dimethylpentylamine after competing in the 2010 North Island Powerlifting Championships.

She admitted the violation and gave evidence that it was accidental and due to her taking, on the morning of competition, a supplement capsule which unknown to her contained dimethylpentylamine. The supplement's package did not list dimethylpentylamine as an ingredient. It listed geranium seed extract but she did not know that dimethylpentylamine could be a product of geranium seed. She worked in a health store selling the product and made inquiries to the distributor about whether it contained any prohibited substances. The distributor told her that the manufacturer had advised that it did not contain prohibited substances.

Although it was not on the 2009 List of Prohibited Substances, athletes were found guilty in 2009 by overseas bodies of anti-doping violations for testing positive to dimethylpentylamine on the basis it was sufficiently related to other listed prohibited substances. Dimethylpentylamine was explicitly added to the 2010 Prohibited List. The penalty for a violation with this substance is two years' suspension unless the athlete can show no fault or no significant fault.

After the Tribunal hearing, but before the Tribunal made its decision, the Tribunal was advised that the World Anti-Doping Authority (WADA) was reclassifying dimethylpentylamine as a "specified substance" in the 2011 Prohibited List. This meant the penalty for this substance was to change from a mandatory two years' suspension to a potentially lesser penalty, which can range from a warning only up to a maximum of two years' suspension. However, the 2011 Prohibited List did not come into law until 1 January 2011. Despite this, WADA advised that for "practical reasons" it thought any existing cases involving the substance could treat the substance as a "specified substance" even though it did not become one until 2011, but acknowledged that sanctioning bodies were free to decide this as they wished.

The Tribunal therefore had a further hearing to decide whether it should treat the substance as a specified substance and, if so, what should be the appropriate penalty? The Tribunal noted two overseas cases that treated dimethylpentylamine (or methylhexaneamine as it is also known) as a specified substance, resulting in penalties of four and six months' suspension.

The Tribunal decided to deal with the violation as if it was for a specified substance. The Tribunal stated: *In the exceptional circumstances of the position taken by WADA and the fact that favourable decisions are being made respecting athletes in other jurisdictions, fairness to New Zealand athletes justifies this Tribunal in applying that same criteria.*

The Tribunal accepted that she did not know the supplement contained a prohibited substance and did not take it for performance-enhancing reasons, but rather to "lift her mental state", and noted she was the only competitor in her class. The Tribunal accepted that she was honest and had strong values about competing with a "clean" body. However, there is a heavy onus on athletes under the Sports Anti-Doping Rules. An athlete is responsible for her decision to take any substance and the rules imply utmost caution.

Ms Brightwater-Wharf had received anti-doping education and knew that Drug Free Sport New Zealand (DFS) operates a help line that athletes can use to check substances, but she did not use it. While she had previously made her own inquiries to the distributor, her failure to use the DFS advisory service was significant in assessing her fault. Particularly in the case of athletes who have participated in the DFS programme, and have been supplied with access details to the DFS advisory services, there is a degree of fault when no inquiry is made (except in true emergency situations). Although an inquiry on the Saturday morning of the competition may not have resulted in specific information about the presence of the prohibited substance, she would have been advised not to take the capsule, in the absence of certainty. She could also have inquired earlier.

The Tribunal stated: *The Tribunal members understand how the apparent needs of a particular moment can lead to a decision such as the one made by Ms Brightwater-Wharf. However, it is important that athletes who are in the programme do recognise that their first instinct, for their own protection, must be to be safe and, so far as possible, to be certain. It is important that the Tribunal reinforces that message and the service which Drug Free Sport does provide.*

The Tribunal considered comparable anti-doping decisions of its own and overseas bodies concerning athletes inadvertently taking prohibited specified substances (including cases where doctors had mistakenly prescribed athletes prohibited substances; the present case was seen as more serious than these). The Tribunal concluded that a suspension of six months was appropriate in this case.

CANRENONE

Drug Free Sport New Zealand v Anna Bramley

(ST 03/11) Decision 20 June 2011; Provisional Suspension Decision 6 May 2011

The Sports Tribunal suspended runner Anna Bramley for three months due to a positive test for the prohibited substance canrenone (a metabolite of spironolactone). Ms Bramley was tested at the Athletics New Zealand Track and Field Championships on 26 March 2011.

