SPORTS TRIBUNAL of New Zealand

ANNUAL REPORT 2014/15

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 2014/15 Annual Report of the Sports Tribunal reports on activities and cases decided during the time period 1 July 2014 to 30 June 2015. Cases heard during this time but not decided as at 30 June 2015 will be reported on in the Annual Report for the following year.

978-1-927232-53-8 WEB

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CHAIRMAN'S FOREWORD

The Tribunal has had a greater number of cases than in the last 3 years. Although we constantly respond to cases in a timely manner, this is not the only critical factor. We must also ensure an environment where all in the sporting community are confident that matters of dispute are understood and the hearing process results in a sensible and fair outcome. That can have challenges as people have invested so much in an outcome and responding to questioning can be pressurised and troubling for all involved.

This year stands out because the move towards cases becoming more legalistic has been pronounced, including the regrettable move of associated disputes into the High Court. Although the matter was eventually resolved in mediation under the aegis of the Tribunal, the attitude and approach which saw this happen are disappointing. They are not consistent with the ethos of sport or fair and transparent process. Any person or institution in controversy is entitled to legal advice and assistance but that need not be, and should not be, seen as an invitation to retreat to hidebound formalism which would have been at home in Victorian Chancery litigation. Doing things "properly and in order" should not obliterate fair play, and apparent justice.

It is abundantly clear that a number of national sport organisations (NSOs) critically require a revision of their selection processes so that they are in a form which is easily understood by all athletes and not so overborne by legalese that they are not immediately accessible to all. That said, whatever form is in operation, it is essential that the mandated processes and procedures are scrupulously applied and that the fundamental principles of natural justice are adhered to.

In the anti-drug aspect of our work, the need for all athletes to be constantly vigilant as to the responsibilities which they have cannot be stressed enough. The World Anti-Doping Agency and Drug Free Sport New Zealand set and enforce applicable regimes and seek to educate and assist athletes and NSOs to comply with the requirements. Every athlete has a personal obligation to ensure that their acts and omissions are consistent with the commitment to drug free sport in New Zealand and as competing international athletes on the global stage.

In this year there have been no changes in the Tribunal membership, which continues to be an experienced and available group of people dedicated to the fulfilment of the Tribunal's Mission. We were delighted to learn of the thoroughly deserved award of the MNZM to Dr Lynne Coleman in the Queen's Birthday Honours List. We all acknowledge and applaud the outstanding work of our Registrar, Brent Ellis. For over a decade he has delivered exemplary service in providing a sensible interface with the sporting community as well as in ensuring the efficient and sensitive operation of our adjudicative function.

Hon Sir Bruce Robertson KNZM
Chairman

DISPUTES WHICH THE SPORTS TRIBUNAL HEARS AND DECIDES

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

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

STATISTICAL ANALYSIS OF CASES DEALT WITH BY THE TRIBUNAL IN 2014/15

Cases filed with the Tribunal in 2014/15

18 substantive cases were filed with the Tribunal in 2014/15. Compared to previous years this is:

- More than 2013 (14 substantive cases filed)
- More than 2012 (13 substantive cases filed)
- More than 2011 (10 substantive cases filed)
- Fewer than in 2010 (26 substantive cases filed).

The 18 cases filed were:

- 5 anti-doping cases
- 1 appeal against NZOC non-selection decision
- 4 appeals against NSO non-selection decisions
- 3 appeals against other NSO decisions
- 2 sports-related disputes referred by agreement
- 3 applications for rehearing a Tribunal decision.

If provisional suspension applications are added in:

- 22 applications were filed with the Tribunal.

Hearings of the Tribunal in 2014/15

There were 15 hearings:

- 11 substantive hearings (several heard under urgency)
- 2 jurisdiction hearings
- 2 provisional suspension hearings (another two provisional suspension orders were made by consent without the need for a hearing).

Cases decided by the Tribunal in 2014/15

The Tribunal issued 16 decisions in 2014/15 as follows:

- 11 substantive decisions
- 2 jurisdiction decisions
- 3 provisional suspension decisions.

Decisions by application type

Of the 11 substantive decisions issued by the Tribunal:

- 6 were anti-doping cases
- 4 were NZOC or NSO selection or nomination appeals
- 1 was an appeal against another type of decision of an NSO.

The Tribunal decided three provisional suspension applications involving anti-doping cases in 2014/15. Provisional suspension was imposed in all three cases (two by consent).

Analysis of anti-doping cases

There were six anti-doping cases decided by the Tribunal:

- 3 involved the presence of a prohibited substance
- 1 involved possession and attempted trafficking of a prohibited substance (the first Tribunal case concerning attempted trafficking)
- 1 involved evading or tampering with sample collections and whereabouts violations
- 1 involved an application for the reduction in the period of suspension.

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

There were five anti-doping cases where the Tribunal found an anti-doping violation had been committed by an athlete or in, one instance, a coach. Below are the anti-doping violations, prohibited substances, sanctions imposed, and sports these athletes were competing in.

ANTI-DOPING VIOLATION	PENALTY	SPORT
Evading sample collection, tampering with sample collection (whereabouts violations)	8 years' ineligibility (second offence)	Weightlifting
Presence of prohibited substance (3-Hydroxy-4-Methoxy-Tamoxifen also known as tamoxifen)	12 months' ineligibility	Basketball
Attempted use and possession of prohibited substance (Anastrozole)	2 years' ineligibility	Rugby League
Attempted trafficking in, and possession of, prohibited substances	6 years' ineligibility	Weightlifting
Presence of prohibited substance (Prednisone)	Reprimand only, no suspension	Hockey

Appeals against decisions of NSOs or the NZOC

There were six appeals against decisions of NSOs or the NZOC.

NOMINATION/SELECTION APPEALS

In the 2014/15 period, the Tribunal decided two appeals against decisions of an NSO and the NZOC not to select athletes for the 2014 Commonwealth Games. Both appeals were dismissed by the Tribunal together with a subsequent application for a rehearing.

The Tribunal also decided three appeals from the decisions of Canoe Racing New Zealand (CRNZ) regarding non-selection for the World Championships. In one case, the Tribunal found it did not have jurisdiction to hear the matter. In the other two, substantive hearings were held in person. One appeal was upheld and the other dismissed.

In relation to two of the CRNZ matters, the two athletes concerned brought an application for a rehearing and a separate application to the High Court of New Zealand for judicial review of the Tribunal's decisions. Both applications were subsequently withdrawn by the applicants.

OTHER APPEALS

The Tribunal heard and decided under urgency an appeal against a decision of an NSO which overturned an earlier internal committee's decision to deduct competition points during a tournament for fielding an ineligible player. The Tribunal upheld that appeal.

Mediation assistance and other support

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

The Tribunal provided assistance to the International Court of Arbitration in relation to an appeal by Drug Free Sport New Zealand against an anti-doping decision of the Tribunal.

