

Introduction

1. This matter started by a notice of appeal. The decision appealed against in the words of the appeal brief was "*the decision of the Respondent to continue the suspension of HNZ*".
2. The New Zealand Olympic Committee (NZOC) challenged the jurisdiction of the Tribunal on the ground that the relevant rule in the constitution of the NZOC did not give the Tribunal jurisdiction to hear the appeal. The doctrine of estoppel by convention and a time limit for bringing the appeal were also raised as jurisdictional reasons which prevented the Tribunal from hearing the matter.

Decision that Tribunal has jurisdiction

3. The Tribunal, in a decision dated 13 July 2009, determined that the Tribunal did have a discretion to hear this matter because of the procedure which had been adopted by the parties in an attempt to mediate the differences between Handball New Zealand (HNZ) and the NZOC. Although HNZ had wrongly brought the matter as an appeal, the Tribunal was prepared to allow the matter to proceed under Part D of its Rules. It treated the matter as coming to the Tribunal under the provisions of section 38(b)(ii) of the Sports Anti-Doping Act 2006.

Discretion of Tribunal to accept matter for determination

4. However the Tribunal exercises a discretion on whether to accept a matter under section 38(b)(ii) of the Act. It called for further submissions on whether or not it should exercise its discretion.
5. After considering the submissions on discretion, the Tribunal by notice of 19 February 2010, adjourned the matter. In its notice of adjournment the Tribunal noted that the course which HNZ was taking, and the reasons for it seeking orders, may not lead to a resolution of the underlying problem. The issue is whether it or the interested party, New Zealand Handball Federation (NZHF),

should be recognised as the national sporting organisation controlling handball in this country.

6. The Tribunal indicated that it would adjourn the matter until 31 May 2010 in the hope that HNZ and NZHF may be able to settle their differences and form a united organisation to control handball in New Zealand. While HNZ continues in its efforts to find resolution, discussed below, there is no immediate prospect of this happening, and it is therefore necessary to determine whether the Tribunal accepts jurisdiction. The situation cannot be left in abeyance.

Discussion regarding exercise of discretion to accept jurisdiction

7. On 23 December 2009, the Tribunal requested further information to assist it in determining whether to accept jurisdiction. It noted that the three matters relevant to acceptance of the exercise of the discretion are:
 - (a) the merits;
 - (b) the delay;
 - (c) the attitude of the International Handball Federation (IHF).
8. The Tribunal also noted that HNZ was seeking two substantive outcomes:
 - (a) A recommendation by the Tribunal that NZOC reinstate HNZ as a member of the NZOC; and
 - (b) That the Tribunal hold that the decision of the NZOC to suspend HNZ was substantially wrong.
9. For the purposes of this discussion, it will be assumed that HNZ, if the matter proceeds to a hearing, is able to challenge the resolution suspending it from the NZOC, notwithstanding that its

notice of appeal was not against that resolution. It alleged that it should have been reinstated.

10. The evidence discloses that between October 2004 and the date of the NZOC resolution on 12 April 2006, there were two rival groups within the sport of handball in New Zealand. From 28 March 2005, neither HNZ nor NZHF were recognised by Sport and Recreation New Zealand as the national sports organisation for handball. There were meetings, discussions, consultations and a working party formed to endeavour to unite handball in New Zealand. On 8 February 2006, IHF asked the NZOC to comment on the matter of a new organisation being created to run handball in New Zealand. That organisation was NZHF. The conflict between HNZ and NZHF, and the terms of the NZOC constitution under which a member must demonstrate "*wide recognition as the governing body*" of a sport in New Zealand, were factors which led to the NZOC suspending HNZ by its resolution of 12 April 2006.
11. Before the resolution of 12 April 2006, the President of IHF had indicated that it may be appropriate from the IHF's perspective to suspend HNZ from the NZOC and then to work with both HNZ and NZHF to help unify them so that one body could be officially recognised by both the NZOC and IHF.
12. In a letter of 20 April 2006 to both HNZ and NZHF, the NZOC advised of the suspension. That letter included the following:

"The rationale for this decision, was that it has become exceedingly clear that we now have two groups...[HNZ and NZHF]...purporting to represent the sport in NZ. This is clearly at odds with the NZOC constitution, where National Federations must demonstrate a 'wide recognition as **the** governing body' for that sport in New Zealand."

"The NZOC remains keen to see if it is still possible to get the two groups to become one, which would be officially re-recognised by the NZOC, and the IF."

"To see if that is possible, and to ensure this does not become even more protracted, could I suggest a one

month period from the date of this letter, to achieve such unification, and if this fails, then the NZOC would be required to exercise its judgment, and make recommendation to the IF.”