Ms Bramley admitted the violation and gave evidence that it was due to her taking spironolactone that she had been prescribed for a medical condition. She was first prescribed spironolactone in 2005 and this prescription was repeated when she later became a patient of a different GP in 2008. Ms Bramley is a former New Zealand equestrian representative but had not competed in that sport for some time. She took up running in 2008 and in 2010 won, or achieved places, in regional and national competitions. Ms Bramley gave evidence that she told her current GP (who is also a sports doctor) that she was competing in running but never thought to specify at what level. Her doctor was unaware she was competing at national level; otherwise her doctor would have advised Ms Bramley to apply for a therapeutic use exemption. Ms Bramley submitted that she had not turned her mind to whether her prescribed medication may possibly be banned and did not check this with her doctor or otherwise check.

The WADA Code and the Sports Anti-Doping Rules impose a duty of strict liability on athletes to ensure that no prohibited substance enters their bodies and it is not necessary to show intent, fault, negligence or knowing use on an athlete's part to establish a violation. The Tribunal reviewed its own decisions, and those of overseas tribunals, where athletes have taken prohibited substances that were prescribed and noted the duty on athletes to check their medication does not contain banned substances. Some cases refer to a "duty of utmost caution" on athletes to avoid taking prohibited substances, including prescribed medications.

The Tribunal considered that Ms Bramley did not take spironolactone to enhance her performance and that she was clearly not a "drugs cheat". However, an athlete cannot avoid personal responsibility by "leaving it" to a doctor. The Tribunal stated:

The fact a substance is prescribed for a medical condition does not diminish the athlete's strict personal responsibility. The fact a sports doctor is consulted may be relevant if discussion about legitimate use takes place. It is for the athlete to initiate that. No fault attaches to the doctor here and the athlete's counsel fairly accepted that. We do not consider the simple fact of attendance on a sports doctor is enough, in particular when the athlete never turned her mind to legitimacy of use, and never addressed the masking element of doping controls at all...The athlete is not a drugs cheat but she fell well short of addressing her responsibilities...

The Tribunal suspended Ms Bramley from participating in sport for three months commencing from the date of her provisional suspension.

METHAMPHETAMINE AND AMPHETAMINE

Drug Free Sport New Zealand v Para Murray

(ST 22/10) Decision 7 March 2011; Provisional Suspension Decision 18 November 2010

The Tribunal suspended rugby league player Para Murray from participating in sport for two years because of an anti-doping violation relating to the prohibited substances D-Methamphetamine and D-Amphetamine. Mr Murray tested positive to these substances after playing a representative match for Northern in a national rugby league tournament.

Mr Murray admitted the violation, which he stated was the result of recreational drug use. He made submissions seeking a modification of the normal penalty in light of his personal circumstances so that he could continue to actively participate in sport. Reference was also made to a perceived need for more drug education in his area.

While the Tribunal was sympathetic to these submissions, its only role was to decide the case on the basis of the Sports Anti-Doping Rules. The Tribunal had no discretion in a case such as this, where prohibited substances are involved and no defence available under the rules (such as no significant fault or negligence) had been established, other than to impose the mandatory penalty of two years' suspension. Therefore, the Tribunal suspended Mr Murray for two years. The Tribunal suggested to Mr Murray that there may be opportunities for him to take an active role in anti-doping education programmes, spread the message to others and achieve a positive result out of an otherwise bad experience.

MORPHINE

Drug Free Sport New Zealand v Graham O'Grady

(ST 01/11) Decision 21 March 2011; Provisional Suspension Decision 18 February 2010

Graham O'Grady, a triathlon competitor, tested positive to the prohibited substance morphine as the result of an in-competition test on 8 January 2011, when he won the Tauranga Half Ironman/NZ champs. Mr O'Grady did not challenge the positive test result which had been confirmed by A and B sample tests. However, he claimed he was not at fault in testing positive to morphine as the morphine found in his system was due to poppy seeds contained in loaves of gluten free poppy seed bread he had been eating before, and on the day of, the competition.

In order to establish a defence of "no fault" under Rule 14.5.1 of the Sports Anti-Doping Rules, the athlete must show by persuasive evidence:

- how the prohibited substance came into his or her system
- that he or she bears no fault, which requires the athlete to establish that in the circumstances he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had used or been administered the prohibited substance.