REVIEW OF CASES DECIDED DURING THE YEAR

Anti-doping cases

Five cases were filed during the 2014/15 year. All of these, together with two other cases filed in the 2013/14 year, were resolved by 1 July 2015. There were also three provisional suspension decisions in this time.

The new World Anti-Doping Agency (WADA) code was introduced on 1 January 2015. The WADA code is mirrored in the Sports Anti-Doping Rules 2015 made by Drug Free Sport New Zealand (DFS) which in turn have been adopted as the anti-doping policy for nearly all of New Zealand's NSOs. The key changes to the code are outlined on the DFS website (http://drugfreesport.org.nz/2015-code/key-changes-to-the-2015-world-anti-doping-code/) and include:

- The addition of two anti-doping violations (prohibited association and complicity) bringing the total types of anti-doping violations under the anti-doping rules to 10
- Tougher penalties for intentional doping and refusing to provide a sample – increased from a 2 year to 4 year ban
- The criteria for determining the length of the ban includes the type of prohibited substance or method involved, type of anti-doping violation, whether first or subsequent offence, and the degree of fault involved
- In cases where there has not been an intention to cheat, the athlete will still face strict liability; however if he/she can show how the prohibited substance entered their system and are able to demonstrate "no significant fault or negligence", a lesser period of suspension or even a reprimand may be applied
- Changes to the whereabouts programme so that an anti-doping violation only occurs if there are three whereabouts failures over a 12 month period rather than the previous 18 month period (refer to Kris Gemmell v Drug Free Sport New Zealand (ST 01/15) case for a discussion about this change).

While most of the 2014/15 anti-doping cases were decided by the Tribunal prior to the introduction of the new rules, there have been two cases so far in 2015 which have been decided under the new rules (DFSNZ v Andrew Ciancio (ST 03/14) and DFSNZ v Quentin Gardiner (ST 06/15), which was decided in July 2015).

The Tribunal has heard a wide range of anti-doping violations in the 2014/15 year beyond the typical cases of athletes testing positive to prohibited substances. Such "non-analytical" violations have involved the first case the Tribunal has heard of attempted trafficking of a prohibited substance (DFS v Daniel Milne ST 11/14) (6 year ban imposed), as well as violations as to the attempted use and possession of a prohibited substance (DFS v Darren Reiri ST 10/14) (2 year ban imposed); and evading and tampering with a sample collection (DFS v Andrew Ciancio ST 03/14) (8 year ban imposed for second offence).

There were two cases involving the presence of a prohibited substance (DFS v Gareth Dawson ST 04/14 and DFS v Claudia Hanham ST 13/14). Both athletes admitted the violation on an unintentional basis (purpose had not been to enhance sports performance but to treat medical issues). The athletes were heard as to the sanction to be imposed. In Mr Dawson's case, the period of suspension was imposed at 12 months and in Ms Hanham's case, a reprimand only was made with no suspension imposed. Athletes are again reminded of the importance of knowing and abiding by the rules, and where necessary taking steps to make proper enquiries to avoid taking prohibited substances (such as checking with DFS) given that a prohibited substance may not necessarily be specifically listed on the WADA Prohibited List.

All of the above cases are summarised later in this report.

Three provisional suspension decisions were made by the Tribunal, two by consent on the basis that the substantive hearings would be expedited.

For the second year running, there were no cases involving positive tests for recreational drugs, including cannabis, which has accounted for nearly half (45%) of the anti-doping cases the Tribunal has heard and decided since its inception. The Tribunal suspects this is the result of the increased threshold level in drug testing for cannabis that was introduced by WADA in May 2013.

Appeals against decisions of NSOs or NZOC

Non-nomination and non-selection decisions have now overtaken appeals from disciplinary decisions as the most common ground of appeal against the decisions of NSOs or the NZOC (26 cases compared with 22 cases respectively). All but one of the appeals against NSO or NZOC decisions in the 2014/15 year related to non-nomination or non-selection.

Two of the appeals were for non-nomination or non-selection for New Zealand teams for the Glasgow Commonwealth Games in 2014.

In the first case, Sarah Her-Lee v Table Tennis New Zealand (ST 08/14), Ms Her-Lee appealed against her non-nomination to the women's table tennis team on the basis that the selectors had improperly applied the nomination criteria, as well as on bias and natural justice arguments. The Tribunal considered that Table Tennis New Zealand had not improperly applied the nomination criteria and dismissed Ms Her-Lee's appeal. Ms Her-Lee subsequently applied for a rehearing, which due to timing was adjourned to after the Commonwealth Games. The Tribunal dismissed the application for rehearing on the basis that the rehearing would be about the same question (non-nomination) which could not be factually dealt with now that the Games were finished. The Tribunal considered that the matter would be more appropriately dealt with internally within Table Tennis New Zealand, perhaps with the assistance of a mediator/facilitator.

In the second case, Monique Dell v New Zealand Olympic Committee (ST09/14), Ms Dell appealed against the NZOC decision not to select her in the 4 x 400m relay team for the Commonwealth Games. Ms Dell had been nominated by Athletics New Zealand as a member of the relay team subject to a condition as to form and fitness requirements. NZOC set Ms Dell a performance time for running the 400 metres which she was unable to meet. Ms Dell argued that communication regarding her nomination was unclear and therefore prejudicial, that there was no power to impose a performance standard and to do so was unreasonable, and that the selection process was biased. In dismissing the appeal, the Tribunal considered that the NZOC were not bound by Athletics New Zealand's nomination which was conditional, and that they were entitled to impose performance requirements of their own, which had not been met. Nor was any bias found.

The Tribunal also heard and decided appeals against three decisions of Canoe Racing New Zealand (CRNZ) for non-selection for World Cup events in 2015.

The first case, Zac Quickenden v CRNZ (ST 03/15), was an appeal for non-selection and the decision not to send a K2 1000 crew to the World Cup Regattas. The case was dismissed for jurisdictional reasons as Mr Quickenden had not given his notice of appeal within the time for appeal (48 hours) strictly applied by CRNZ. The Tribunal has discretion to extend or abridge the time frames set by the Tribunal, but not time frames set by an NSO's internal rules.

The second case, Darryl Fitzgerald v Canoe Racing New Zealand (ST 04/15) also involved an appeal against CRNZ's decision not to send a K2 1000 team to the 2015 World Cup Regattas. The matter was heard under urgency. Mr Fitzgerald argued that CRNZ had not properly followed or implemented its selection policy, that there was no material on which the selection decision could reasonably be based and that natural justice had been denied. The Tribunal dismissed the appeal on the basis that CRNZ had properly followed its selection policy and there was a clear rationale for making its decision.

