

INTRODUCTION

1. The Appellant (Binbin) was a member of the New Zealand Commonwealth Games squad in 2006 at the age of 17. He unsuccessfully applied for a Prime Minister's Scholarship (the scholarship) for the year 2006. Binbin now seeks to appeal against the decision which denied him the scholarship.
2. The Respondent (TTNZ) raised jurisdictional objections to the appeal. A hearing was held in Auckland on 10th July 2006 to consider these objections.

THE PRIME MINISTER'S SCHOLARSHIP

3. The Prime Minister's Athlete Scholarship programme is a Government initiative managed by the NZ Academy of Sport (the Academy), which is a component of Sport and Recreation New Zealand (SPARC). The goal of the programme is to assist talented and elite athletes achieve tertiary and vocational qualifications while pursuing excellence in sport. In 2005, at least 500 athletes across fifty sports were awarded a scholarship.
4. The scholarships allow athletes to have their academic fees paid to a maximum of \$10,000 per annum and receive a living allowance of up to \$6,000 if undertaking the requisite study programme. TTNZ was initially informed it would be able to nominate any carded athletes plus a further five athletes for the 2006 scholarships. This would have given TTNZ ten scholarships. The original advice was in error and the total number of scholarships to which TTNZ was entitled for the 2006 year was five.
5. The eligibility criteria for a scholarship was negotiated by the Academy with each sport. The TTNZ selection criteria provided, amongst other matters, that where possible the scholarships were to be split equally by gender, subject to quality applications from both sexes.
6. Mr Limna, an officer of the Academy, participated in a pre-hearing telephone conference. He confirmed that the scholarships were awarded on the application of the sport. While the usual practice is that applications made by the sport are approved, the Academy does have a discretion and has the power to decline to grant a scholarship if it considers the applicant is not up to the required standard. Thus, the Academy makes the final decision and awards the Scholarships.

BACKGROUND

7. Binbin, along with others, applied for a scholarship. On 8 December 2005, TTNZ wrote to him advising that the scholarships had been allocated. The letter recorded that it had received incorrect information and that it had been restricted to five scholarships. **The letter was notification to Binbin that he had not been awarded a scholarship.**
8. It is apparent that between the receipt of the letter of 8 December 2005 and the filing of the appeal on 26 May 2006, there was considerable communication between officials of TTNZ and Binbin's father (Mr Zhu) over the non-awarding of the scholarship to Binbin. These communications were by letter and email, and by telephone. Mr Zhu initially sought to have the TTNZ's decision altered. If he had succeeded a successful candidate would have lost a scholarship, probably after the funds had been paid to that candidate.
9. In a lengthy letter dated 12 February 2006 to TTNZ, Mr Zhu said:

"We are writing to you to strongly suggest TTNZ re-think the case about Binbin Zhu to be able to receive the Prime Minister athlete scholarships 2006. We will not agree with what TTNZ have said or what they have written to us about the selectors' decision. We will not accept that the New Zealand Academy of Sport has confirmed the recipients of the Prime Minister's Athlete Scholarships 2006 for table tennis. We believe that we have a very strong case to support Binbin Zhu to be above every male table tennis candidate for the scholarship."

The letter referred to national ranking, availability for national teams, likelihood of future international representation and academic abilities as the criteria to nominate the recipients for a scholarship. Mr Zhu then analysed at length the various candidates under those classifications.

10. From about early March 2006, Mr Zhu was also endeavouring to have TTNZ apply to the Academy to request that an additional scholarship be awarded to Binbin. TTNZ was not prepared to make such an application. On 22 March Mr Zhu wrote to the Academy and TTNZ. He once again analysed the various candidates' abilities and results against the various criteria. In that letter he referred to the fact that SPARC was willing to provide extra scholarships to TTNZ. He had previously raised the possibility of an extra scholarship to TTNZ in an email of 13 March 2006, when he said:

"The best solution at moment is that TTNZ try apply more scholarships from SPARC for Binbin as he is absolutely outstanding on sport and academic."

11. The TTNZ criteria were on its website and a copy of that criteria bears the date 3 March 2006. The criteria had been set out in a letter from the chairman of TTNZ to Mr Zhu dated 10 March 2006.
12. The communications between the parties were effectively terminated by a letter from the chairman of TTNZ to Mr Zhu dated 5 May 2006. The letter, amongst other things, noted that TTNZ had fully outlined the process and decisions made in deciding on the 2006 scholarships and therefore saw little benefit to re-address these points. TTNZ stood by its decision. Finally it noted that TTNZ would not enter into further correspondence with Mr Zhu regarding the matter.