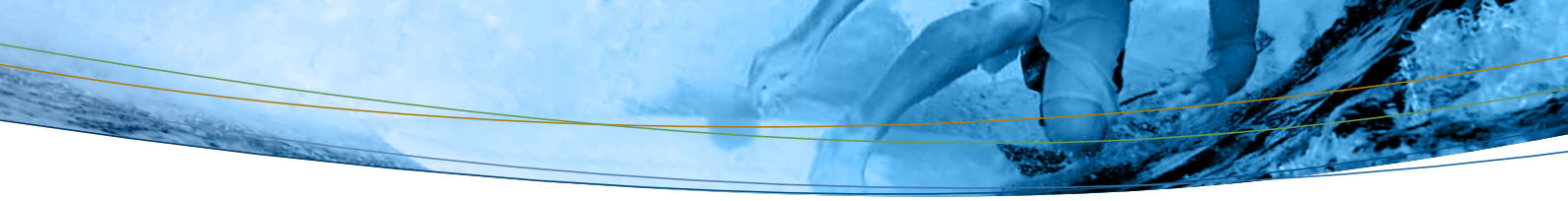
The Tribunal heard and accepted expert scientific evidence that morphine may be produced from consumption of poppy seeds (which are not prohibited substances). Poppy seeds are a potential, if not certain, source of morphine. The concentration of morphine that may result from consumption of poppy seeds is subject to many variables. There was evidence that the variables involved in the present case, including the source of poppy seeds and the bread production process, may in combination have inflated the morphine concentration. The Tribunal accepted that on the scientific evidence the morphine concentration in Mr O'Grady's test samples was a "possible" or "likely" consequence of the consumption of poppy seed bread.

While the scientific evidence established the possibility of the contamination arising from the poppy seed consumption, the Tribunal still had to be satisfied, on a balance of probabilities, that the source of the morphine concentration was more likely than not the consumption of poppy seeds and, if so satisfied, that Mr O'Grady could not reasonably have known or suspected that outcome.

Having heard and seen Mr O'Grady and the other witnesses, the Tribunal was satisfied that the source of Mr O'Grady's positive test was the consumption of the poppy seed bread. On the evidence there was no other credible explanation.

The Tribunal then had to decide whether Mr O'Grady could reasonably have known or suspected that consuming a commercial bread product might introduce morphine into his system and ultimately result in the positive test. The Tribunal decided that this result could not reasonably have been anticipated by Mr O'Grady. As the Tribunal concluded that there was no fault on the part of Mr O'Grady for the anti-doping violation, no penalty of suspension was imposed. The Tribunal emphasised that, in its experience, this was a very unusual case.

As an anti-doping violation had been established, the Sports Anti-Doping Rules required that his competition result on 8 January had to be disqualified. Such disqualification is an automatic consequence of an anti-doping violation under the rules, even when an athlete is found to have no fault for the violation.



OTHER PROHIBITED SUBSTANCES

Drug Free Sport New Zealand v Woodes Rogers

(ST 15/10) Decision 11 October 2010; Provisional Suspension Decision 13 August 2010

The Tribunal suspended Woodes Rogers, a powerlifter, from participating in sport for two years due to anti-doping violations involving numerous prohibited substances.

Mr Rogers underwent an out-of-competition test and returned positive tests to a number of prohibited substances:

- Testosterone:Epitesterone in a ratio of 64:1 (threshold ratio is 4:1)
- Oxymesterone
- Metabolites of Methandienone
- Metabolites of Methyltestosterone
- Metabolites of Oxymetholone
- 19-norandrosterone (a metabolite of nandrolone, norandrostenedione or norandrostenediol).

Despite being notified, Mr Rogers failed to participate in both his provisional suspension hearing and his substantive hearing.

The Tribunal considered that the number of prohibited substances he tested positive to amounted to “aggravating circumstances” under the Sports Anti-Doping Rules, which could have led to the Tribunal imposing a penalty of up to four years’ suspension. However, Drug Free Sport New Zealand (DFS) accepted that correspondence from Mr Rogers amounted to a prompt and “frank” admission of his anti-doping offending. As a result, DFS did not seek a suspension longer than two years. Given the admission, and the position of DFS, the Tribunal decided that a suspension of two years was the appropriate penalty.

ATTEMPTED USE AND POSSESSION OF PROHIBITED SUBSTANCES

Drug Free Sport New Zealand v Adam Stewart

(ST 19/10) Decision 8 September 2010

The Tribunal suspended Adam Stewart, who had been selected as a member of the New Zealand cycling team for the 2010 Commonwealth Games, for two years due to anti-doping violations involving attempted use and possession of prohibited substances. These violations relate to two incidents where he imported prohibited substances by post. The Tribunal heard this matter under urgency due to the close proximity of the Commonwealth Games.

New Zealand Customs intercepted a parcel addressed to a PO Box number operated by Mr Stewart and referred the parcel to MedSafe in the Ministry of Health. The parcel contained six pre-filled syringes labelled Eprex epoetin alfa 4000iu/0.4ml ("EPO"), one ampoule labelled pregnyl chorionic gonadotropin 5000IU ("hCG") and one ampoule of pregnyl solvent. The importation was unlawful in terms of the Medicines Act 1981. These substances are prohibited substances under the WADA Prohibited List. After being interviewed by a representative for Drug Free Sport New Zealand, Mr Stewart admitted to ordering and purchasing these substances for himself and to an earlier incident in 2009 where he ordered and received hCG but got rid of it without using it.