The third case, Andrew Roy v Canoe Racing New Zealand (ST 05/15) related to a decision by CRNZ not to select Mr Roy for the Under 23 K1 200 event at the World Championships. In this case, it was found that there were a number of instances where the selectors had not properly followed the selection process and policies to Mr Roy's detriment. The Tribunal allowed Mr Roy's appeal and further ordered that Mr Roy be selected for this event rather than referring the decision back for reconsideration by CRNZ.

There was also an appeal against a decision of the New Zealand Rugby League Appeals Committee (NZRLAC) not to deduct competition points against a team who had fielded an unregistered and ineligible player for a tournament (Southern Zone Rugby League v New Zealand Rugby League, ST 12/14). The matter was heard under extreme urgency during the middle of the tournament as the outcome could have had a bearing on who would be the finalist teams the coming weekend. The Tribunal allowed the appeal on the basis that there had not been sufficient evidential bias for NZRLAC's decision as the team who had fielded the ineligible player had not made full and proper enquiries as to the player's eligibility in the circumstances.

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

Urgency

The Tribunal continued this year to process cases efficiently and speedily, handle urgent applications at short notice and frequently sit outside normal hours where needed. When required, proceedings were arranged and/or heard over weekends and in evenings.

In particular, appeals against NSO or NZOC decisions for selection for the Commonwealth Games and other international events tend to be heard urgently given the short periods of time that may exist between selection announcement and the corresponding event.

Provisional suspension applications, which are filed under urgency, were processed, heard and decided in short periods, often in order to expedite the substantive applications.

SUMMARIES OF CASES DECIDED BY THE TRIBUNAL IN 2014/15

Anti-doping Cases

EVADING AND TAMPERING WITH SAMPLE COLLECTION

Drug Free Sport New Zealand v Andrew Ciancio

(ST 03/14) Decision 24 June 2015; Provisional Suspension Decision 4 June 2014

Drug Free Sport New Zealand (DFS) brought anti-doping proceedings in the Tribunal against Mr Ciancio in 2014. The Tribunal ordered that Mr Ciancio be provisionally suspended in June 2014.

The New Zealand proceedings were adjourned at Mr Ciancio's request, while other unrelated anti-doping proceedings against him were being heard and decided by the Court of Arbitration for Sport (CAS) in Australia. In a decision dated 20 April 2015, CAS suspended Mr Ciancio for 7 years, commencing from 24 November 2012.

The New Zealand proceedings subsequently recommenced and the Sports Tribunal heard the matter on 22 June 2015 and issued its decision on 24 June 2015.

The Tribunal found Mr Ciancio committed the six anti-doping violations alleged against him. These involved evading sample collection or tampering with sample collection contrary to the Sports Anti-Doping Rules. He did so by giving false and misleading information as to his whereabouts for availability for drug testing and changing his whereabouts for availability for drug testing with the intention of evading sample collection. These breaches took place on various dates between July and October 2013.

The New Zealand violations occurred significantly after the Australian violations. The New Zealand violations counted as a second anti-doping violation. Mr Ciancio could have been liable for a lifetime ban if the Tribunal applied the 2013 Anti-Doping Rules.

However, the Tribunal decided it was appropriate to apply the current 2015 Anti-Doping Rules, which DFS accepted would be the orthodox position, which provided for a suspension of 8 years for a second violation of this kind.

The Tribunal therefore suspended Mr Ciancio for 8 years commencing from 4 June 2014 (the date he was provisionally suspended).

PRESENCE OF PROHIBITED SUBSTANCE – TAMOXIFEN

Drug Free Sport New Zealand v Gareth Dawson

(ST 04/14) Decision 1 August 2014; Provisional Suspension Decision 15 May 2014

Southland Sharks basketball player Gareth Dawson tested positive to the prohibited substance tamoxifen during a pre-season NBL tournament.

The mandatory penalty for this violation is 2 years' suspension. However as tamoxifen is a "specified substance" the suspension can be less than 2 years if Mr Dawson established:

- how the prohibited substance tamoxifen got in his system and
- that taking the tamoxifen wasn't intended to enhance his sports performance.

Mr Dawson admitted the violation. He developed a medical condition in 2011, which was sore and annoying when competing, and went to a doctor in Timaru who diagnosed the condition but didn't prescribe treatment. The condition went away for 18 months and then returned. In 2013 Mr Dawson researched the condition online, saw references to tamoxifen as a treatment and ordered tamoxifen tablets from an online pharmacy but didn't receive them as they were intercepted in the mail by NZ Customs. When the tablets didn't arrive he consulted a doctor in Invercargill where he was now living. He requested a "repeat prescription" of tamoxifen and was prescribed tamoxifen, which he later took. He said this was the source of the positive test.

The Tribunal was satisfied about how the prohibited substance entered Mr Dawson's body, that he didn't intend to enhance his sports performance or mask the use of a performance enhancing substance and that it was obtained by prescription and taken to deal with a medical condition. Therefore he was eligible for suspension of less than 2 years, depending on his level of fault.

The Tribunal said athletes know there is a regime where they have strict personal responsibility to ensure that prohibited substances don't enter their bodies. If they are casual and inattentive to education provided, or don't use advice available, they do so at their peril.

In assessing Mr Dawson's level of fault, the Tribunal disagreed that he was merely silly or careless by trying to self-medicate but said he was foolhardy and his culpability was not at the low end. He was an experienced athlete who had ample opportunity to know and understand the drug free environment. Having obtained a medical diagnosis he irresponsibly later tried to get a prescription medicine from the Internet to treat it. That he'd shifted cities wasn't a persuasive reason to do this.

He didn't contact Drug Free Sport to check about tamoxifen or otherwise obtain any information about its anti-doping status and made little effort to exercise the proper caution expected of a semi-professional and experienced athlete to avoid taking prohibited substances. When he wasn't successful in obtaining tamoxifen from the Internet, he was less forthcoming with the next doctor he contacted than he should have been in asking for a repeat prescription.

The Tribunal concluded that the penalty couldn't be less than 12 months' suspension, because of Mr Dawson's failures to meet his personal responsibilities in the drug free environment, and suspended him for 12 months (from 15 May 2014, when he was provisionally suspended by the Tribunal).

ATTEMPTED USE OF, AND POSSESSION OF, PROHIBITED SUBSTANCE – ANASTROZOLE

Drug Free Sport New Zealand v Darren Reiri

(ST 10/14) Decision 5 December 2014; Provisional Suspension Decision 29 October 2014

On 6 October 2014, Drug Free Sport New Zealand (DFS) filed Anti-Doping Proceedings against Darren Reiri, a rugby league player, relating to the attempted use of, and possession of, a prohibited substance.

Mr Reiri admitted the violations. In May 2013 he ordered the prohibited substance Anastrozole from a website in India. A package of tablets was dispatched to him but intercepted by Customs and referred to Medsafe, who sent a letter to Mr Reiri advising the package had been intercepted. Mr Reiri didn't respond to the letter and in July 2013 re-ordered tablets from the website. This second package was also intercepted. Medsafe then referred the matter to DFS.

