SPORTS TRIBUNAL
of New Zealand

ANNUAL REPORT
2011/12

Mission of the Sports Tribunal of New Zealand

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

Period covered by this Annual Report

The 2011/12 Annual Report of the Sports Tribunal reports on activities and cases decided during the time period 1 July 2011 to 30 June 2012. Cases heard during this time but not decided as at 30 June 2012 will be reported on in the Annual Report for the following year.

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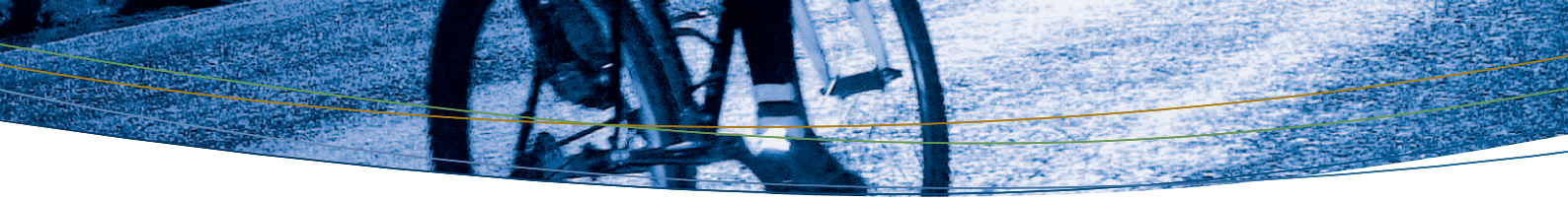


CHAIRMAN'S FOREWORD

As noted later in this report, the year ending 30 June 2012 was a relatively quiet year for the Tribunal. It determined 10 substantive matters, less than half of the 22 substantive decisions given in the previous year. There was an Olympic appeal lodged just before the end of the year, which was determined under urgency, and a decision given within a week of the appeal being filed. Details of this decision will appear in next year's report.

The Tribunal, in the methylhexaneamine case of Takerei, commented on the unsatisfactory position arising from CAS decisions relating to whether an athlete can rely upon the Specified Substance exemption if the athlete does not know that the substance taken contained a prohibited substance. It is understood that in the current review of the WADA Code, WADA proposes to remove the confusion, by providing that an athlete cannot rely upon not knowing that the prohibited substance is contained in the supplement taken by the athlete.

The issue of recreational drugs is also likely to change in the new Code. Currently, it is necessary for the athlete to satisfy the Tribunal as to how the substance got into the athlete's system and for that evidence to be corroborated. This is a very difficult rule to apply and it is understood is likely to be amended, as will also be the present rule which requires the degree of fault to be the criterion considered in assessing any reduction of the sanction. The fault provision is likely to be removed.

Other relevant matters are set out fully in this report.

Changes in the members of the Tribunal during the year were noted in last year's Annual Review when the Tribunal's appreciation of the work undertaken by Nick Davidson QC and Adrienne Greenwood, who retired during this year, were noted. It also noted the replacement appointments of Sir Bruce Robertson, a retired Court of Appeal Judge, as Deputy Chairman, and the reappointment of Dr Lynne Coleman for a second term.

I have appreciated the assistance from members of the Tribunal, particularly as it is often necessary to deal with appeals, particularly selection appeals, with urgency. They are thanked for their contributions, as is the Registrar, Brent Ellis, for his continued service to the Tribunal.

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 New Zealand.

STATISTICAL ANALYSIS OF CASES DEALT WITH BY THE TRIBUNAL IN 2011/12

Cases decided by the Tribunal in 2011/12

The Tribunal issued 16 decisions in 2011/12. These were made up of:

- 10 substantive decisions
- 6 provisional suspension decisions.

Cases by application type

Of the 10 substantive decisions issued by the Tribunal:

- 7 were anti-doping
- 2 were appeals against non-nomination or non-selection decisions of NSOs
- 1 was an appeal against a disciplinary decision of an NSO.

The Tribunal heard and decided 6 provisional suspension applications in 2011/12. The provisional suspension decisions all involved anti-doping cases. Provisional suspension was imposed in all 6 cases.

Analysis of anti-doping cases

The 7 anti-doping decisions involved:

- 2 cases of cannabis
- 2 cases of dimethylpentylamine 1-3, also known as methylhexaneamine
- 1 case of methamphetamine
- 1 case of synthetic cannabis: JWH-018 [JWH-018 N-(5-Hydroxpentanyl) and JWH-018 N-Pentanoic Acid]
- 1 case of numerous violations:
    - Participating in sporting activity in breach of 2 year suspension
    - Failure or refusal to provide sample
    - On 1 October 2009, being in possession of various prohibited substances
    - At various times between 27 October 2006 and 1 October 2009, being in possession of various prohibited substances
    - Using or attempting to use prohibited substances at various times between 27 October 2006 and 1 October 2009.

Anti-doping cases by substance and sport

There were seven 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

- Powerlifting 1 case
- Basketball 1 case

DIMETHYLPENTYLAMINE 1-3, ALSO KNOWN AS METHYLHEXANEAMINE

- Rugby League 1 case
- Touch 1 case

SYNTHETIC CANNABIS – JWH-018 [JWH-018 N-(5-HYDROXPENTANYL) AND JWH-018 N-PENTANOIC ACID]

- Wrestling 1 case

METHAMPHETAMINE AND AMPHETAMINE

- Basketball 1 case

NUMEROUS VIOLATIONS

- Powerlifting 1 case

Sanctions in anti-doping cases

CANNABIS CASES

There were seven anti-doping cases. The Tribunal imposed sanctions of suspension in six of the cases as follows:

- 4 months JWH-018 (synthetic cannabis)
- 12 months Dimethylpentylamine 1-3 (Methylhexaneamine)
- 12 months Dimethylpentylamine 1-3 (Methylhexaneamine)
- 2 years Cannabis
- 2 years Methamphetamine
- Lifetime Numerous violations

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 three appeals against decisions of NSOs.

SELECTION APPEALS

There were two appeals against decisions of NSOs not nominating or selecting an athlete or a coach. Both appeals were upheld:

- One appeal related to non-nomination as a coach for the Youth Olympics.
- The other appeal related to non-selection for a New Zealand team at a world championships.