At the hearing, Mr Stewart admitted to the following violations:

- Attempting to use prohibited substances between 31 March 2009 and 19 May 2010 by ordering, purchasing and arranging for the delivery of the EPO, hCG and pregnyl solvent to a PO Box number
- Being in possession of the prohibited substance hCG on or about 24 June 2009.

Under the Sports Anti-Doping Rules, the two incidents were to be treated as one violation with a prescribed penalty of two years' suspension. Despite this, there were aggravating circumstances in this case that, under the rules, could have led to the Tribunal imposing a penalty of up to four years' suspension. However, in view of the prompt admission and co-operation by Mr Stewart and Drug Free Sport's submissions recognising this, the Tribunal decided to impose the minimum sanction under the rules of two years' suspension.

The Tribunal noted the severe consequences of the suspension on Mr Stewart and his cycling career, including that it prevented him from competing in the 2010 Commonwealth Games. However, consequences must follow in the case of an athlete who has infringed the Sports Anti-Doping Rules as Mr Stewart has done.

Drug Free Sport New Zealand v Adam Stewart – Further decisions

(ST 19/10) Decision on application of Rule 14.8 16 February 2011; Decision on jurisdiction 6 December 2010

As noted above, the Tribunal suspended Mr Stewart for two years for attempted use and possession of prohibited substances. An issue arose whether the Tribunal had jurisdiction to consider an application to disqualify his competition results under Rule 14.8 of the Sports Anti-Doping Rules. The Tribunal decided it had jurisdiction to consider the application (see decision on jurisdiction 6 December 2010).

A further hearing was subsequently held to consider the application of Rule 14.8 and whether his results should be disqualified. Rule 14.8 requires mandatory disqualification of certain results "unless fairness requires otherwise". Mr Stewart submitted that the fairness exception should apply for various reasons including that he allegedly did not ingest the substance and the violation did not assist his performance. However there was no evidence of whether he took the substance or not. In any event, the rule also applies in cases of anti-doping violations where the athlete may not have taken the substance and not just to those violations arising from a positive test. There is a presumption that Rule 14.8 is to apply and exceptional circumstances are required to rebut that presumption. Exceptional circumstances were not established in this case and the consequences in Rule 14.8 applied. Mr Stewart's results from 31 March 2009 to the date of application of the period of ineligibility were disqualified. The Tribunal also noted that it is for Bike NZ and the International Cycling Union (UCI) to determine application of this order to those results which may have a "team" element in them.

REFUSAL OR FAILURE TO PROVIDE A SAMPLE

Drug Free Sport New Zealand v Kyle Reuben

(ST 20/10) Decision 1 December 2010; Provisional Suspension Decision 8 October 2010

The Tribunal suspended rugby league player Kyle Reuben from participating in sport for two years for refusing or failing to provide a sample for drug testing. The testing occurred after Mr Reuben played for Southern against Counties Manukau in the national rugby league competition. He initially provided an insufficient sample. He had a conversation with the drug testing chaperone and asked about possible repercussions for cannabis use. He subsequently told the chaperone that he was not prepared to wait to pass a further sample and would accept the consequences. He walked off without completing the test. The chaperone reported that he advised Mr Reuben of the consequences of leaving but Mr Reuben declined to stay and complete the test.

Mr Reuben admitted the violation. He stated that he had put family commitments first and had wanted to do the test as quickly as possible in order to get a ride with his brother and make sure he got home in time to collect his child from a babysitter. He also stated that he had openly told the chaperone of his social cannabis use and while he knew that first-time offenders with cannabis may get suspended for a few months, he did not realise that he could get suspended for two years for refusing or failing to provide a sample.

The Sports Anti-Doping Rules state 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, which normally requires truly exceptional circumstances.

This was not a case of no significant fault or negligence in the Tribunal's view. Mr Reuben chose to walk away from the chaperone and not complete the test. His justification for doing this falls well short of the "exceptional circumstances" test. The Tribunal also found that the chaperone had warned Mr Reuben that he would face a two year suspension if he walked away. It may be that Mr Reuben was confused about this and thought that if he acknowledged taking cannabis he would get a similar penalty as athletes who test positive for cannabis. However, if he thought this, he was mistaken. The fact that an athlete may have smoked cannabis has no relevance to the penalty applied when the athlete refuses to complete a test. The Sports Tribunal therefore suspended Kyle Reuben from participating in sport for two years.