Under the Sports Anti-Doping Rules, the penalty is 2 years' suspension. However, if Mr Reiri could establish how the substance came into his possession and that he didn't intend to enhance his sports performance, he was eligible for a lesser penalty.

The main issue was whether Mr Reiri could show he didn't intend to enhance his sports performance. Mr Reiri said he had been playing less rugby league, was concentrating more on working out in the gym and had decided to get bigger and more muscular. A friend advised him to use Anastrozole and gave him the supplier's details. Mr Reiri said that he knew Anastrozole was supposed to enhance athletic performance but bought it to use in the gym not to become a better rugby league player. He said his sole aim was to use it for "cosmetic purposes", that he wanted to get bigger and stronger and didn't give a "second thought" to whether any improvements he could make in the gym would benefit his rugby league activities.

The Tribunal agreed with DFS' position that the question of absence of intent to enhance performance involves an objective consideration of the circumstances and asking whether Mr Reiri took the substance to raise the level of his performance in sport; intent to cheat or not was irrelevant; the focus was on the connection between possession of the substance and performance in sport; and it was artificial to segregate performance improvement in body building from performance improvement in rugby league, where becoming bigger and stronger would improve performance in either activity.

The Tribunal concluded Mr Reiri fell short of establishing he didn't intend to enhance his sport performance. It said:

> *Objectively viewed the explanations are not persuasive especially when Mr Reiri persisted with his attempted acquisition after his first try was foiled by Medsafe. His failure to seek advice or check his position is inexcusable. He appeared to be willing to rely on the say so of a friend who he did not want to identify but with regard to who Mr Reiri told the investigator the friend had told him "it was a good performance enhancing drug". Mr Reiri had a long involvement in the sport and a clear duty to be cautious. While because of his age and new priorities his degree of involvement in rugby league was lessening, the obligations remained even if it was for him more of a hobby than a sport.*

The Tribunal therefore suspended Mr Reiri for 2 years. The Tribunal ordered the 2 year suspension period start from 1 February 2014 to take account of the substantial delay in the matter being referred to the Tribunal.

ATTEMPTED TRAFFICKING OF, AND POSSESSION BY AN ATHLETE SUPPORT PERSONNEL OF, PROHIBITED SUBSTANCE

Drug Free Sport New Zealand v Daniel Milne

(ST 11/14) Decision 28 November 2014

In December 2012, Mr Milne offered to supply steroids and other performance enhancing prohibited substances to a 19 year old weightlifter (X) he was coaching so that X could improve his competitive weightlifting performance. Mr Milne held a party at his house where he showed X some of these products, offered to source them for X and show X how to use them. X subsequently declined and told another coach. This led to Drug Free Sport New Zealand carrying out investigations and ultimately referring the matter to the Tribunal on 6 October 2014 alleging anti-doping violations of attempted trafficking in, and possession by an athlete support personnel of, prohibited substances. Mr Milne admitted both charges.

This is the first anti-doping violation of attempted trafficking in New Zealand.

The minimum penalty for attempted trafficking is 4 years' suspension from sport with a maximum penalty of a life ban. Overseas cases have imposed penalties ranging from 4 years' suspension to a life ban, depending on the circumstances of each case.

The Tribunal noted there were aggravating factors here including that: the violations happened within an athlete and coach relationship; X was a young man who should have received mentoring and support and not been encouraged to take prohibited substances; and this was not a one-off, spontaneous mistake but reflected Mr Milne's unacceptable attitude to the use of prohibited substances then. In the Tribunal's view, without considering any mitigating factors, a starting point of 7 to 8 years' suspension would apply in these circumstances.

However, there were mitigating factors. Mr Milne eventually admitted the violations and accepted responsibility for what occurred, meaning X and other witnesses didn't have to give evidence at the hearing. He was contrite and ashamed. He made positive and constructive contributions to the sport over the years but regrettably a period occurred where he lost focus and sound judgement. He was still a relatively young man with some personal difficulties but still with clear potential.

The Tribunal was satisfied Mr Milne's frame of mind in which the offending occurred is now history but stated that "the fundamental attack on the integrity of all sporting contests demands that the breach is not minimised".

The Tribunal concluded that a suspension of 6 years was appropriate in all the circumstances. The Tribunal ordered the 6 year period start from 1 January 2014 to take account of the delay in the matter being referred to the Tribunal.

PRESENCE OF PROHIBITED SUBSTANCE – PREDNISONE

Drug Free Sport New Zealand v Claudia Hanham

(ST 13/14) Decision 3 December 2014; Provisional Suspension Decision 13 November 2014

Drug Free Sport New Zealand (DFS) filed for provisional suspension of Claudia Hanham (Claudia) on 10 November 2014 for testing positive for a prohibited substance. The Tribunal provisionally suspended Claudia on 13 November 2014 without opposition on the basis there would be an expedited hearing. DFS filed substantive anti-doping proceedings on 19 November and the Tribunal held a hearing on 2 December 2014 which was the earliest date that suited the parties. The Tribunal issued its decision the next day on 3 December 2014.

Claudia plays several sports at representative level, including hockey, touch, rugby and tag. She tested positive for Prednisone after playing hockey. Claudia didn't deny taking Prednisone and, when drug tested, volunteered she was taking it and disclosed that on the testing form.

Claudia admitted the violation but said she hadn't known Prednisone was prohibited and it had been prescribed to her for medical treatment.

In March 2014 Claudia suffered severe chest pain and was admitted to hospital. She was diagnosed with an extremely serious condition that could result in kidney failure and early mortality. Medical evidence was given that it is "life threatening with a 5 year 50% combined mortality or end stage kidney rate if untreated". Claudia was immediately prescribed a very high dose of Prednisone (plus other medications). She has remained on those drugs, though at a diminishing level, since then. Since learning of the positive test, Claudia applied for, and was granted, a Therapeutic Use Exemption (TUE) authorising her continued use of the Prednisone medication. The Tribunal noted that if this had been applied for earlier the violation would not have occurred.

Claudia went to a consultant doctor in April 2014 and asked whether she could safely participate in sport given her condition and the medication prescribed. They discussed medical risks of playing sport. Evidence was given that Claudia and her mother told the doctor she was playing representative sport but he wasn't told she was subject to drug testing. He considered Prednisone diminished athletic performance and wasn't aware it was prohibited in sport. The Tribunal noted athletes need to be very explicit about their situation when consulting doctors.

Athletes ideally should make enquiries of more than one source apart from the obvious one of raising the matter with the treating doctor. Claudia did subsequently check the Prohibited Substances List on the WADA website (which doesn't specifically identify Prednisone as being prohibited) but didn't check with DFS. The clear obligation is on and remains with the athlete.