APPEALS AGAINST OTHER DECISIONS

There was one appeal against a disciplinary decision of an NSO which was dismissed:

- The appeal was against a decision disqualifying a kart racer for having an unmarked carburettor contrary to the relevant race rules.

REVIEW OF CASES DECIDED DURING THE YEAR

2011/12 was surprisingly quiet in terms of volumes of cases decided. The Tribunal issued 16 decisions (including provisional suspension decisions) over this period. By comparison, in 2010/11, the Tribunal issued 37 decisions.

However, some of the cases heard and decided over 2011/12 involved complex, challenging and novel issues. Some of the highlights of cases decided are noted below.

Anti-doping cases

TRIBUNAL IMPOSES LIFETIME BAN FOR NON-ANALYTICAL ANTI-DOPING VIOLATIONS INCLUDING USE, ATTEMPTED USE AND POSSESSION OF PROHIBITED SUBSTANCES

The majority of anti-doping cases the Tribunal deals with involve "analytical" anti-doping violations resulting from athletes testing positive to substances prohibited under the WADA Prohibited List. However, there are a number of possible "non-analytical" violations that don't involve an athlete testing positive to prohibited substances such as use or possession of prohibited substances. Last year the Tribunal heard and decided its first case involving the "non-analytical" anti-doping violations of attempted use and possession of prohibited substances.

This year the Tribunal heard and decided another case involving a range of non-analytical violations including use, attempted use and possession of prohibited substances, as well as violations of refusing or failing to provide a urine sample for drug testing and of participating in sport while suspended. In this case, a powerlifter imported a variety of prohibited substances. He was convicted in separate proceedings in the District Court of importing and possessing prescription medicines contrary to the Medicines Act. These drugs contained substances banned in sport and formed the basis of some of the anti-doping allegations brought against him in the Sports Tribunal.

The athlete admitted most of the anti-doping violations alleged against him, including importing prohibited substances and being in possession of prohibited substances over a number of years. However, he denied using or attempting to use them. He claimed he imported the substances either for the use of his GP or to be stored and used by him at some future date, after he retired from powerlifting, to attempt a personal best powerlift assisted by steroids. However, the Tribunal concluded evidence showed he had used or attempted to use these substances.

The athlete had previously been banned by the Tribunal for an anti-doping violation. The Tribunal agreed with submissions of Drug Free Sport that there were aggravating circumstances in the present case, including possession and use of a large quantity of prohibited performance enhancing drugs over a period of years, which were sufficiently serious to justify imposing a lifetime ban. This is the first lifetime ban the Tribunal has imposed.

TRIBUNAL FINDS BASKETBALL PLAYER NOT AT FAULT FOR CANNABIS VIOLATION

There were two cannabis cases decided by the Tribunal this year. In one case the athlete failed to participate in proceedings and therefore the Tribunal had no choice but to impose the mandatory penalty of two years. This case received little, if any, media attention.

The other case attracted significantly more attention. In the highly unusual circumstances of this case, the Tribunal found a national league basketball player was not at fault for testing positive to cannabis. The player was an American based professional player who came to New Zealand to play for a team in the national league. Evidence was given that the player visited a friend in California the night before he left for New Zealand and that while there he ate a cellophane wrapped sweet from a bowl of sweets offered to him by his friend. While both the player and the friend assumed at the time the sweets were a commercial candy, further evidence was given that the sweets had been left behind by another friend who subsequently revealed that they had been obtained from a medical marijuana store, pursuant to a Californian medical marijuana licence, and were laced with cannabis. This was claimed to be the source of the cannabis. Such a claim obviously required careful assessment and cogent evidence before it could be accepted. However, after a careful assessment the Tribunal found the player and his witnesses to be credible and accepted their evidence as truthful. After considering all the evidence, including scientific evidence, the Tribunal was satisfied on the balance of probability that the positive cannabis test was a result of consuming the sweet.

The Tribunal considered that consuming a sweet at a friend's house will not constitute fault unless there is some objective basis for concern. However, there was nothing here that could be fairly said to put the player on notice regarding possible contamination of the sweet. The Tribunal emphasised the unique factual circumstances of this case and noted that the position could be very different if the player had been consuming food or drink provided by a stranger in a different setting. In the unique circumstances of this case, the Tribunal concluded the player was not at fault and did not impose a penalty for the violation.

FIRST CASE OF ANTI-DOPING VIOLATION RESULTING FROM SYNTHETIC CANNABIS USE

This year the Tribunal heard its first case of an anti-doping violation from the use of a synthetic cannabis product. A wrestler tested positive for metabolites of the prohibited substance JWH-018, the presence of which is commonly the result of synthetic cannabis use.

The athlete, despite initial reluctance, had succumbed to peer pressure at a birthday celebration to smoke "roll your own" cigarettes containing the synthetic cannabis product Kronic which a friend had bought at a dairy when the sale of such products was still legal (the sale of such products is now illegal in New Zealand). The athlete was unaware that Kronic contained a prohibited substance.

The Tribunal considered that the starting point of four months' suspension applied by the Tribunal in cannabis cases was also an appropriate starting point in this case of synthetic cannabis use. However, there were a number of mitigating factors in this case that justified a reduction in penalty and the Tribunal suspended him for three months. The Tribunal noted that as a result of being provisionally suspended after the positive test the athlete had lost his chance of qualifying for the Olympics.

METHYLHEXANEAMINE CASES

In last year's Annual Report, it was noted that there have been a number of athletes overseas testing positive for dimethylpentylamine 1-3 or methylhexaneamine as it is better known. This unfortunately seems to have continued both overseas and in New Zealand over the last year.

The Tribunal heard two cases involving athletes testing positive for methylhexaneamine. As in many of the overseas cases, these athletes took supplements containing methylhexaneamine, which they claimed they were unaware the supplements contained. In one case, a rugby league player used the supplement to assist him with weight training. In the other case, a Touch player drank a supplement offered to him by a team-mate on the final day of a tournament to help him stay awake several hours before the final (the player apparently suffering from disrupted sleeping patterns as a result of shift work). The Tribunal imposed suspensions of 12 months in both cases.

As noted in last year's Report, many supplements are explicitly marketed for the purpose of enhancing performance and presumably many athletes take them to improve their sports performance. Athletes who take these products, and test positive for a prohibited substance as a result, face significant barriers in convincing a Tribunal that they didn't intend to enhance their sports performance and may be liable for a mandatory two year ban.