Drug Free Sport New Zealand v Khalid Slaimanrel

(ST 06/10) Provisional Suspension Decision 22 June 2010; Decision 13 August 2010

The Tribunal suspended Khalid Slaimanrel for one year and nine months because of an anti-doping violation. Mr Slaimanrel refused to provide a specimen for drug testing during an in-competition test at a powerlifting event.

Mr Slaimanrel admitted the violation. He stated that he only participated in the competition for fun and did not intend participating in future powerlifting competitions. He also stated he intended to compete in bodybuilding and believed that any period of suspension imposed by the Tribunal would not prevent him from doing so. The Tribunal warned him that any period of suspension it imposed here would also apply to any sporting body that is a signatory to the World Anti-Doping Code.

The usual sanction for such a violation is two years' suspension. However, DFS acknowledged that there had been a period of delay between Mr Slaimanrel's refusal to take the test and their notification to Mr Slaimanrel that they were going to pursue the matter before the Tribunal. The delay was the consequence of consideration of some other issues that could not be attributed to Mr Slaimanrel. The Tribunal considered that the two year sanction should be reduced by three months to take into account the period of delay.

DECISIONS OF TRIBUNAL FINDING NO ANTI-DOPING VIOLATION OCCURRED

There were two cases heard by the Tribunal where the Tribunal decided that an anti-doping violation had not occurred.

When the Sports Tribunal decides that no anti-doping rule violation has been committed, the Tribunal's decision will be publicly reported only with the consent of the athlete or other person who is the subject of the decision (see Rule 13.3.3 of the Sports Anti-Doping Rules).

In both these cases, the athletes concerned did not consent to the public reporting of the decision. Therefore, all details relating to these cases are strictly confidential.

ANTI-DOPING CASES HEARD BY THE TRIBUNAL

SELECTION APPEALS

Garth Shillito v Fencing New Zealand

(ST 13/10) Reasons for Decision 29 September 2010; Decision 1 September 2010

The Tribunal had an urgent hearing at night to hear an appeal by Garth Shillito against a decision of Fencing New Zealand (FNZ) not to select him for the New Zealand Men's Open Sabre Team to attend the Commonwealth Fencing Championships 2010. The Tribunal issued its decision the next day dismissing the appeal.

Mr Shillito appealed FNZ's decision not to select him on various grounds including that the selection process had not been properly followed and the applicable selection criteria in the FNZ selection policy had not been correctly applied. He pointed to his New Zealand ranking of third (based on points earned in various competitions) as justifying his place in the team. He also complained that not all of the selected team had competed in all the competitions identified as counting towards selection, and that one member of the team was resident in Australia and his selection in the team was based on results in Australian competitions.

FNZ accepted there were deficiencies in the ranking system and these skewed the results and led to Mr Shillito getting a higher number of points and ranking than the standard and number of competitions he competed in warranted. The FNZ policy requires not just consideration of rankings and results but also a prediction of athlete performance by the selectors. They also considered that the performance and potential for the Commonwealth championships of the Australian resident fencer justified his inclusion in the team. Results for that fencer in Australia could be taken into account. Further, the policy clearly indicated an intended assessment of relativity between fencers.

The Tribunal decided it could not conclude that there was a failure by FNZ to follow the selection policy or to apply the relevant selection criteria. Although rankings and results in some specified tournaments were the primary selection criteria, they were not exclusive in determining relative performance of the fencers, and prediction of potential performance in the championships was also to be considered. It was a matter for the selectors what weighting they placed on the various competitions and results, including the Australian ones, which the selectors were able to consider in this case. The Tribunal would have to identify clear errors in the selection process before it would intervene. The Tribunal considered there was no obvious failure by the selectors but rather a judgement call on relative performance.

However, the Tribunal considered Mr Shillito had properly brought his appeal, exposed some matters wanting in the FNZ selection policy and raised proper questions about its application. In particular, the Tribunal was concerned over whether age had been a factor in not selecting him, which it could not be under the selection policy, but ultimately considered this was not the reason for his non-selection. The Tribunal made some comments about what a clear selection policy should contain.

Wayne Gear v Table Tennis New Zealand

(ST 05/09) Decision 13 July 2010; Reasons for Decision 15 July 2010

The Tribunal allowed an appeal by Wayne Gear against a decision of Table Tennis New Zealand (TTNZ) nominating someone else as coach for table tennis players competing at the Youth Olympic Games. The Tribunal heard the matter under urgency and gave a decision at the end of the hearing.

