

**BEFORE THE SPORTS TRIBUNAL
OF NEW ZEALAND**

ST 06/07

BETWEEN

GLEN WILLIAMS

Appellant

AND

TRIATHLON NEW ZEALAND (INC)

Respondent

MEMORANDUM TO PARTIES

Dated 18 October 2007

BACKGROUND

1. In May 2007, Mr Williams filed an appeal against Triathlon NZ ("Tri NZ"). At that time, I directed that the documents not be forwarded on Tri NZ because, in my view, the Tribunal does not have jurisdiction to hear the appeal. That is still my view but Mr Williams wishes to proceed. He says his lawyer has advised him that he has a case.
2. In the circumstances, I have asked the registrar to provide Tri NZ with the Notice of Appeal, the Appeal Brief, my Minute of 21 May 2007, Mr Williams' recent reply and this minute.
3. If Mr Williams still wishes to proceed, it is not necessary at this stage for Tri NZ to file a Statement of Defence. I will appoint a panel of the Tribunal to determine jurisdiction and there will be a hearing for that purpose at which Mr Williams can make his submissions and Tri NZ can advise its position on jurisdiction.
4. I will not sit on that panel and will not advise the panel of my views on jurisdiction. I am, however, setting them out in this Minute (which will not be seen by the panel) so that Mr Williams, in particular, may be aware of them. The reason for making my views known at this stage is that the panel will have jurisdiction under Rule 25.2 of the Tribunal Rules to make an order that any party to the proceeding pay the costs and expenses of the other party. The Tribunal does not normally make such an order and, if it does, the amount ordered is usually quite modest. However, it does have an ability, in exceptional circumstances, to order reimbursement of all costs met by a party.

JURISDICTIONAL VIEWS

5. The Tribunal's jurisdiction is based on contract. Unless a national sporting organisation gives jurisdiction to the Tribunal, it has no jurisdiction. A member of a national sporting organisation, by virtue of his or her membership, is bound by the rules of that national sporting association.
6. From the information supplied by Mr Williams, there are only two provisions in the constitution of Tri NZ giving jurisdiction to this Tribunal. They are:
 - (a) a matter referred by the Board to the Tribunal in accordance with Rule 8.3;

- (b) an appeal to this Tribunal from a decision of the Appeal Board of Tri NZ in accordance with Rule 14.8.
7. I do not see how Mr Williams' appeal comes within either of these provisions.
 8. The Board has not referred the matter to the Tribunal under Rule 8.3. That Rule deals with disciplinary matters other than doping offences which would normally go to the Disciplinary Commission. It provides for an appeal to the Appeal Board from decisions of the Disciplinary Commission. Not only has there been no reference by the Board, but there is no evidence that there has been a decision of the Disciplinary Commission.
 9. The same position applies with the appeal right under Rule 14.8. It must be an appeal from a decision of the Appeal Board which, under Rule 14, has the right to hear appeals from the Disciplinary Commission. In other words, any matters coming through Rule 14.8 to the Tribunal are disciplinary matters.
 10. The underlying difficulty for Mr Williams, in my view, is that he is not appealing against a decision of the Disciplinary Commission which is brought direct to the Tribunal by the Board, nor is he appealing from a decision of the Appeal Board.
 11. In fact, he is complaining about a matter which, on the face of it, is a decision not made by Tri NZ. That was made by World Triathlon which, I understand to be, the parent body. Mr Williams is complaining about Tri NZ not using their influence to have the decision changed. That can not be a matter, in my view, in respect of which there is an appeal right under the constitution of Tri NZ.

FURTHER PROCEDURE

12. Mr Williams is to confirm within seven days of receipt of this minute whether he still intends to proceed with his appeal. If he does, I will then convene the panel, as mentioned above, and the Chairman of that panel will, no doubt, convene a procedural conference between Mr Williams and a member of Tri NZ to arrange for a hearing to determine jurisdiction.

Dated the 18th day of October 2007

A handwritten signature in black ink, appearing to read 'B J Paterson', written in a cursive style.

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Hon B J Paterson QC
Chairman