In both cases, the athletes were ultimately 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. However, both players faced considerable hurdles satisfying this test. In the case of the touch player, there was a split decision by the Tribunal on this issue, with one of the three panel members considering that the player had not satisfied the test.

The Tribunal noted that there is a conflict in recent international cases over whether an athlete who takes a *supplement* for performance enhancing reasons, but is unaware it contains a prohibited substance, is able to satisfy the test of not taking the *prohibited substance* for performance enhancing reasons. Different cases have reached different conclusions. Some cases state that the focus is on whether the supplement itself is used with the intention of enhancing performance and it is irrelevant whether the athlete knows it contains the prohibited substance. Other cases put the focus on the prohibited substance, rather than the supplement. These cases allow an athlete to be able to satisfy the test of not intending to use the prohibited substance for enhancing sports performance if they can show they were unaware of the presence of a prohibited substance in the supplement. The Tribunal noted in its decision involving the Touch player that this is an unsatisfactory position and hoped that WADA will take steps to clarify this position in the near future.

One positive factor over the last year is that the sale of supplements and products containing methylhexaneamine is now banned in New Zealand. Given the anti-doping violations that have resulted from the use of these supplements, this ban can only be a good thing for athletes and sport in general.

Appeals against decisions of NSOs

There were three appeals against decisions of NSOs. One involved an appeal against disqualification for having an unmarked carburettor in a kart race. That appeal was dismissed and further details can be found in the case summaries section of this Report. The other two cases involved appeals against non-selection or non-nomination and both were upheld by the Tribunal. Aspects of these two appeals are highlighted below with fuller details appearing in the case summaries section of this Report.

SELECTION APPEAL UPHELD ON NATURAL JUSTICE PRINCIPLES

In one appeal, a boxing coach was originally nominated by the NSO as coach for a boxer at the Youth Olympic Games. However, after discussion with the NZOC, the NSO subsequently reconsidered the decision and nominated someone else as coach instead. The originally nominated coach unsuccessfully appealed the reconsideration decision to the NSO's Appeals Committee and then appealed the Appeal Committee's decision to the Tribunal. The Tribunal considered the NSO had the right to change its nomination and was entitled to do so. However, the Tribunal concluded that the coach was denied natural justice by the Appeals Committee in the way his case was heard and decided. Under natural justice principles, an appellant has to be given an opportunity to be heard and adequately present his or her case. This did not happen here for various reasons including that the appellant wasn't informed where or when the hearing (which took place in private) would be held, he wasn't given the right to appear, he wasn't asked for submissions or evidence and evidential matters were clarified at the hearing without his knowledge.

SELECTION APPEAL UPHELD ON GROUNDS THAT SELECTION CRITERIA NOT PROPERLY FOLLOWED

In another appeal a speed skater successfully challenged her non-selection for the New Zealand Junior Women's team at the World Championships. While she was acknowledged as the best junior female speed skater in the country no skaters were selected for the junior women's team. The selectors considered she did not meet the selection criteria in terms of a world top 10 placing, she had not realised her potential since the 2007 World Championships (where she placed ninth – the only top 10 result achieved by a New Zealand junior skater in five years) and that she had a fitness problem. She had been out of the sport from 2007 until 2009 with an injury when she returned to achieve two top 20 finishes. However, she had not competed in 2010 to allow herself to return her fitness and confidence back to 2007 levels and in 2011 commenced intensive fitness training with an internationally regarded coach and the national women's champion.

The decision was appealed on a number of grounds, most of which were dismissed by the Tribunal. The case illustrates a common difficulty in selection cases. Much was made of comparative race results and various opinions were proffered over how these results should be interpreted and whether the selectors' interpretation of the results was correct and ultimately whether their decision was correct. The Tribunal emphasised its role is not to act as the selector and substitute its own evaluation of comparative results which the selectors were capable of evaluating. Rather it is concerned primarily with process and not the merits of the selection decision.

The appeal was upheld on the process grounds that the selection criteria were not properly followed or implemented in relation to determining her prospects of a top 10 finish and that selectors had not properly brought to account her potential at international level and senior rank. Too great a focus had been placed on the 2007 top 10 result, and it not being repeated, without making sufficient allowance for the effect of injury and the recovery process. Too much emphasis may also have been placed on one race, where she finished second to the New Zealand women's champion, in selectors concluding a lack of aggression in her skating. The Tribunal also considered the selectors had not adequately assessed her fitness in relation to World Championship prospects, particularly in light of her recent training. The matter was referred back to the NSO for reconsideration in accordance with the selection criteria.

SUMMARIES OF CASES DECIDED BY THE TRIBUNAL IN 2011/12

Anti-doping cases

CANNABIS

Drug Free Sport New Zealand v Nick Rhind

(ST 06/11) Decision 26 September 2011; Provisional Suspension Decision 26 July 2011

The Tribunal suspended powerlifter Nick Rhind for two years because of a cannabis anti-doping violation. He tested positive to cannabis at the New Zealand Powerlifting South Island Championships. He requested his B sample be tested and that was also positive.

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 but only if he or she establishes certain requirements in the Rules. These requirements include the athlete: establishing how the cannabis got in their system; establishing that it was not taken with the intention of enhancing their sports performance; and producing corroborating evidence in addition to his or her own word (i.e. the athlete has to provide a witness to back up his or her evidence).

Mr Rhind filed a notice admitting the violation, advising he did not want to participate in the hearing and acknowledging that the Tribunal may impose a penalty without holding a hearing.

Because of the consequences to Mr Rhind of not participating and not establishing the requirements under the "specified substances" provisions of the Rules, the Tribunal sent a notice to him advising that if he took no action the Tribunal was required to suspend him for two years. He was given an opportunity to review his notice. Mr Rhind never responded. The Tribunal sent follow up notices, letters and emails on several occasions reminding him of the consequences of not participating and informing him of the details of his hearing. The hearing was held by teleconference. Mr Rhind did not participate and made no further contact to explain why.

The Tribunal was satisfied that Mr Rhind had been made fully aware of the requirements under the Rules. As he had not sought to rely on the "specified substances" provisions of the Rules, he was not eligible for a reduced penalty, and the Tribunal had no option but to impose the mandatory penalty of two years' suspension.