A TTNZ high performance team panel consisting of two members drew up an initial "long list" of candidates for the position of coach of the team competing at the Youth Olympic Games in Singapore in August. The panel members who drew up the long list of coaching candidates included themselves on this list but they did not include Mr Gear. They considered Mr Gear for the list but, for reasons relating to an earlier disciplinary matter where Mr Gear had received a reprimand only, decided not to not include Mr Gear on the long list. One of the panel members was ultimately nominated by TTNZ selectors as the coach.

There is a principle of natural justice that a person cannot be a judge in their own cause. If that person is a party in the cause or has a financial or proprietary interest in the outcome, then that person is automatically disqualified. The Tribunal took the view on the facts that the two panel members who drew up the long list were acting as judges in their own cause and therefore their decision not to include Mr Gear on the long list should be set aside for this reason. The Tribunal therefore allowed Mr Gear's appeal.

It was unnecessary to make a decision on the other appeal grounds, such as bias, as the nomination decision was set aside on the principle that a person cannot be a judge in their own cause. The Tribunal made comments on whether apparent bias, as opposed to actual bias, would have been sufficient to overturn the decision but this did not have to be decided. The Tribunal also observed that usually there was no obligation to ask for expressions of interest and the athlete or other candidate does not have a right to make submissions on selection. Unless there are express provisions in the applicable rules, a selector is not required to discuss potential selection with a candidate or give reasons for non-selection after the event.

The Tribunal referred the matter back to TTNZ for determination in accordance with the appropriate selection criteria. The Tribunal emphasised that in allowing the appeal it was not indicating any preference between Mr Gear or the other coach that TTNZ had nominated. This was a matter for TTNZ when it reconsidered the nomination decision. The Tribunal noted that if TTNZ chose to re-nominate that coach, the Tribunal saw no reason why he should not be the coach.

OTHER APPEALS

Jack Halka v Bowls New Zealand

(ST 12/10) Decision 21 April 2011

The Tribunal allowed an appeal against a decision of Bowls New Zealand (BNZ), to the extent that the matter was sent back to the appropriate bowling body to hear. Jack Halka competed in a championship bowls match at Taradale and complained about the appointment of a "junior bowler" as a marker in the match. He protested to the match convenor and sought a re-match with a more experienced marker. A committee at the Bowls Taradale (BT) club rejected his protest.

Mr Halka then initially tried to appeal to BNZ but was incorrectly advised by BNZ that he had to appeal to Bowls Hawkes Bay (BHB). However, under the relevant rules his appeal should have gone to the BT Judicial Committee. Mr Halka appealed to BHB. The BHB Judicial Committee decided after the hearing that it had no jurisdiction and considered that Mr Halka's "avenues for redress remain only with Bowls Taradale and they have been exhausted". Mr Halka then appealed BHB's decision to BNZ. The BNZ Judicial Committee also adopted the position that Mr Halka's appeal against the protest decision could only be heard within BT. The BNZ Judicial Committee decided that it had no jurisdiction to hear the appeal from BHB as under the rules there was only one appeal right and the BHB Judicial Committee decision was the final disposition of the one appeal right available.

Mr Halka appealed to the Sports Tribunal on a number of grounds and asked for various orders. BNZ submitted the Sports Tribunal did not have jurisdiction to hear the appeal.

The Tribunal agreed that under the relevant rules of the various bowling bodies Mr Halka only had one right of appeal. Under the rules, a decision on appeal is final, whether that decision is made by the "judicial committee" of a club or of a centre or of BNZ or by the Sports Tribunal. The rules were clear that there can be only one appeal.

However, the Tribunal considered that Mr Halka's appeal had not actually been heard. It would be "curious if an appellant is led to the wrong appeal body and a finding to that effect, of no jurisdiction, is the disposition of the one appeal right". Mr Halka was led to lodge an appeal to BHB and his failure to lodge an appeal to the BT Judicial Committee cannot count against him. The Tribunal considered that the BNZ Judicial Committee should have sent the matter back to the BT Judicial Committee, where it properly lay.

Therefore, the Sports Tribunal ordered that the appeal be sent back to the BT Judicial Committee to be heard. This was not to hear a second appeal, as his appeal has not been heard at all. The Tribunal gave guidance on the matters that should be considered.

Thomas Emmerson v KartSport New Zealand Inc

(ST 18/10) Decision 18 November 2010

Mr Emmerson (E) appealed against a decision of KartSport New Zealand (KNZ). The executive of KNZ changed a rule dealing with permitted fuels, including prohibiting use of bio-fuel blends in open class races. E uses bio-fuels in his kart and at a subsequent race meeting competed in one class but was not able to compete in the open class due to this fuel restriction. E sought to challenge the validity of this fuel rule and protested to stewards. The stewards' panel heard his protest and concluded that there was no infringement of rules by KNZ. E appealed to the KNZ Appeal Board. The Appeal Board considered stewards should not have heard the protest as E was not a "competitor" in that class under the rules and he had no right to protest. Despite this, the Appeal Board considered E's appeal anyway because the stewards had considered the complaint. The Appeal Board dismissed his appeal and E appealed to the Sports Tribunal.