GROUND OF APPEAL

13. It is necessary to briefly refer to the grounds of appeal at this stage. This is because Mr Smyth in his submissions, in opposition to Mr David's submissions, effectively sought to introduce a new ground of appeal. He stated that the appeal was against two decisions of the Board of TTNZ, namely:
 - (a) The decision made in December 2005 not to nominate Binbin for a scholarship;
 - (b) The decision made in May 2006 not to apply to SPARC for an additional scholarship award in addition to those already awarded.
14. Mr David for TTNZ objected to this additional ground. This was on the basis that neither the notice of appeal nor the appeal brief sought to appeal against the decision in May 2006.

THE ORIGINAL APPEAL GROUNDS

15. Binbin, in his original appeal document, advanced three grounds of appeal, although the first which related to TTNZ receiving incorrect information from SPARC cannot be a ground of appeal. In his submissions to the hearing, Mr Smyth raised two grounds:
 - (a) There was a failure by TTNZ to properly follow its own and SPARC's selection criteria for nominating candidates for a Prime Minister's scholarship award. Thus there is a breach of natural justice and/or the decision-maker acted outside of its powers and/or jurisdiction in making the nomination; and

- (b) Substantially new evidence had become available after the decision which is being appealed, namely that one recipient of the Prime Minister's Scholarship Award (Brad Chen) is not eligible because he is not currently in full education, whereas the Appellant has at all times been eligible.
16. Mr Zhu, in the appeal brief, elaborated on the alleged failure by TTNZ to follow proper procedures in the following respects:
- (a) Brad Chen was awarded a scholarship although he was not at that time on the 2005 ranking list. He had therefore not met the criteria;
 - (b) Binbin's ranking was higher than that of Nathan Lowe who also received a 2006 Scholarship;
 - (c) TTNZ had unfairly excluded Binbin from the top ten men's 2005 ranking. Not only should Binbin have been in the list, but Steven Zeng should not have been in that list (Zeng did not receive a Scholarship).
17. It is noted that on the basis of Mr Smyth's submissions, Binbin seeks to pursue the appeal by in effect introducing two grounds of appeal which were not in the appeal brief – namely:
- (a) That the appeal is against a decision not to apply for an additional Scholarship; and
 - (b) New evidence has become available indicating that Brad Chen is not currently in full time education.

In respect of the last point, there was no evidence before the Tribunal to support this ground, and counsel for TTNZ advised that Mr Chen had been given an exemption in respect of one semester so he could train and compete at the Commonwealth Games, and that he was now in full time education. If this is correct, there would appear to be no point in that ground of appeal, but for reasons which will become apparent it is not necessary to resolve this ground.

THE JURISDICTIONAL BASIS OF THE APPEAL

18. TTNZ relies both upon the terms of its Constitution and the provisions of the rules of this Tribunal in its challenge to jurisdiction. Rule 10 of TTNZ's Constitution contains its appeal rights and procedures. It reads:

“APPEAL PROCEDURES

- (a) Any affiliate within the jurisdiction, or under the control of, any Member Organisation or any person being a member of such Member Organisation, or affiliate being aggrieved by a decision or ruling of the governing body of such Member Organisation, may appeal against such decision or ruling and shall be heard by the Board at such place and time and in such manner as the Board shall direct.
- (b) There shall be a right of appeal against the decisions of the Board to the Sports Disputes Tribunal of New Zealand. Any such appeal shall be filed within 28 days of the Board's decision and in all other respects shall be dealt with in accordance with the Rules of the Sports Disputes Tribunal of New Zealand (copies of which are available from TTNZ). The decision of the Sports Disputes Tribunal of New Zealand shall be final and there shall be no further right of appeal."