13. There were discussions and meetings after the letter of 20 April 2006 with a view to combining HNZ and NZHF. By notices on 28 March 2008 and 22 May 2008, HNZ requested that the matter be determined by mediation.
14. The NZOC arranged for a mediator, and a mediation between HNZ and NZHF took place on 20 July 2008. For reasons which have not been explained to the Tribunal, the mediation did not settle the matter, which then led to HNZ bringing the matter to the Tribunal.
15. The reason that this Tribunal adjourned the matter in February last was to give HNZ the opportunity to endeavour to negotiate a unified body with NZHF. The NZOC evidently does not support the giving of further time. This may be because of frustration with both or at least one of the parties arising from the earlier negotiations. Notwithstanding HNZ’s continuing attempt to resolve matters there is no obvious prospect that further time will enable the underlying disagreement between HNZ and NZHF to be settled.
16. It was not the Tribunal’s intention that NZOC should take a further role in endeavouring to mediate a resolution of the underlying dispute. HNZ has indicated that unless the NZOC takes the initiative, it wants the matter determined by this Tribunal. The NZOC is not prepared to take that initiative, so the resolution by agreement, which stands out as the obvious course, is regrettably unavailable.
17. The Tribunal had reached the above views before a "*second memorandum of counsel updating the Sports Tribunal as to steps taken by Handball New Zealand*" was received at the end of May 2010. It disclosed that NZOC would take no further steps, for its

part, to resolve the present proceedings, so continuing the position outlined above.

18. The second memorandum from HNZ also disclosed correspondence with NZHF, including that of 27 May 2010 requesting agreement to enter into a mediation. That of course can continue. This Tribunal had endorsed a process of unification of the game. The letter of 27 May 2010 from Ms Ertel for HNZ to NZHF, suggested in some detail a mediation process and another member of this Tribunal as a potential mediator. HNZ considers that a joint approach to NZOC may facilitate the mediation.
19. Also of importance is a letter from Ms Ertel to the IHF Secretary-General and the Chair of the IHF Arbitration Commission dated 28 May 2010 confirming that HNZ has not received any documentation from IHF or the IHF Arbitration Commission concerning the progress of HNZ's appeal to the Commission on 7 May 2009.
20. Ms Ertel reminds us that while the dispute between IHF and HNZ is not the subject of the arbitration proceedings, we have stated that the attitude of IHF is relevant to the exercise of discretion.
21. In that context, and because there is no response yet to the correspondence with NZHF (proposing mediation) or IHF (regarding arbitration), HNZ sought a further period to see if any resolution outside this Tribunal is available.
22. However, even if HNZ were able to persuade the Tribunal to set aside the NZOC resolution of 12 April 2006, that will not resolve the underlying dispute. The Constitution of the NZOC requires that a member demonstrate:
 - (a) wide recognition as the governing body for that sport in New Zealand;

- (b) recognition by an International Federation of that sport that is recognised by the IOC.
23. On the evidence HNZ can clearly not establish that it has wide recognition as the governing body for handball in New Zealand.
24. Of more importance is the recognition by the IHF. It resolved to accept NZHF as a full member on 5 June 2009. There is a suggestion that it is not empowered to do this because NZHF is not a member of the NZOC. (A statement in the Tribunal's request of 23 December indicating that it was such a member is incorrect). Whether IHF was entitled to register NZHF as a member is not a matter for this Tribunal. It has done so. The Tribunal cannot gainsay that action.
25. If however the appeal filed with the IHF Arbitration Committee on 7 May 2009 is to receive a favourable response, and its contention that a decision on the appeal and the advice of a decision having been made on 24 November 2009 proves to be incorrect, then the issue would potentially revive. As this Tribunal understands it, if HNZ succeeded in its appeal, one potential outcome is that neither HNZ nor NZHF would belong to NZOC or the IHF. That would compel some qualification.
26. It is difficult in the circumstances to see how HNZ can challenge the resolution of 12 April 2006. The initial suggestion came from the IHF. There appear to have been valid grounds for the NZOC to suspend HNZ in the hope that HNZ and NZHF could come to a unifying agreement.

The Decision

27. The Tribunal has therefore concluded that even if it is able to consider the validity of the resolution of 12 April 2006, it could not make a decision leading to either the retention or reinstatement of membership of HNZ as a member of the NZOC, because HNZ is not recognised by the IHF. There is no practical

relief which the Tribunal can give. To proceed further would incur cost and not resolve the underlying dispute.

28. The Tribunal declines jurisdiction in the exercise of its discretion for the reasons above.

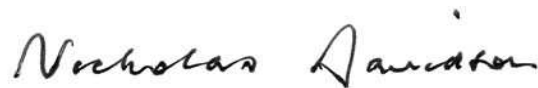
Publication

29. The usual practice of the Tribunal would lead to the publication of this decision (see Rule 25(b) of the Rules of the Sports Tribunal). If any party wishes to make submissions on publication it should do so within 10 days.

Dated 9 June 2010



**B J Paterson QC
Chairman**



**N R W Davidson QC
Deputy Chairman**