The Tribunal considered whether the Appeal Board can effectively validate a protest, if not a legitimate process, by hearing the appeal on its merits, and also whether this gave the Tribunal jurisdiction to hear the matter. An appeal from the stewards' decision could only be on grounds that the decision was wrong. The Appeal Board, in trying to be fair to E, considered his complaint about validity of the rules but exceeded its jurisdiction in doing so. The Tribunal considered whether out of fairness it should consider E's complaint that the changed fuel rule was ultra vires and invalid. However, the Tribunal concluded it would be wrong for it to consider the matter and that it had no jurisdiction. The Tribunal's jurisdiction under KNZ rules was to consider appeals from the KNZ Appeal Board that had arisen from legitimate protests under rules. This was not the case here as E did not have the right to have the fuel rule declared ultra vires (under the procedure in the rule dealing with right to protest). The fact that the Appeal Board elected to consider the merits does not give the Sports Tribunal jurisdiction to do so when the Appeal Board itself had no jurisdiction to consider the merits. The Sports Tribunal therefore declined jurisdiction.

CASES DEALT WITH BY THE TRIBUNAL FROM 2003 TO 2011

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.

Statistical analysis of cases dealt with by the Tribunal from 2003 to 2011

As at 30 June 2011, there were 122 decisions (or records of settled cases) on the Sports Tribunal website.

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).

It should also be noted that this figure does not include provisional suspension decisions. Since the passing of the Sports Anti-Doping Act 2006, the Tribunal is usually the body that decides provisional suspension applications, which are usually referred by National Sports Organisations (NSOs). In most substantive anti-doping cases since this time, the Tribunal has had to decide provisional suspension applications, which have required a separate hearing and the issuing of a separate decision. For example, in 2010/11, the Tribunal heard and decided 15 provisional suspension applications.

Of the 122 substantive decisions on the website, 78 (approximately 64%) 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

As at 30 June 2011, the Tribunal has issued 80 substantive decisions in 78 anti-doping cases.

The 80 substantive decisions include:

- a 2003 case that appears on the website, for which the Tribunal released a decision ruling it had no jurisdiction
- 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
- three decisions relating to one case.

ANALYSIS OF ANTI-DOPING CASES HEARD BY THE TRIBUNAL

Of the 80 anti-doping substantive decisions by the Tribunal, there were:

- 40 cases of cannabis, when not used in conjunction with another prohibited substance
- 7 cases of a failure or refusal to provide a sample
- 2 cases of dimethylpentylamine 1-3, also known as methylhexaneamine
- 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
- 2 cases of morphine
- 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 methamphetamine/amphetamine/cannabis
- 1 case of methamphetamine/amphetamine
- 1 case of boldenone and testosterone
- 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 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)
- 2 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 41 cases involving cannabis (either by itself or with other substances) were:

- Rugby league 14 cases
- Basketball 9 cases
- Touch 8 cases
- Softball 7 cases
- Boxing 2 cases
- Wrestling 1 case

SANCTIONS IN CANNABIS CASES

Sanctions imposed in the 41 cases involving cannabis were:

- Suspension 29 cases
- Warning and reprimand 9 cases
- Deferred suspension (education programme) 1 case
- Fine and warning 2 cases

First cannabis violations:

Suspensions imposed for first cannabis violations have generally been in the range of one to two months for first violations. 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 two 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 42 decisions listed on the Tribunal website as at 31 July 2011 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)
- 13 Tribunal decisions relating to athletes appealing their non-nomination or non-selection for a New Zealand team or squad
- 8 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 20 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 13 cases relating to athletes or coaches 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
- 1 appeal by a coach against non-nomination or non-selection for the Youth Olympic Games
- 5 appeals against not being selected for a New Zealand team.

OTHER APPEALS

There have been eight 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 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).

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 12 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 by a coach relating to non-nomination/non-selection for the Youth Olympic Games
- 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.

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 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 ADOPTS NEW APPROACH TO CANNABIS SANCTIONS – NEW STARTING POINT OF FOUR MONTHS' SUSPENSION

Since the inception of the Tribunal, the most common anti-doping violation has been for testing positive to cannabis. Athletes often give evidence that the cannabis was taken in social situations such as parties. Cannabis has been used by athletes, who were fully aware that it is prohibited, only days or even the night before the tournament or match in which they tested positive.