19. There are two rules of this Tribunal which are relevant. The first (Rule 12.1.1) gives a right of appeal to this Tribunal if the rules or policies of the National Sports Organisation provide for such Appeal "and the Appellant has exhausted his or her rights of appeal within the rules or policies of that National Sports Organisation before commencing the Appeal". The grounds of any such appeal are limited by Rule 12.1.3, the relevant parts of which read:

"12.1.3 An appeal under Rules 12.1.1 or 12.1.2 shall be limited on the grounds set out in the applicable rules or policies of the National Sports Organisation or the New Zealand Olympic Committee (if applicable in Selection cases), or in the absence of such grounds, one or more of the following grounds:

- (a) that natural justice was denied;
- (b) the decision maker or decision making body acted outside of its powers and/or jurisdiction (ie acted ultra vires);
- (c) that substantially new evidence has become available after the decision which is being appealed, was made."

CHRONOLOGY

20. The following is a chronology of the relevant dates:

- | | |
|----------|---|
| 31/10/05 | SPARC initially confirmed TTNZ would receive five scholarships in addition to scholarships provided to carded athletes (this would have given ten scholarships) |
| 30/11/05 | Last date for receipt of nominations for scholarships. Binbin applied within time. |

- 6/12/05 SPARC clarified the position and advised TTNZ that only five scholarships were to be awarded.
- 6/12/05 TTNZ selectors made recommendations to Chief Executive Officer of TTNZ. The Chief Executive accepted those recommendations and forwarded them to SPARC.
- 8/12/05 Binbin advised by TTNZ that he had not been awarded a scholarship (see para 7 above).
- 13/12/05 Mr Zhu telephoned TTNZ and forwarded emails complaining about the failure to award a scholarship to Binbin. There followed numerous communications between TTNZ and Mr Zhu. In a letter of this date TTNZ advised Mr Zhu in general terms of the criteria applied for selection of candidates. Mr Zhu made it clear in subsequent letters that he was not going to accept the TTNZ decision and would take whatever steps necessary to rectify the position.
- 16/1/06 In response to an email from Mr Zhu of this date advising "we will not accept this result" the chief executive officer of TTNZ advised Mr Zhu that he had "asked that this issue be added to the agenda of the TTNZ Board on 18 February. We will let you know the outcome of discussions."
- 31/1/06 Mr Zhu sent email to SPARC asking them to reconsider the position.
- 12/2/06 Mr Zhu forwarded the letter referred to in paragraph 9 above. In it he responded in a detailed way to the selection criteria referred to in the email from TTNZ dated 13/12/05.
- 3/3/06 Selection criteria for scholarship awards placed on TTNZ website.
- 10/3/06 The Chairman of TTNZ wrote to Mr Zhu setting out in detail the criteria applied and noting that it would also be reused for scholarship applications in 2007. The letter concluded with a comment that "you can use the selection criteria outlined in this letter to help Binbin prepare for future applications". Clearly as at

10 March 2006 TTNZ communicated to Mr Zhu that it did not intend to reopen the nomination of candidates for the 2006 scholarships.

13/3/06 Mr Zhu sent the email referred to in paragraph 10 above to both SPARC and TTNZ. This was in effect a suggestion that application be made for a further scholarship for Binbin.

14/3/06 In an email to SPARC Mr Zhu noted that TTNZ had refused to try and help Binbin to apply for another scholarship.

15/3/06 An email from a SPARC official to Mr Zhu contained the following:

“As stated in our last phone conversation, I suggested that an option was for you to discuss with TTNZ, its applying to SPARC for an additional scholarship. Having spoken with TTNZ I understand it is not keen to take this course of action. SPARC is fully supportive of TTNZ’s decision. It is a call for it to make.”

In an email to SPARC Mr Zhu noted that TTNZ had refused to help Binbin to apply for another scholarship.

20/3/06 The chief executive of TTNZ wrote to Mr Zhu advising, amongst other things, that there was no point in applying for another scholarship because there were two other unsuccessful candidates ranked higher than Binbin.

22/3/06 Mr Zhu wrote to both the Academy and TTNZ a lengthy letter suggesting that Binbin had been treated unfairly and making submissions as to why he should have been awarded a scholarship based on the criteria applied by TTNZ. This letter concluded by asking TTNZ to apply for an extra scholarship (see para 10 above).

23/3/06 The Chairman of TTNZ wrote to Mr Kyle advising that TTNZ considered the matter closed. It appears as though there was some doubt as to whether this letter was received by Mr Zhu and thus the letter was resent in identical terms on the 5th of May.

5/5/06 The Chairman of TTNZ wrote to Mr Zhu saying that the matter had

been closed.