Drug Free Sport New Zealand v Sylvester Seay

(ST 04/11) Decision 28 July 2011; Provisional Suspension Decision 8 June 2011

Sylvester Seay tested positive for cannabis as the result of a drug test conducted after he played a national league basketball match. Mr Seay was a USA based professional basketball player who came to New Zealand in April 2011 to play for the Waikato Pistons.

Evidence was given at the hearing that Mr Seay and his wife visited a friend (L) in California the night before they left for New Zealand and that while there he ate a cellophane wrapped sweet from a bowl of sweets that was offered to him by L. The sweets had been left behind at L's place by a friend of L and Mr Seay and L assumed they were a common commercial candy. However, L subsequently discovered from the friend who left the sweets behind, when the friend came to retrieve them, that the sweets had been obtained from a medical marijuana store and were laced with cannabis. The consumption of the sweet was 12 days before the drug test. Mr Seay gave evidence, supported by his witnesses, that he does not use cannabis, that he has never failed a drug test before and that the source of the cannabis must have been from the laced sweet.

The Tribunal considered that on the evidence presented in this case, including scientific evidence and material, it was unable to rule out the sweet as a source of cannabis causing the positive test result. The Tribunal found Mr Seay and his witnesses to be credible and accepted their evidence as truthful. The Tribunal was satisfied on the balance of probability that the cannabis, resulting in the positive test, entered Mr Seay's system through his consumption of the sweet.

The Tribunal then considered whether Mr Seay was at fault. The Tribunal considered that consuming a sweet at a friend's house will not constitute fault or negligence unless there is some objective basis for concern. The Tribunal stated:

The Tribunal does accept that there was nothing that could fairly be said to put Sylvester on notice regarding possible contamination of the sweet. If an athlete goes to a friend's house, particularly a friend who knows of the importance of the athlete being drug free, and consumes some food or a sweet or sweets at that house it would go beyond reasonableness to then say that the athlete was at fault if some drug contamination unknown to the athlete or the friend was in fact present. Obviously the factual circumstances could be very different if the athlete was consuming food or drink provided by a stranger in a different setting.

There was nothing in this case that could fairly be said to put Mr Seay on notice regarding possible contamination of the sweet. The Tribunal therefore concluded Mr Seay was not at fault for the anti-doping violation. Therefore no penalty was imposed.

SYNTHETIC CANNABIS

Drug Free Sport New Zealand v Ricky Welsford

(ST 10/11) Decision 25 November 2011; Provisional Suspension Decision 11 October 2011

The Tribunal suspended wrestler Ricky Welsford for three months for an anti-doping violation resulting from use of a synthetic cannabis product. Mr Welsford underwent an in-competition drug test at the New Zealand Wrestling Championships and tested positive for metabolites of the substance JWH-018 [JWH-018 N-(5-Hydroxpentanyl) and JWH-018 N-Pentanoic Acid]. This is a prohibited substance under the WADA Prohibited List. Its presence is commonly associated with synthetic cannabis use.

Mr Welsford admitted the violation. He and a witness gave evidence that they were celebrating a birthday with a group of friends. After a few drinks, a friend handed around "roll your own cigarettes" which had the synthetic cannabis product Kronic in them, which the friend said he had bought from a dairy before the sale of Kronic was banned. Everyone in the group was smoking the cigarettes and pressuring Mr Welsford to do so too but he was not keen. However, he ultimately succumbed to peer pressure from the rest of the group ("to shut us up so we could leave him alone" according to his witness) and took some puffs from one of the cigarettes. He did not realise that Kronic contained a product banned in sport.

The Tribunal assessed his degree of fault in all the circumstances of the case including:

- Mr Welsford's age (19 at the time of the test)
- the circumstances of his peer group of friends pressuring him
- possibly some failure to immediately recognise that Kronic is likely to have the same consequence as cannabis
- his immediate acceptance of responsibility and his openness and honesty
- the fact that this violation is out of character with what his sporting results show must be a disciplined and determined character
- his contribution to his club as coach
- the loss of his Olympic qualifying chances (he was not nominated for the Oceania Championships due to being provisionally suspended for the positive test).

The Tribunal considered these factors justified a reduction from the usual starting point of four months' suspension for a cannabis violation.

However, on the other hand, the Tribunal emphasised the care and responsibility which an athlete has in relation to substances consumed. The Tribunal hoped that Mr Welsford will, given his personal unfortunate experience, drive home that message to those he coaches and is involved with in his club and sport. The Tribunal decided that three months' suspension commencing from the date of provisional suspension was appropriate in all the circumstances.

DIMETHYLPENTYLAMINE 1-3 (AKA METHYLHEXANEAMINE)

Drug Free Sport New Zealand v Wiremu Takerei

(ST 01/12) Decision 8 June 2012; Provisional Suspension Decision 5 April 2012

The Tribunal suspended touch player Wiremu Takerei for 12 months for testing positive for dimethylpentylamine 1-3, also known as methylhexaneamine, after playing in the final of the National Touch Championships.

Mr Takerei admitted the violation and gave evidence it was due to taking a supplement offered to him by a team-mate to help keep him awake on the final day of the three day tournament. He asked the team-mate what the drink was and was told the supplement name and that it had been bought in a health store over other supplements because it was on sale and cheaper. Mr Takerei assumed it was an "energy drink" and safe to take and did not check the ingredients. However, unknown to him, the supplement contained the prohibited substance methylhexaneamine. This particular supplement, and others containing methylhexaneamine, are now banned from sale in New Zealand.

The mandatory penalty for this type of violation is two years' suspension. However, because methylhexaneamine is a "specified substance" under the Sports Anti-Doping Rules, the suspension period can be less than two years if the athlete can establish certain things including that the taking of the substance was not intended to enhance his sports performance.

Mr Takerei did shift work and usually slept at times some of the tournament matches were being played. He took the supplement several hours before the final and said he took it to counter the unusual sleep pattern caused by the shift work and took it solely for the purpose of "keeping his eyes open" and not to enhance his sports performance. However, during the hearing, he admitted he also took it to give him energy to play in the final.

The Tribunal discussed the conflict in recent international doping cases over the issue of whether an athlete who takes a supplement for performance enhancing reasons, but doesn't know it contains a prohibited substance, can still satisfy the test of not taking the prohibited substance for performance enhancing reasons. This was also the issue in the present case. Different cases have reached different conclusions over this issue so it is not yet finally settled. The Tribunal noted that this is an unsatisfactory position and hoped that WADA might move to bring certainty to this position in the near future.