However, in the particular circumstances of this case a reprimand rather than a suspension was appropriate. The Tribunal stated:

> *Claudia clearly is not a drug cheat and was a young woman subject to a sudden and serious life threatening medical situation requiring treatment. While she should in hindsight have made better inquiries, in these particular circumstances a reprimand is all that is required. The importance of her obligation is underlined by the period of suspension under the provisional order.*
>
> *The decision of the Tribunal is that Claudia is not suspended but is reprimanded.*

REDUCTION OF SUSPENSION PERIOD

Kris Gemmell v Drug Free Sport New Zealand

(ST 01/15) Decision 26 January 2015

In a decision of 1 December 2014, the Court of Arbitration for Sport ("CAS") allowed an appeal by Drug Free Sport New Zealand ("DFSNZ") against a Sports Tribunal decision of 12 February 2014 finding an allegation that Kris Gemmell committed a whereabouts violation had not been established on the facts. CAS decided a whereabouts violation had been established, in that Mr Gemmell had three missed tests and/or filing failures within 18 months. CAS suspended him for 15 months, commencing from the date of the Tribunal's decision of 12 February 2014.

In January 2015, Mr Gemmell applied for a reduction in his suspension, in light of new 2015 Rules. On 1 January 2015, new Sports Anti-Doping Rules came into force changing the rules concerning when a whereabouts violation is committed. Before this, for an athlete to commit a whereabouts anti-doping violation, there had to be a combination of three missed tests and/or filing failures all occurring within an 18 month period. The 2015 Rules reduced the 18 month period to 12 months. To breach the 2015 Rules and commit a whereabouts anti-doping violation, an athlete's three missed tests and/or filing failures had to all occur within 12 months.

While Mr Gemmell's failures for which he had been sanctioned all occurred within an 18 month period, they fell outside a 12 month period. Therefore, if his failures had occurred within the same relative time frame but after 1 January 2015, he would not have committed a whereabouts anti-doping violation.

The Tribunal had to decide (1) whether it had jurisdiction to decide the application and (2) if so, whether any reduction should be granted in light of 2015 Rules changes which would no longer characterise Mr Gemmell's conduct as a violation.

The Tribunal held it had jurisdiction under the relevant rule to decide the application and decided that a reduction in the suspension was appropriate.

The Tribunal noted that while today Mr Gemmell's conduct would not result in a whereabouts violation, he had been found to have committed an anti-doping violation of the whereabouts rule as it existed at the time and any reduction in his suspension does not change that fact.

The Tribunal stated:

> *What the Tribunal has to decide is whether it is appropriate to modify the sanction which CAS saw fit to impose for that violation on the basis that the WADA sporting community has decided that the earlier rule was too onerous. An athlete today who replicated Mr Gemmell's circumstances would commit no violation and face no sanction.*
>
> *In the Tribunal's view the fact that the WADA sporting community has decided that the Rule under which Mr Gemmell is presently subject to a 15 month period of ineligibility was too onerous does justify some reduction in that period of ineligibility.*
>
> *Mr Gemmell's period of ineligibility commenced on 12 February 2014. The Tribunal is satisfied that with the overlay of the DFSNZ appeal to CAS that Mr Gemmell has suffered detriment in pursuing career opportunities since the date the violation charges were laid. He has also suffered the stress, publicity and cost consequences of three hearings. As the Tribunal has noted the fact of a violation remains.*

The Tribunal noted that under the previous rules, the minimum period of suspension that could have been imposed was 12 months. CAS imposed 15 months but was unable to take into account the 2015 Rule change. CAS did, however, note the possibility of Mr Gemmell making this application.

Weighing all the factors, the Tribunal decided it was appropriate to reduce the suspension to a 12 month period equivalent to the minimum period that could have been imposed under the old rules and ordered Mr Gemmell's suspension to expire at midnight on 12 February 2015.

Appeals against decisions of NSOs

NOMINATION/SELECTION APPEALS

Sarah Her-Lee v Table Tennis New Zealand
(ST 08/14) Decision 2 July 2014

Sarah Her-Lee appealed to the Sports Tribunal against a decision by Table Tennis New Zealand (TTNZ) not to nominate her as a member of the women's table tennis team for selection for the 2014 Commonwealth Games. Five other players were nominated instead.

Ms Her-Lee appealed on the grounds that the TTNZ selectors hadn't properly implemented the nomination criteria by placing insufficient weight on her participation in "key events" specified in the nomination criteria and too much weight on individual world rankings of the nominated players, some of whom had not had much or any recent international competition. The nomination criteria allowed the selectors to consider factors other than participation in "key events", including any factors they considered relevant. It was accepted that the selectors could consider world rankings under the criteria. Four of the nominated players had current world rankings considerably higher than Ms Her-Lee. The one who didn't have a current world ranking had previously held world rankings also considerably higher than Ms Her-Lee's ranking.

The Tribunal considered whether the limited recent international competitive experience of some of the players nominated ahead of Ms Her-Lee was such as to make the selectors' determination unfair or otherwise invalid. The evidence was that reasons for the breaks in international competition included having children and undertaking graduate study. TTNZ gave evidence that its high performance director had been monitoring the performance of all the players who were all still actively competing, albeit in one case at club level in China. The Tribunal concluded on the evidence there was nothing to suggest that TTNZ hadn't properly applied the nomination criteria, including by applying the discretionary considerations under that criteria.

The Tribunal didn't accept a submission that Ms Her-Lee hadn't been provided a reasonable opportunity to satisfy the nomination criteria because she hadn't been selected for the world teams events earlier in 2014. The performance of that team, containing most of the nominated players, appeared to be a factor in persuading the NZOC to accept the nomination of a women's team for the Commonwealth Games. In the Tribunal's view TTNZ hadn't breached any selection criteria in picking that team. TTNZ was entitled to nominate the players who it thought most appropriate, which may have included consideration of exposing those players again to international competition.

Nor did the Tribunal accept a submission that there was apparent bias in the decision resulting from the effects of a 2013 dispute between Ms Her-Lee and one of the other nominated players who was then the team coach. A team event, which includes doubles, entails cooperation and compatibility between team members and officials, and the nomination criteria recognise this as a factor that may be relevant in nominating a team. The Tribunal also rejected a natural justice argument based on the number of selectors.

The Tribunal therefore dismissed the appeal.

Rehearing:
On 17 July Ms Her-Lee filed an application for the Tribunal to rehear her appeal on various grounds. However, she and TTNZ then agreed it was impractical to hear the application before the Commonwealth Games started and it was adjourned until afterwards.

Subsequently, TTNZ objected to the application on the basis it was now moot as the Games had concluded. The Tribunal agreed that the original appeal was against non-selection for the Games and a rehearing would be about the same question, which factually cannot now be dealt with.