In the last few years, the Tribunal has generally imposed suspensions of between one month and two months on athletes who commit cannabis violations, provided it is the athlete's first anti-doping violation.

The Tribunal has indicated for some time in its decisions that it may need to increase the sanctions it imposes for cannabis violations. In 2010/11, it did so.

The Tribunal wrote to National Sports Organisations on 28 July 2010 advising that it has recently reviewed and revised its policy on sanctions that it will impose in anti-doping cases involving cannabis violations. The Tribunal stated it would take a new approach to the sanctions it imposes for athletes who commit first-time violations with cannabis and that it would now impose longer sanctions of suspension. The Tribunal advised that:

- the starting point for a first anti-doping violation involving cannabis will now be four months' ineligibility (suspension)
- this period may be increased or decreased depending on the presence of aggravating or mitigating factors
- this will bring the Tribunal's sanctions in line with those recently imposed in overseas jurisdictions in cannabis cases.

National Sports Organisations were requested to advise athletes, officials, coaches and other members in their organisation of this new approach.

The new sanction will only apply to athletes who have satisfied the requirements of Rule 14.4 of the Sports Anti-Doping Rules, which deals with specified substances. Rule 14.4 allows for the elimination or reduction of the period of ineligibility (which would otherwise be two years) if the athlete can establish how the cannabis entered their body, can establish that the cannabis was not intended to enhance their sports performance and can produce corroborating evidence establishing absence of intent to enhance sports performance.

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.

AMENDMENT TO TRIBUNAL RULES
– APPELLANTS CAN APPLY FOR SUSPENSION OF DECISION THEY ARE APPEALING

Rule 43 of the Sports Tribunal Rules has been amended. The effect of the amendment is to allow an appellant, who is appealing a decision of a National Sports Organisation or the New Zealand Olympic Committee, to apply to the Tribunal to have the decision, or part of the decision, appealed against suspended pending the hearing of the appeal. The amendment came into effect on 1 March 2011.

EXPENDITURE

Under the Memorandum of Understanding between the Minister for Sport and Recreation, SPARC and the Tribunal, SPARC employs the Registrar of the Tribunal, provides accommodation for the Tribunal office and funds support and information technology costs (including work on upgrading the Tribunal's website). SPARC also funds the other operating costs of the Tribunal, which for 2009/10 and 2010/11 were as follows:

2009/10 Year			2010/11 Year		
Other operating costs	Number of cases decided	Average cost per case	Other operating costs	Number of cases decided	Average cost per case
$78,595	14	$5,614	$99,379	22*	$4,517

* Note that in 2010/11 there were three decisions arising out of one anti-doping violation. As they involved separate issues involving separate hearings by different Tribunal panels, these have been treated as three cases in the figures above.

The figures above show the average other operating costs per case for the Tribunal for 2009/10 and 2010/11. 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.

The total other operating costs rose in 2010/11, which is to be expected as the Tribunal heard and decided more cases than in the year before. However, the average cost per case in 2010/11 decreased to $4,517 compared with $5,614 in 2009/10. This is a pleasing result and shows the Tribunal operating in an efficient manner despite the higher workload.

The figures above do not include decisions in provisional suspension cases. There were 15 of these cases decided in 2010/11 and each required a separate hearing and decision. If provisional suspension cases are factored in, then the average cost per case in 2010/11 was $2,686, which is a decrease on the 2009/10 figure of $4,136. (see below).

2009/10 Year			2010/11 Year		
Other operating costs	Number of cases decided including provisional suspensions	Average cost per case	Other operating costs	Number of cases decided including provisional suspensions	Average cost per case
$78,595	19	$4,136	$99,379	37	$2,686

SPORTS TRIBUNAL BIOGRAPHIES

Current 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: 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).

DEPUTY CHAIR: SIR BRUCE ROBERTSON

Sir Bruce was appointed a High Court Judge in 1987 and a Court of Appeal Judge in 2005. He retired in 2010. He is President of the Court of Appeal in Vanuatu and of the Court of Appeal in Pitcairn Island. He has also sat on the Court of Appeal in Samoa. Sir Bruce was Chair of the Rugby World Cup Authority. He holds and has held several other appointments in legal and judicial circles, many of them of an international nature, and in community affairs.

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.

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 works as a lawyer for firm Tompkins Wake in Hamilton.

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.

Recently Retired Members of the Sports Tribunal

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.

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.

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 Federation's 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.

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. Inquiries should be directed to Brent Ellis, Registrar of the Sports Tribunal.

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