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**Sports Tribunal reduces suspension imposed on Kris Gemmell**

The Sports Tribunal has reduced the suspension imposed on former New Zealand triathlon representative, Kris Gemmell, for a whereabouts anti-doping violation.

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.

The decision in this case is available for download from the website of the Sports Tribunal ([www.sportstribunal.org.nz](http://www.sportstribunal.org.nz)). See *Kris Gemmell v Drug Free Sport New Zealand* (ST 01/15). Copies can also be obtained directly from Brent Ellis, Registrar, Sports Tribunal of New Zealand (telephone: 0800 55 66 80; e-mail: [info@sportstribunal.org.nz](mailto:info@sportstribunal.org.nz)).