The Tribunal has discretion under its rules whether to order a rehearing. The Tribunal considered that the issues raised by Ms Her-Lee's application would be more appropriately dealt with within TTNZ's internal administrative and hearing processes. The Tribunal therefore declined the application.

Monique Dell v New Zealand Olympic Committee

(ST 09/14) Decision 18 July 2014

Monique Dell appealed against the decision of the New Zealand Olympic Committee (NZOC) not to select her for the women's 4x400m relay team commencing on 23 July 2014. The Tribunal heard the appeal under urgency.

Ms Dell was at the forefront of New Zealand women's 400 metre running for a number of years. In 2009 she ran a personal best of 51.88 seconds. However, she didn't compete as much in 400m over the next years but ran more in the 2013 season. She recorded creditable 400m times in July 2013 but these were outside the individual qualifying criteria, so her opportunity to compete at the Commonwealth Games was limited to the 400m relay.

A New Zealand women's 4x400m relay team, which Ms Dell was not part of, achieved a qualifying time allowing New Zealand to enter a relay team in the Games (the members of which were to be determined).

Athletics New Zealand (ANZ) nominated Ms Dell as one of six members of the Games relay team subject to her "proving form and fitness". ANZ nominated Kristie Baillie as first reserve.

On 4 June 2014, the NZOC announced that Ms Dell would be confirmed as selected as the sixth member in the relay squad subject to form and fitness requirements being met. The NZOC also confirmed their selection of Ms Baillie as first reserve. On 4 June, ANZ advised Ms Dell she was required to meet a performance standard of running 400 metres in 54.25 seconds by 30 June 2014 to be confirmed as selected. However she failed to meet that standard. NZOC subsequently didn't select her and on 4 July 2014 announced that Kristie Baillie would be the sixth member selected for the relay team.

The Tribunal rejected arguments on behalf of Ms Dell that: she had been prejudiced because of uncertainty over whether she had been nominated; there was no power to impose a performance standard; imposing a performance standard was unreasonable; and the selection process was biased.

The Tribunal considered Ms Dell was nominated by ANZ with, what was in effect, a recommendation that her selection should be subject to a condition. The NZOC selectors weren't bound to select Ms Dell because she had been nominated, nor were they bound by any performance recommendation by ANZ selectors, and nor were they prevented from imposing a performance requirement of their own. In the Tribunal's view the NZOC selectors selected Ms Dell as a consequence of the ANZ nomination, but adopted as a condition a performance requirement, which they were entitled to do under the terms of the NZOC/ANZ agreement (dealing with nomination and selection). The NZOC selectors were entitled to adopt as the performance requirement a time specified by the ANZ selectors who had particular expertise and knowledge. The Tribunal considered the NZOC selectors made a conditional selection of Ms Dell subject to her achieving the specific performance standard by 30 June 2014, which she did not do.

The Tribunal was also satisfied that ANZ's communications to Ms Dell on 4 June fairly informed her. While it would have been preferable if ANZ's advice had been accompanied by written advice by NZOC of Ms Dell's conditional selection, the Tribunal's view is that the communications fairly informed Ms Dell of what was expected of her if she was to be confirmed as a member of the relay squad. Ms Dell didn't voice any disagreement at the time about the imposition of that requirement.

There was no bias in Ms Baillie's selection. Her selection as first reserve was not conditional as she had run the sixth fastest recent 400m time, which in the selectors' view justified her selection as first reserve. Ms Baillie was correctly nominated and selected as first reserve and then, by Ms Dell's non-selection, correctly selected as the sixth member of the team.

The Tribunal didn't accept NZOC's argument that Ms Dell had not given NZOC valid notice of her appeal and that she was out of time to appeal.

However, the Tribunal was satisfied that Ms Dell was not prejudiced by the processes followed and decisions made by ANZ and the NZOC, which in fact allowed her an extension of time to prove her fitness. Ms Dell's appeal against her non-selection therefore did not succeed.

Zac Quickenden v Canoe Racing New Zealand

(ST 03/15) Decision 21 April 2015

Zac Quickenden appealed the decision of Canoe Racing New Zealand (CRNZ) not to send a men's K2 team to the 2015 World Cup series regattas and his non-selection in such a crew.

CRNZ challenged whether the Tribunal had jurisdiction to hear the appeal as it said Mr Quickenden didn't give CRNZ notice of the appeal within the required time limit.

The Tribunal held an urgent hearing on the evening of 21 April and upheld CRNZ's challenge that evening. The Tribunal provided reasons for its decision on 23 April.

Mr Quickenden notified CRNZ he wished to appeal his non-selection and on 1 April attended a "without prejudice" meeting with CRNZ representatives in accordance with CRNZ's selection policy. The selection policy stated that if the appeal is still unresolved, the athlete may appeal to the Sports Tribunal provided that any notice of appeal is given to the CEO of CRNZ within 48 hours after the meeting. At the meeting it was agreed the selectors would review their decision and let Mr Quickenden know the outcome and that the 48 hours to give notice of appeal would start from when he received the selectors' review, rather than at the end of the meeting.

On Thursday 9 April the selectors emailed him a letter upholding their decision and stating "any appeal rights you are entitled to are set out in the CRNZ Open Sprint Selection Policy. As agreed at the meeting, any such appeal rights must be made within 48 hours of you receiving this letter".

CRNZ submitted the 48 hours from Thursday 9 April expired on the afternoon of Saturday 11 April. However, Mr Quickenden didn't give written notice of appeal to CRNZ until the first working day after the weekend, Monday 13 April, which he thought complied with the time limit.

The Tribunal noted that there is no reference in the policy as to how the computation of 48 hours is to occur with regard to weekends, public holidays or similar.

The Tribunal regrettably concluded that the notice was not given within 48 hours and that the Tribunal therefore did not have jurisdiction and the appeal had to be struck out.

There was an understandable mistake made as to the calculation of the 48 hours but there is no power in the CRNZ selection policy for the Tribunal to grant extensions of time. CRNZ could have agreed to extend the time frame, just as all the parties had agreed earlier in the process, but it refused to do so. The parties can allow for a mistake but the Tribunal cannot require them to do so.

Darryl Fitzgerald v Canoe Racing New Zealand

(ST 04/15) Decision 29 April 2015

Darryl Fitzgerald appealed against a decision of Canoe Racing New Zealand (CRNZ) not to send a Men's K2 1000 team to the 2015 World Cup series regattas.

The Tribunal held an urgent hearing on 29 April 2015. Due to the short time frame before the New Zealand team left for the event, the Tribunal announced its decision at the conclusion of the hearing that the appeal was dismissed and that reasons for the decision would follow. The Tribunal provided reasons for its decision on 4 May 2015.