26/5/06 Binbin's appeal filed with Tribunal.

TTNZ'S SUBMISSIONS ON JURISDICTION

21. Mr David for TTNZ made three points in respect of the objection to jurisdiction. The first and third are related. Those points are:
 - (a) The decision not to recommend Binbin to the Academy for a Scholarship is not a decision in respect of which there is, on the proper construction of the TTNZ Constitution, a right of appeal.
 - (b) If there is an appeal under the Constitution, it is in this case time-barred under clause 10(b) of the Constitution.
 - (c) On a proper interpretation of the Tribunal's rules, it has no jurisdiction.
22. The submission was that the first and third points are related because under rule 10(b) of the TTNZ's constitution it is necessary for this Tribunal to deal with appeals "in accordance with the Rules of the Sports Disputes Tribunal ...". Therefore the constitution of TTNZ contemplated that appeals would only lie from decisions of the Board in relation to matters over which the Tribunal had jurisdiction under its Rules.
23. TTNZ's selection criteria provided, amongst other things, that successful applicants will be selected by TTNZ selectors in consultation with the CEO. This happened in this case and it was only after the complaint from Mr Zhu that the Board of TTNZ became involved in reviewing the process. It was submitted that there had never been any appeal process to the Board of TTNZ, or a ruling from the Board which might bring the appeal procedures in clause 10 of the constitution into operation.
24. It was submitted that the appeal procedures in rule 10 of the Constitution are intended to apply to those matters such as the expulsions of membership which are specifically dealt with in the constitution. The Board of TTNZ has certain powers in respect of members under the constitution and the submission was in effect that the right of appeal was only against those decisions of the Board which are specifically referred to in the constitution.

25. A further point was that rule 10(b) of the constitution provides that any appeal must be dealt with in accordance with the rules of the Tribunal. The Tribunal rules do not contain grounds of appeal which can apply in this matter. Nor do they make provision for orders of the kind which are sought.
26. The second point made by Mr David was that even if there is a right of appeal, it is now time-barred in accordance with the provisions of rule 10(b) of the constitution as it was not "filed within 28 days of the Board's decision". This is a mandatory time limit and the Tribunal has no jurisdiction to extend that time.
27. TTNZ's final point was that in accordance with the Tribunal's own rules an appeal can only be brought if the relevant grounds of 12.1.3(a), (b) or (c) apply. No such ground is alleged in this case. Further, the relief sought cannot be properly given by the Tribunal. The relief sought in the appeal brief is that a scholarship for 2006 be awarded to Binbin. This Tribunal cannot make such an order.
28. In respect of the ground of appeal raised in Mr Smyth's submission, namely that the appeal is from a decision of the Board not to apply for an additional scholarship, it was submitted that if the Tribunal was prepared to consider this ground, there was no decision of the Board from which an appeal can lie. In respect to this point, it was also submitted that leave would need to be given by the Tribunal to add this extra ground at this stage.

BINBIN'S SUBMISSIONS

29. Mr Smyth, for Binbin, submitted that rule 10(b) of the TTNZ constitution should not be given the narrow interpretation contended for on behalf of TTNZ. While there was no Board decision as such, the Chief Executive Officer (termed the Executive Director under the Constitution) was acting under delegated powers on behalf of the Board when he made the nominations for the scholarships. The wording of rule 10(b) provided a right of appeal "against the decisions of the Board" and on a proper construction of the constitution a decision of the Board should not be restricted in the manner contended for on behalf of TTNZ. For similar reasons, it was suggested that there had been a decision not to apply for an extra scholarship.
30. A further submission was that if there was an ambiguity in rule 10(b) it should be construed so as to give effect to the intent of SPARC and the purpose behind this Tribunal. Such a construction would indicate that there should be an appeal in the circumstances.