In the present case, the Tribunal decided Mr Takerei had not comfortably satisfied them that he did not take the supplement (containing the prohibited substance methylhexaneamine) to enhance his sports performance. However, by a two to one majority, the Tribunal panel was comfortably satisfied he did not take methylhexaneamine to enhance his sports performance and so was eligible for a lesser penalty than two years' suspension.

There was a reasonable degree of fault. Mr Takerei knew about the dangers of performance-enhancing drugs but made no enquiry when the supplement was given to him to drink. He took it immediately before an important match and this should have alerted him to check what he was taking. He has been drug tested previously and has had some drug education.

While each case turns on its own facts, the Tribunal believes in being consistent in imposing penalties. The most recent comparable Tribunal decision was the Blair Jacobs case where 12 months' suspension was imposed (also for a methylhexaneamine violation involving the same supplement). It was difficult to see how the suspension can be any less in the present case. The Tribunal therefore suspended Mr Takerei from sport for 12 months.

Drug Free Sport New Zealand v Taani Prestney (ST 09/11)

Decision 15 December 2011; Provisional Suspension Decision 30 September 2011

The Tribunal suspended rugby league player Taani Prestney for 12 months for testing positive for dimethylpentylamine 1-3, also known as methylhexaneamine, after playing a match.

Mr Prestney admitted the violation and gave evidence he took a supplement before going to do weight lifting at a friend's place and that the supplement was the cause of the positive test. The supplement belonged to his brother, who took it for weight training. His brother moved overseas and suggested Mr Prestney use it up. Mr Prestney mentioned to some rugby league team-mates at training that he took the supplement the day before. They told him it contained a banned substance, something he said he was unaware of at the time. He played the match the next day.

The mandatory penalty for this type of violation is two years' suspension. However, because methylhexaneamine is a "specified substance" under the Sports Anti-Doping Rules, the suspension period can be reduced if the athlete can establish certain things including that the taking of the substance was not intended to enhance his sports performance. Mr Prestney said he took the supplement to assist in his weight training.

The Tribunal had to decide whether taking the supplement to assist in weight training was an intention to enhance sports performance under the rules. The Tribunal decided "by a very fine margin" that Mr Prestney had not intended to enhance his sports performance. The Tribunal noted that athletes who take supplements, such as this one, for purposes relating to their physical wellbeing or improvement run a very high risk that they will be held to have taken them to enhance their sports performance.

The Tribunal considered there was a high degree of fault in this case. There was a total lack of enquiry by Mr Prestney about the supplement; he knew before he took the field that the supplement contained a prohibited substance, yet he took the field; and, despite some conflict in evidence, it is apparent he was warned of the dangers of that particular supplement in an anti-doping presentation by the team manager.

There are mitigating factors, namely Mr Prestney's youth and the fact that he was inexperienced. He is not an elite athlete and would not have had the same exposure to drug education as they do. The Tribunal is of the view that he was rather naïve in what he did but all athletes must be vigilant and where there is any doubt must remove themselves from participation. The fact that he may not have been aware of consequences of taking the drug is not usually relevant to the degree of fault.

The Tribunal considered that, in many respects, Mr Prestney's degree of fault is higher than that in another case involving this substance where the Tribunal suspended that athlete for 12 months. However, the mitigating factors in Mr Prestney's case were taken into account and a suspension of 12 months was appropriate.

METHAMPHETAMINE AND AMPHETAMINE

Drug Free Sport New Zealand v Daniel Ryan

(ST 07/11) Decision 31 October 2011; Provisional Suspension Decision 18 August 2011

The Tribunal suspended NBL basketball player Daniel Ryan for two years for an anti-doping violation involving D-Methamphetamine and D-Amphetamine. Mr Ryan tested positive to these substances after playing for the Waikato Pistons in the National Basketball League Semi-Final.

Mr Ryan initially filed defences that the substances were taken "out of competition" as he believed his season was over when he took the substances (he was called in at the last minute to play by the team coach) and that the substances had not been taken for performance enhancing purposes.

However, he subsequently withdrew these defences and indicated that he did not require a formal hearing; he would accept the violation infringement and would not challenge the mandatory penalty of two years set out under the Sports Anti-Doping Rules for a violation with these substances.

The Tribunal noted in its decision that these withdrawn defences could not have succeeded under the Sports Anti-Doping Rules. The presence of a prohibited substance in a sample collected in competition is a violation under the Rules regardless of when the substance was taken by the athlete. The infringement is that Mr Ryan competed with prohibited substances in his body. Whether a substance was taken for performance enhancing reasons or not is only relevant when the substance is of a type classified as a "specified substance" under the Rules and the substances in this case were not specified substances.

Mr Ryan asked the Tribunal to note in its decision his position that, while out drinking, he was given a pill that he thought was a "legal party pill" which he took for relaxation and stress relief and that he would not have taken the pill if he knew what it really was. He accepted that the Tribunal was not able to comment on or accept the circumstances surrounding the offence, as there had been no hearing in which to test this evidence.

The Tribunal noted his position as requested. The Tribunal further noted that the circumstances, whatever they may be, were not relevant to the decision which it was required to give in this case under the Rules. The Tribunal therefore imposed the mandatory penalty of two years' suspension.

USE, ATTEMPTED USE AND POSSESSION OF PROHIBITED SUBSTANCES AND OTHER ANTI-DOPING VIOLATIONS

Drug Free Sport New Zealand v Rodney Newman

(ST 17/10) Decision 31 January 2012; Provisional Suspension Order 12 October 2010

The Tribunal suspended powerlifter Rodney Newman for life for committing multiple anti-doping violations.

Mr Newman had previously been suspended by the Sports Tribunal for two years in 2008 for an anti-doping violation.

In August 2010, Drug Free Sport New Zealand (DFS) filed proceedings with the Tribunal alleging Mr Newman had committed further anti-doping violations. A hearing was scheduled for October 2010 but was adjourned when the Ministry of Health instituted separate proceedings against Mr Newman, under the Medicines Act 1981, in the District Court. Some of the District Court charges related to alleged acts relevant to allegations in the anti-doping application before the Tribunal. The Tribunal, at Mr Newman's request, agreed to delay hearing the anti-doping allegations until the District Court matter was concluded.