After conducting trials, CRNZ chose Mr Fitzgerald and another athlete (F) as the crew for a Men's K2 boat to compete in the upcoming World Cup Regatta. Mr Fitzgerald told CRNZ he would prefer to race with another paddler (Q) who hadn't been chosen in the team rather than F. CRNZ informed Mr Fitzgerald that the team chosen was himself and F, who were the top performers on the basis of the trial results, and asked him to confirm that he was prepared to be considered for New Zealand team selection paddling with F and would commit to training with F. There was correspondence between Mr Fitzgerald and CRNZ over a number of days concerning this. Mr Fitzgerald eventually replied that he confirmed his interest in being selected for the K2 but while there were appeals pending around the K2 selection he could not "confirm nor deny" his interest in being involved with the plan outlined by CRNZ until the appeals had been resolved.

Following this, after full consultation between the selectors, CEO and the CRNZ Board, the decision was taken by CRNZ not to send a Men's K2 1000 to the World Cup Regattas.

Mr Fitzgerald appealed that CRNZ hadn't properly followed/or implemented its selection policy, that there was no material on which the selection decision could be reasonably based and that natural justice was denied.

The Tribunal dismissed the appeal. The Tribunal found no evidence of lack of a reasonable opportunity to satisfy the requirements in the policy, unfairness or actual bias. The Tribunal stated it was not demonstrated that the policy had not been sensibly, sensitively and sympathetically followed. Rather than there being no material on which the decision of CRNZ could reasonably be based, there was an available rationale for its position. There was a clear scenario which supported and justified the eventual decision taken after the ongoing and persistent stance of Mr Fitzgerald. On an independent and objective assessment of the acts and omissions over the critical days, there was a solid foundation for the decision taken and no basis for the Tribunal to intervene.

Andrew Roy v Canoe Racing New Zealand

(ST 05/15) Decision 21 May 2015

Andrew Roy appealed against a decision of Canoe Racing New Zealand (CRNZ) not to select him for the Under 23 K1 200 event at the World Championships.

The Tribunal concluded that CRNZ's decision not to select Mr Roy did not conform with the Selection Policy that laid down the criteria for selection decisions. The Tribunal held that the Selection Terms of Reference (which the Tribunal said must be read together with the Policy) governed the processes which must be followed in making selection decisions but that they had not been properly followed and/or implemented. The Tribunal also concluded that Mr Roy had not been afforded a reasonable opportunity to satisfy the requirements of the Policy.

There were a number of breaches of the Terms of Reference including selectors failing to comply with: formal selector meeting requirements, formal voting requirements, timing requirements and the requirement to prepare a selectors' report for the CRNZ Board giving reasons for their selection decisions including why Mr Roy wasn't selected. There was a failure by CRNZ to ensure the Board,

which was the ultimate decision maker, was aware of Mr Roy's non-selection and the reasons for that recommendation so that the Board could ensure proper processes had been followed.

As well as these breaches, the Tribunal found there were other aspects indicating that the Policy had not been followed by CRNZ and Mr Roy had not been given a reasonable opportunity to satisfy the selection criteria. The Tribunal concluded that the assessment of Mr Roy's performances and potential was too undisciplined and casual to be regarded as reliable. It thought in particular that, contrary to the intention of the Policy, Mr Roy's disappointing performance in the 2015 National Championships, which had been hampered by weed obstructions in the water and inadequate regatta organisation in terms of times between events, had not been balanced against superior performance in other nominated selection events. The Tribunal also thought that Mr Roy had been disadvantaged by being deprived of an opportunity to take part in the 2014 World Championships (another nominated selection event) and had been unfairly assessed for selection purposes in relation to alleged behaviour and character issues.

Given these findings, the Tribunal considered that the grounds of the appeal had been made out but thought that, contrary to the usual practice, the matter of Mr Roy's selection should not be sent back to CRNZ for reconsideration. The Tribunal said that it is not a task that the selectors should properly be asked to undertake objectively and dispassionately or, on the facts of this case, can reasonably be expected to undertake without regard to their earlier views.

The Tribunal's decision was therefore to allow the appeal and order that Andrew Roy be selected for the K1 200 event for the 2015 World Championships.

In conclusion the Tribunal said:

> *Finally but very importantly, we note that both parties indicated that they wished to work together to re-establish good relationships. We commend them for this. Many sporting bodies and athletes incur difficulties from time to time but, for the good of the sport, usually resolve and put them behind them.*

OTHER APPEALS

Southern Zone Rugby League v New Zealand Rugby League
(ST 12/14) Decision 15 October 2014

Southern Zone Rugby League appealed against a decision of the New Zealand Rugby League Appeals Committee (NZRLAC) not to deduct competition points from Counties Manukau (CM) who fielded an ineligible player contrary to the relevant rules in a match against the Canterbury Bulls. The NZRLAC had overturned a decision of the NZRL Football Committee (NZRLFC) deducting two competition points and fining CM.

The outcome of the appeal could change competition points and potentially affect which teams qualified for the national final on Saturday 18 October. The appeal was filed on Monday 13 October and an urgent hearing was held on Wednesday 15 October with the Tribunal issuing its decision after the hearing.

The NZRLAC decided that, while there was a breach of the rules by CM fielding an unregistered and ineligible player, Albert Vete (V) and the rules set out a penalty of points deduction, CM took all reasonable steps to satisfy themselves of V's eligibility and others should have warned CM of a problem. It quashed the NZRLFC decision which deducted competition points.

The Tribunal disagreed. It was CM's responsibility to ensure that they didn't field an unregistered and ineligible player and CM hadn't done enough to ensure this.

V, who was registered with the NZ Warriors, told CM that he was also registered with an Auckland club (which was an eligibility requirement) but that was incorrect. However, there was no evidence that CM directly enquired of V or otherwise as to whether he fulfilled the other required eligibility criteria.

CM made an enquiry to NZRL about player registrations but didn't get a reply. Nevertheless they included V in their team. That was taking a risk. It wasn't reasonable to assume that because there was no response there was no problem and CM didn't follow up their enquiry with sufficient effort in the circumstances. There were other avenues CM could have followed.

The NZRLAC appeared to consider the substantial fault was the failure of NZRL or Auckland Rugby League to warn CM of a potential problem, and it effectively took the onus away from CM and placed it on others.

But the clear obligation was on CM to field a team of eligible players and there was significant fault when they failed to follow up on the enquiry they initiated. The relevant rules put CM on notice and the responsibility was theirs from the beginning.

The Tribunal was satisfied that there wasn't an available evidential basis for the NZRLAC's conclusion. It must have been apparent to all involved that V had been playing semi-professional sport and there was a need to be careful and cautious as to eligibility.

The Tribunal allowed the appeal and ordered that the decision of the NZRLFC be reinstated.

Mediation assistance and other support

The Tribunal provided formal mediation services and/or other assistance in four cases. Three of these involved disputes between NSOs and athletes and one involved a matter of interpretation of rules between an NSO and a regional organisation. The latter case was able to be resolved without the need for a formal hearing and decision. Specific details of these cases are confidential.