31. In reply to the submission that any right of appeal against the original nominations was time-barred, it was submitted that time did not commence to run until 5 May 2006 and that the appeal had therefore been brought within time. The basis of this submission was that Mr Zhu had communicated with TTNZ immediately after the advice in December 2005 and that he could not appeal to this Tribunal until he had exhausted his rights of appeal against TTNZ. Rules 6.1(c) and 12.1.1 of the Tribunal Rules provide accordingly. It was submitted absurd to suggest that he is required to file an appeal to this Tribunal before he received the letter of 5 May 2006.
32. In support of the submission referred to in the last paragraph, it was submitted that rule 10(a) of TTNZ's constitution gave an internal right of appeal. Binbin was a member of a Member Organisation "aggrieved by a decision or ruling of the governing body of such Member Organisation". It was submitted that the term "the governing body of such Member Organisation" referred to the Board of TTNZ as it was the governing body of Binbin's Member Organisation, namely The Auckland Table Tennis Association. The phrase "governing body" is widely used in sporting associations to refer to organisations which govern sport and in rule 10(a) must therefore refer to TTNZ. If there is any ambiguity in rule 10(a), it should, on the basis of the *contra proferentem* rule be construed against TTNZ.
33. It followed in Mr Smyth's submission that an appeal to the Board of TTNZ had been lodged in December 2005 and even to this date there has not been a hearing of that appeal. It was submitted that if Binbin and Mr Zhu misunderstood the position, some credit should be given to the fact that Mr Zhu's natural language was not English.
34. A submission was made, without evidence, that Mr Chen could not comply with the terms of scholarship. If that decision had been known at the time TTNZ made its nominations to the Academy, Binbin would have received a scholarship even though he was ranked No. 8 in the TTNZ rankings. Those ranked No 6 and 7 could also not comply.
35. The relief being sought by Binbin is:
 - (a) That the Tribunal substitute the decisions which ought to have been made by TTNZ;
 - (b) That TTNZ be recommended to change its constitution, selection criteria and ranking system to ensure that in future the selection of Prime Minister

Scholarship Awards are transparent and, further, that the procedure available to aggrieved persons to appeal internally and to the Tribunal is clear.

DISCUSSION

36. If Binbin has a right of appeal to this Tribunal, that right must be conferred by the constitution of TTNZ. Rights of appeal in such circumstances are contractual rights founded in this case by the constitution of TTNZ and Binbin's nexus with TTNZ through the constitution.
37. With respect, the Tribunal cannot accept the construction of the term "the governing body of such Member Organisation" as contended for on behalf of Binbin. If the rule has the meaning contended for, it gives the Board of TTNZ a jurisdiction to hear appeals against decisions of the Board, namely, against itself. Such a submission is contrary to the normal meaning of "appeal". The general definition of an appeal "is an application to a superior court or tribunal to reverse, vary or set aside the judgment, order, determination, decision or award of an inferior court or tribunal ..."
(see para 677, *37 Halsbury's Laws of England*, 4th ed). The rule refers to an "appeal against such decision or ruling". It does not give a right of "re-hearing" or "review" which is really what the submission on behalf of Binbin is contending for.
38. Further, while TTNZ may be the governing body for the sport of table tennis in New Zealand, it is not, applying the normal meaning of the words, "the governing body of the Auckland Table Tennis Association". The references relied upon by Mr Smyth are to the governing body of a sport and not to the governing body of a Member Association. Auckland Table Tennis Association has its own management structure. If there is a right of appeal in this case it must fall within Rule 10(b).
39. Although there is no evidence on this point, it seems very likely that the only appeal right in the constitution when it was initially adopted, was that contained in rule 10(a). The constitution was revised in December 2003 and at that time the appeal right contained in rule 10(b) was probably adopted. The Tribunal was not in existence when the constitution was originally adopted, but came into existence in early 2003.
40. The Tribunal accepts that if given its normal and natural meaning, rule 10(b) gives a right of appeal against any decision made by the Board of TTNZ even if the decision applies to a very trivial matter. In Mr David's submissions, this can not be so as it would open the flood gates to all sorts of unmeritorious appeals. There is however, nothing in the rule itself which limits the right to only certain decisions of the Board.

The Tribunal sees no reason to give the rule the restricted meaning contended for by Mr David. It may be, as submitted by Mr Smyth, that the filing fee of \$500 payable to this Tribunal on lodging an appeal is a deterrent to the flood gates principle suggested. Another matter which will tell against widespread use of the provision is that an appeal must be from a decision “regarding a sports related matter including a decision of an official, committee, judicial tribunal or similar body of a national sports organisation”.