On 6 December 2011, the District Court gave its decision finding Mr Newman had imported prescription medicines and had in his possession prescription medicines, contrary to the Medicines Act. The drugs that the District Court found Mr Newman imported and possessed included prohibited substances banned in sport under the World Anti-Doping (WADA) Code and formed the basis for some allegations against him that the Sports Tribunal was to hear.

The Sports Tribunal held the anti-doping hearing on 16 January 2012. DFS alleged that Mr Newman had committed five anti-doping violations. While Mr Newman admitted or accepted that most of the anti-doping allegations against him were established, he denied allegations of use or attempted use of prohibited substances. However, the Tribunal found that the alleged anti-doping violations against Mr Newman had been proven to the required standard. These five violations were:

1. Participating in sporting activity (by coaching at the Auckland Powerlifting Championships on 8 May 2010) in breach of the two year suspension imposed by the Tribunal in November 2008.
2. Failing to submit to sample collection without compelling justification on 18 May 2010.
    - Mr Newman refused to provide a urine sample when requested by drug testing officials.
    - Mr Newman did not deny that he refused to provide a sample but suggested he may not have been required to do so because he had retired from powerlifting.
    - At the hearing he accepted that he remained subject to anti-doping rules until he gave written notice to the New Zealand Powerlifting Federation that he had retired and that he had not given any such notice.
3. On 1 October 2009, being in possession of various prohibited substances including mesterolone, stanozolol, testosterone, oxymetholone, methandienone, oxandrolone, and prasterone.
4. At various times between 27 October 2006 and 1 October 2009, being in possession of various prohibited substances.
5. Using or attempting to use prohibited substances at various times between 27 October 2006 and 1 October 2009.

- While admitting importing and possessing prohibited substances, Mr Newman denied using or attempting to use them.
- He claimed he had imported the substances either for the use of his GP under an arrangement or to be stored and used by him for one last attempt to achieve a personal best powerlift assisted by steroids at some future date after he retired from powerlifting and was not subject to anti-doping rules.
- However, the Tribunal concluded that other evidence showed he had used or attempted to use prohibited substances during this time. This included:
  - email correspondence (seized pursuant to a search warrant) between Mr Newman and overseas suppliers of prohibited substances stating he had used prohibited substances for a number of years and had previously made multiple purchases and importations of steroids
  - purchasing products from a company that went to considerable lengths to disguise the products
  - the large quantity of drugs seized at his property
  - that some bottles containing prohibited substances indicated that some of their contents had been used.

DFS submitted that there were aggravating circumstances including possession and use of a large quantity of performance enhancing drugs, over a long period of time while competing at a national level in a sport, giving him a direct advantage which he deliberately sought. DFS further submitted that his conduct showed a flagrant disregard for the illegalities involved in what he did and was undertaken in a manner designed to deliberately conceal his conduct.

The Tribunal agreed that there were aggravating circumstances of this nature and that these were of sufficient gravity to impose a lifetime ban on Mr Newman.

Appeals Against Decisions of NSOs

NOMINATION/SELECTION APPEALS

Rex Jenkins v Boxing New Zealand

(ST 16/10) Decision 28 July 2011

Boxing coach Rex Jenkins appealed against a decision of the Appeals Committee of Boxing New Zealand (BNZ) concerning the appointment of another coach as coach of a boxer at the Youth Olympics. Mr Jenkins accepted, when he filed his appeal, that it was too late to have the appointment changed but sought rulings on the procedure followed, his right to be appointed coach and the eligibility of the coach actually appointed.

BNZ originally nominated Mr Jenkins as coach for the boxer competing at the Games. The New Zealand Olympic Committee (NZOC) decides whether nominated athletes and coaches are appointed. Mr Jenkins had correspondence with the NZOC, attended an NZOC workshop and assumed he had been appointed, although he had not been. Mr Jenkins was not the boxer's personal coach and the NZOC raised with BNZ whether in the particular circumstances it might be better for the boxer to have his personal coach at the Games instead and invited BNZ to reconsider their nomination. The BNZ executive reconsidered their decision and instead nominated the boxer's personal coach who was ultimately appointed as coach. Mr Jenkins unsuccessfully appealed that nomination decision to the BNZ Appeals Committee.

The Tribunal did not accept that the decisions reached by the BNZ Executive were unreasonable, on the evidence and in law. If the NZOC, as appointer, raised relevant issues for consideration, the Tribunal did not see any reason why BNZ was not entitled to reconsider its nomination. While unfortunate that the request to reconsider was made after Mr Jenkins was led to believe that he had been appointed, the Tribunal considered that in the circumstances BNZ had the right to, and was entitled to, change its nomination.

However, the Tribunal decided Mr Jenkins had been denied natural justice in the way the BNZ Appeals Committee heard his appeal. This included that: Mr Jenkins was not notified when or where the appeal hearing was to be heard; the hearing was heard in private; he was not asked for submissions or supporting evidence; he did not know the matters to be considered; and some factual matters were clarified in the hearing that should have been referred to Mr Jenkins first as he may have had some submissions on them.

Under natural justice principles, it is necessary to give an appellant the opportunity to be heard and appropriately present his or her case. The Appeals Committee should have called for submissions from both parties, should normally have given Mr Jenkins the right to appear in support of his case and should have clarified evidential matters with the knowledge, and in the presence, of both parties. If the Appeals Committee elects to make a decision without a hearing, it must be particularly vigilant that parties are given adequate opportunity to make submissions, be apprised of the facts and to hear any comments adverse to their case. In view of the findings made, the Tribunal made a declaration that the Appeals Committee denied Mr Jenkins natural justice.

Samantha Michael v New Zealand Federation of Roller Sports

(ST 02/11) Decision 19 July 2011

The Tribunal allowed an appeal by Samantha Michael against a decision of New Zealand Federation of Roller Sports ("Roller Sports") not to select her for the New Zealand Junior Women's team to compete at the 2011 World Championships in South Korea.

The New Zealand speed skating team for the World Championships selected by Roller Sports consisted of senior men, junior men and a senior woman. No skaters were selected for the junior women's team. Ms Michael contended she should have been selected for the junior women's team.