CASES DEALT WITH BY THE TRIBUNAL FROM 2003 TO 2015

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

Statistical analysis of cases dealt with by the Tribunal from 2003 to 2015

As at 30 June 2015, there were 163 decisions (or records of settled cases) of the Sports Tribunal.

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

The above figure does not include provisional suspension decisions. Since the Sports Anti-Doping Act 2006, the Tribunal is usually the body that decides provisional suspension applications, which are usually referred by Drug Free Sport New Zealand. In most anti-doping cases since then, the Tribunal has also had to decide a provisional suspension application which has required a separate hearing and decision. In 2014/15, the Tribunal heard and decided three provisional suspension applications.

Anti-doping cases make up approximately two thirds of the Tribunal's cases. Of the 163 substantive decisions on the website, 104 (approximately 65%) are anti-doping cases.

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

ANTI-DOPING CASES HEARD BY THE TRIBUNAL

As at 30 June 2015, the Tribunal has issued 104 substantive decisions in 101 anti-doping cases.

ANALYSIS OF ANTI-DOPING CASES HEARD BY THE TRIBUNAL

Of the 104 anti-doping substantive decisions by the Tribunal, there were:

Presence of prohibited substance

- 44 cases of Cannabis, when not used in conjunction with another prohibited substance
- 6 cases of Dimethylpentylamine 1 - 3, also known as Methylhexaneamine
- 3 cases of Methamphetamine/Amphetamine
- 3 cases of Probenecid
- 2 cases of BZP (Benzylpiperazine)
- 2 cases of Clenbuterol
- 2 cases of Ephedrine
- 2 cases of Furosemide
- 2 cases of Morphine
- 2 cases of Terbutaline
- 1 case of Boldenone and Testosterone
- 1 case of Canrenone
- 1 case of EPO (erythropoietin)
- 1 case of Methamphetamine/Amphetamine/Cannabis
- 1 case of Nandrolone
- 1 case of 1-Phenylbutan-2-amine (PBA) and N, alpha-diethyl-benzeneethanamine (DEBEA)
- 1 case of Prednisone
- 1 case of Stanozol/Hydrochlorothiazide/Amiloride
- 1 case of Stanozol/Nandrolone/Furosemide
- 1 case of Synthetic Cannabis (JWH-08)
- 1 case of Tamoxifen (3-Hydroxy-4-Methoxy-Tamoxifen)
- 1 case of the following numerous violations (T/E ratio > 4:1; Oxymesterone; Metabolites of Methandienone; Metabolites of Methyltestosterone; Metabolites of Oxymetholone; 19-norandrosterone).

Other anti-doping violations

- 1 case of attempted use and possession of prohibited substances (EPO, hCG and pregnyl solvent)
- 1 case of attempted use and possession of prohibited substance (Anastrozole)
- 9 cases of a failure or refusal to provide a sample (including tampering with sample and whereabouts offences)
- 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 case of attempted trafficking and possession by athlete support personnel.

Other decisions

- 2 cases of athletes participating in sport while suspended
- 1 decision concerning jurisdiction (relating to the attempted use and possession case)
- 1 decision disqualifying results (relating to the attempted use and possession case)
- 3 cases where the Tribunal found there had been no anti-doping violation (details of such cases are confidential)
- 3 cases where the Tribunal ruled it had no jurisdiction to hear the case.

CANNABIS CASES BY SPORT

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

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

SANCTIONS IN CANNABIS CASES

Sanctions imposed in the 45 cases involving cannabis were:

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

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

FIRST CANNABIS VIOLATIONS:

Suspensions imposed for first cannabis violations have generally been in the range of 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 three cases of athletes committing their second anti-doping violation involving cannabis.

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

THIRD CANNABIS VIOLATIONS:

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

- 10 years' suspension was imposed on this athlete.

APPEAL CASES HEARD BY THE TRIBUNAL

APPEAL CASES BY APPLICATION TYPE

There are 59 decisions listed on the Tribunal website as at 30 June 2015 involving appeals against decisions of NSOs and/or the NZOC. This includes two costs decisions. These appeal cases can be categorised as follows:

- 27 Tribunal decisions relating to athletes appealing their non-nomination or non-selection for a New Zealand team or squad
- 22 Tribunal decisions relating to athletes or other members of NSOs appealing disciplinary decisions (includes separate costs decisions in two cases)
- 10 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.

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

There have been 27 cases relating to athletes or coaches appealing their non-nomination or non-selection for a New Zealand team or squad:

- 8 appeals against not being selected for a New Zealand team
- 7 appeals against non-nomination or non-selection for the Olympic Games
- 6 appeals against non-nomination or non-selection for the Commonwealth Games
- 2 appeals by a coach against non-nomination or non-selection for the Youth Olympic Games
- 3 decisions relating to jurisdiction to appeal non-nomination for the Commonwealth Games
- 1 decision relating to jurisdiction to appeal non-selection for a New Zealand team.

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 an 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.

OTHER APPEALS

There have been 10 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)
- 1 appeal against a decision declaring a player transfer null and void
- 1 appeal against a decision of an NSO overturning an earlier decision of an internal committee to deduct competition points due to player ineligibility.

APPEAL CASES UPHELD

The Tribunal has upheld, or partially upheld, approximately 31% of the appeals it has heard (if jurisdictional and costs decisions and appeals settled with mediation or other assistance from the Tribunal are discounted).

The Tribunal has upheld, or partially upheld, appeals in 18 cases:

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

CASES SETTLED WITH MEDIATION OR OTHER ASSISTANCE BY TRIBUNAL

15 cases have been settled with assistance from the Tribunal:

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

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.

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

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

Following the trend in recent years, in two cases this year, two NSOs requested the Sports Tribunal to mediate and facilitate the resolution of internal disputes including the interpretation of internal rules. This helped the parties subsequently resolve their disputes.

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

EXPENDITURE

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

Sport NZ also funds the other operating costs of the Tribunal, which include costs associated with hearing and deciding cases (such as the remuneration paid to Tribunal members, travel, hiring of hearing venues and teleconferencing costs) and producing information resources. In 2014/15, these other operating costs were $93,564.

SPORTS TRIBUNAL BIOGRAPHIES

Current members of the Sports Tribunal

CHAIR: HON SIR BRUCE ROBERTSON KNZM

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

DEPUTY CHAIR: ALAN GALBRAITH QC

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

DEPUTY CHAIR: DR JIM FARMER QC

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

CHANTAL BRUNNER

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

RON CHEATLEY MBE

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

DR LYNNE COLEMAN MNZM

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

GEORGINA EARL ONZM (FORMERLY GEORGINA EVERS-SWINDELL)

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

ROB HART

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

PAULA TESORIERO MNZM

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

CONTACT INFORMATION

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

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