Roller Sports acknowledged Ms Michael as the best junior female speed skater in the country but considered she was not able to meet the selection criteria in terms of a top 10 placing.

When Ms Michael inquired about her non-selection, she was provided reasons for her non-selection, specifically that the selectors considered she had not realised her potential since the 2007 World Championships and in their opinion considered she had a fitness problem.

Ms Michael achieved ninth place in the 2007 World Championships, which was the only top 10 result for a New Zealand junior skater in the last five years. In 2008, she fell and broke her wrist and collarbone, which took her out of the sport until 2009 when she achieved two top 20 results. She decided not to participate in 2010 to allow full recovery and return her fitness and confidence back to 2007 levels. In January 2011, she moved to Timaru to start intensive training, including fitness training, under an internationally regarded coach as well as training with the New Zealand women's champion.

Ms Michael appealed her non-selection on a number of grounds, most of which the Tribunal dismissed. The Tribunal emphasised it is concerned primarily with process not the merits of the selection decision. It is not its role to substitute its evaluation. It was not influenced by comparative results which the selectors were well capable of evaluating.

The Tribunal upheld her appeal on process grounds that selection criteria were not properly followed or implemented in relation to determining her prospects of a top 10 finish and that the selectors had not properly brought to account Ms Michael's potential at international level when she moves to senior ranks. The Tribunal considered the 2007 top 10 result had to be evaluated against injury and the recovery process. Too much emphasis should not be placed on one race, when she finished second to the New Zealand women's champion, when the selectors concluded she showed a lack of aggression. The Tribunal also considered selectors had not assessed her fitness on the evidence available in relation to World Championship prospects, particularly in light of her recent training.

The Tribunal referred the matter back to Roller Sports for reconsideration in accordance with the selection criteria and expressly recorded this was not a direction to select.

OTHER APPEALS

Scott Manson v KartSport New Zealand (ST 08/11)

(ST 08/11) Reasons for Decision 27 October 2011; Decision 13 October 2011

A junior kart driver, Scott Manson (S) appealed against a decision of KartSport New Zealand (KartSport). S finished first in the final race at an event but was disqualified for having an unmarked carburettor, contrary to the relevant rules, at inspection after the final. The event was part of a series and the winner of the series was to represent New Zealand in an overseas competition. The disqualification ultimately meant he was second overall on points but if his disqualification did not stand then he would win the series on points and represent New Zealand.

S was disqualified as a result of a stewards' hearing. Following this a technical inspection was carried out and the inspection found S's engine was compliant. The chief steward subsequently cancelled the disqualification. A KartSport Inquiry Board subsequently held that the stewards' committee decision stood and confirmed disqualification. S appealed to the KartSport Appeal Board, who dismissed his appeal.

S made natural justice complaints about the stewards' committee hearing such as the hearing proceeded without S present and also that the chief steward who filed the complaint sat on the panel. However, these complaints concerning the procedure of the stewards' hearing could not succeed as the KartSport Appeal Board heard S's appeal "de novo" (i.e. heard the case anew as if it had not been heard before) and the appeal to the Sports Tribunal was from the KartSport Appeal Board decision and not from the stewards' decision.

The carburettors had apparently been marked with paint earlier in the event by a KartSport technical officer. The Tribunal considered whether the driver has the ultimate responsibility to ensure his or her carburettor has been marked by the official. The Tribunal concluded that while it was for KartSport's technical officer to mark the carburettor, it was also the driver's responsibility to ensure that the markings were there (or in the case of a junior such as S, the parent or guardian). Drivers and parents had been told so at the mandatory drivers' briefing (S and his father had signed a registration form declaring they would abide by directions of the chief steward on the day and one of these directions, given at the drivers' briefing, was that competitors were to check markings on carburettors).

The Tribunal acknowledged that in dismissing this appeal, S will be denied the opportunity to represent New Zealand when his only omission may have been to check that his carburettor was marked. However in the unfortunate circumstances of this case, as the carburettor was not marked for whatever reason, the mandatory penalty of disqualification under KartSport's rules must follow and the appeal was dismissed. The Tribunal made observations about amending various KartSport rules and procedures that it hoped might assist KartSport in future.

CASES DEALT WITH BY THE TRIBUNAL FROM 2003 TO 2012

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 2012

As at 30 June 2012, there were 132 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 Sports Anti-Doping Act 2006, the Tribunal is usually the body that decides provisional suspension applications which are usually referred by National Sports Organisations. 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 2011/12, the Tribunal heard and decided six provisional suspension applications.

Of the 132 substantive decisions on the website, 85 (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 2012, the Tribunal has issued 87 substantive decisions in 85 anti-doping cases.

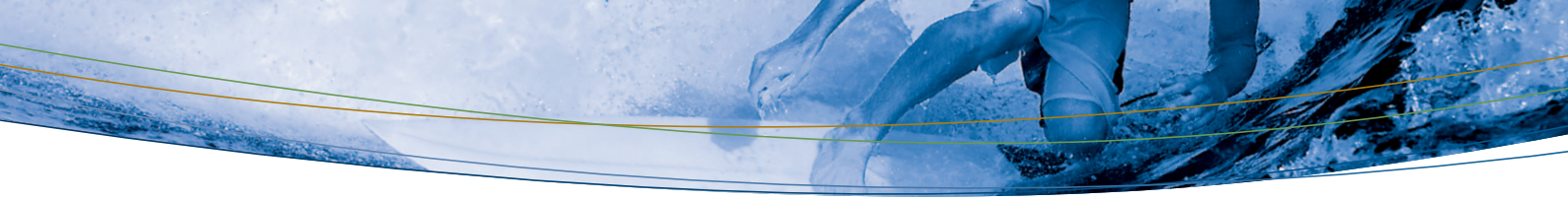
The 87 substantive decisions include:

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

- 42 cases of cannabis, when not used in conjunction with another prohibited substance
- 7 cases of a failure or refusal to provide a sample
- 4 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
- 2 cases of methamphetamine/amphetamine
- 1 case of methamphetamine/amphetamine/cannabis
- 1 case of synthetic cannabis (JWH-08)
- 1 case of Canrenone
- 1 case of Nandrolone
- 1 case of EPO (erythropoietin)
- 1 case of Stanozol/Hydrochlorothiazide/Amiloride
- 1 case of Stanozol/Nandrolone/Furosemide
- 1 case of Boldenone and Testosterone
- 1 case of the following numerous violations (T/E ratio > 4:1; Oxymesterone; Metabolites of Methandienone; Metabolites of Methyltestosterone; Metabolites of Oxymetholone; 19-norandrosterone)
- 1 case of attempted use and possession of prohibited substances (EPO, hCG and pregnyl solvent)
- 1 case of numerous violations involving: possession, use and attempted use of various prohibited substances; failure or refusal to provide a sample; and participating in sporting activity while suspended
- 1 decision concerning jurisdiction (relating to the attempted use and possession case)
- 1 decision disqualifying results (this also related to the attempted use and possession case)
- 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 10 cases
- touch 8 cases
- softball 7 cases
- boxing 2 cases
- powerlifting 1 case
- wrestling 1 case

SANCTIONS IN CANNABIS CASES

Sanctions imposed in the 43 cases involving cannabis were:

- suspension 30 cases
- warning and reprimand 9 cases
- deferred suspension (education programme) 1 case
- fine and warning 2 cases

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

FIRST CANNABIS VIOLATIONS

Suspensions imposed for first cannabis violations have generally been in the range of 1 to 2 months for first violations. However, in 2010 the Tribunal adopted an increased starting point of 4 months for first cannabis violations.

SECOND CANNABIS VIOLATIONS

There have been 3 cases of athletes committing their second anti-doping violation involving cannabis.

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

THIRD CANNABIS VIOLATIONS

There has been one case (in 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 45 decisions listed on the Tribunal website as at 30 June 2012 involving appeals against decisions of NSOs and/or the NZOC. This includes two costs decisions. These appeal cases can be categorised as follows:

- 22 Tribunal decisions relating to athletes or other members of NSOs appealing disciplinary decisions (includes separate costs decisions in two cases)
- 15 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 22 decisions or records of settlement (relating to 21 cases):

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

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

There have been 15 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
- 2 appeals by a coach against non-nomination or non-selection for the Youth Olympic Games
- 6 appeals against not being selected for a New Zealand team.

OTHER APPEALS

There have been 8 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 14 cases:

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

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

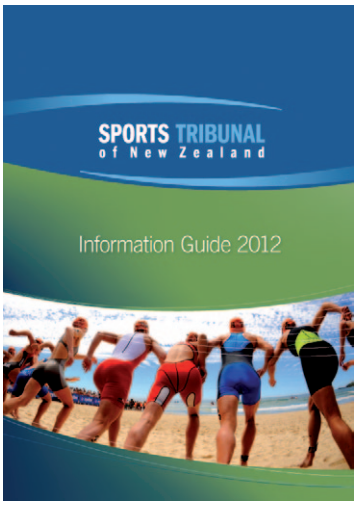
There have been 2 decisions specifically devoted to deciding costs applications. In both these cases, costs were sought by an NSO:

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

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

NEW TRIBUNAL INFORMATION GUIDE PUBLISHED AND DISTRIBUTED TO SPORTS SECTOR

A new and updated Information Guide to the Sports Tribunal was published in booklet form in 2012. The Information Guide was distributed to key organisations in the Sports Sector.



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

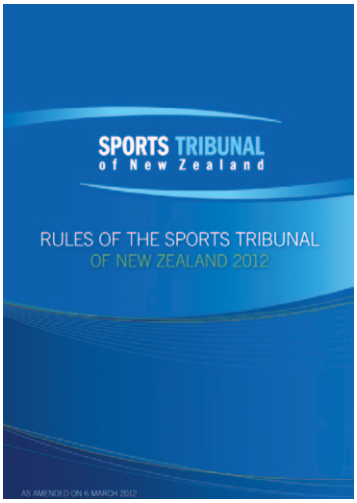
It also provides advice and step by step guides on what needs to be done to take an application or dispute to the Tribunal or what to do when a dispute or an application (such as anti-doping proceedings) has been taken against you.

The Information Guide is available for download from the Tribunal's website at www.sportstribunal.org.nz. Printed copies of the Information Guide are also available by contacting the Registrar (see contact information).

NEW TRIBUNAL RULES PUBLISHED AND DISTRIBUTED TO SPORTS SECTOR

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

The Tribunal amended its Rules in 2012 and has published these.



The new Tribunal Rules were published in a booklet and distributed to key organisations in the sports sector. This booklet contains all the Tribunal's forms which have been updated.

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

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.

EXPENDITURE

Under the Memorandum of Understanding between the Minister for Sport and Recreation, Sport NZ and the Tribunal, Sport NZ employs the Registrar of the Tribunal, provides accommodation for the Tribunal office and funds support and information technology costs. Sport NZ also funds the other operating costs of the Tribunal, which for 2010/11 and 2011/12 were as follows:

2010/11 Year			2011/12 Year		
Other operating costs	Number of cases decided	Average cost per case	Other operating costs	Number of cases decided	Average cost per case
$99,379	22*	$4,517	$71,704	10	$7,170

* 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 above figures show the average other operating costs per case for the Tribunal for 2010/11 and 2011/12. 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 fell in 2011/12, which reflects the lower volume of cases heard this past year. The average cost per case in 2011/12 increased. As noted in the review of cases, this year the Tribunal heard and decided a number of cases involving particularly complex, challenging and novel issues. The increase in average costs per case is a reflection of the complexity in these cases and the careful consideration required to be given to them by the Tribunal.

The figures above do not include decisions in provisional suspension cases. There were six of these cases decided in 2011/12 and each required a separate hearing and decision. If provisional suspension cases are factored in, then the average cost per case in 2011/12 drops to $4,482 (see below).

2010/11 Year			2011/12 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
$99,379	37	$2,686	$71,704	16	$4,482

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.

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.

CONTACT DETAILS:

Brent Ellis

Registrar

Phone: 0800 55 66 80

Fax: 0800 55 66 81

Email: info@sportstribunal.org.nz

Website: www.sportstribunal.org.nz

POSTAL ADDRESS FOR FILING DOCUMENTS:

Brent Ellis

Registrar

Sports Tribunal of New Zealand

PO Box 3338

Wellington 6140

PHYSICAL ADDRESS FOR FILING DOCUMENTS BY COURIER:

Brent Ellis

Registrar

Sports Tribunal of New Zealand

C/- Ground Floor

86 Customhouse Quay

Wellington 6011