41. While the Tribunal is not determining at this stage whether there may not be a limit to the type of appeal which can be brought under rule 10(b), it is of the view that there was such a right available to Binbin in respect of the decision in this case. It was a decision in which Binbin had an interest. There were economic implications for him. It was an important decision for him. Thus, on the face of it, there was a right of appeal if a “decision of the Board” was involved and the matter is one on which the Tribunal can give appropriate relief.
42. In the Tribunal’s view, the decision to nominate five candidates to the Academy was “a decision of the Board”. TTNZ is an incorporated society. Under its constitution, the Board is responsible for the governance of table tennis at the national level. It has the power to appoint an executive director “and to adopt clearly defined delegations of authority from the Board to the Executive Director” (rule 15(d)). It also has the power to appoint any subcommittee and to delegate such powers and responsibilities as the Board deems appropriate to such subcommittees. It has the power to determine the process to apply in respect of the appointment of selectors. In this case, the selection criteria was determined in consultation with SPARC. Successful applicants were selected by the TTNZ selectors in consultation with the Executive Director (termed CEO in the criteria). The selectors and the Executive Director acted under delegated powers from the Board. As such, they were the alter ego of the Board in selecting and recommending the five successful candidates. They did so with the approval and on the authority of the Board. For the purposes of rule 10(d) their decision was a Board decision.
43. The more difficult issue is what relief, if any, the Tribunal can give on such an appeal. On what is virtually a strike-out application, the Tribunal needs to accept that one of the grounds under Rule 12.1.3 of its own rules may possibly be made out. Under Rule 12.11, the Tribunal may “make such orders as it considers appropriate to give effect to its decision”. It may substitute any decision which ought to have been given by the National Sports Organisation. In this case, five Scholarships were awarded

and although the recommendations were made by TTNZ, the actual grant of the Scholarship was made by the Academy. This Tribunal, by its own Rules, cannot make any finding which binds the Academy (as part of SPARC). As a decision has been made by the Academy, that decision will remain notwithstanding any decision which this Tribunal may make if it assumes jurisdiction. It can not make an order that a scholarship be taken away from a candidate who was awarded a scholarship. The most it could do would be to make a "declaratory" order that Binbin should have been one of the five nominees. Such an order may have no practical effect at all and certainly would have no binding effect on the Academy. Whether such an order would result in the Academy either making an additional scholarship available to Binbin or taking a scholarship from a candidate whom has already been awarded a scholarship (and who may have drawn the funds down), this Tribunal has no means of knowing. While the Tribunal would not proceed with an appeal which is, in effect, moot it can not in this case determine that the appeal would be moot. If it were to decide that Binbin should have been one of the five nominees, then it cannot discount the possibility that he may in some way receive a scholarship from the Academy.

44. In summary the Tribunal does not know whether a "declaratory" order would benefit Binbin if it were to consider the substantive matter and determine that TTNZ erred in applying its selection criteria. There may be strong policy reasons for the Academy to determine, no matter what decision this Tribunal may make, that existing scholarships should not be disturbed and no new scholarship will be granted. However, because there may be some utility in a declaratory order the Tribunal considers that it would have had jurisdiction if the appeal had been brought in a timely manner.
45. However, what is fatal to Binbin's appeal against the nominations made in December 2005, is the time limit provided by rule 10(b) of TTNZ's constitution. There is a mandatory provision that such appeal "be filed within 28 days of the Board's decision". There is no provision either under TTNZ's Constitution or under the Tribunal's Rules which gives power to this Tribunal to extend that time limit. In this case, Binbin was aware from the middle of December that he had not been awarded a Scholarship. The time for appealing expired in mid January. This Tribunal can not extend that time. The value of the time limit in this case addresses one of the concerns of the Tribunal. If there had been a timely appeal against the decision, the matter could have been addressed before the other candidates commenced their

education and received the financial assistance and possibly made study decisions based on the scholarship. If an appeal had been lodged before the scholarships had been "picked up", the interests of the other candidates who have subsequently benefited from the scholarships would not have become such a factor. Even then, however, it may have been too late to have given any effective relief if the Academy had formally awarded the scholarships. Binbin cannot appeal against the decision made in December 2005 because of the time limit in Rule 10(b) of the Constitution.

46. While Mr Zhu did respond on 16 January 2006 expressing dissatisfaction with the decision taken, that cannot constitute an appeal to this Tribunal. This Tribunal's jurisdiction, if otherwise available, is dependent upon an appeal to it. Processes which fall short of that would produce uncertainty and irresolution.
47. If the appeal had not been time barred, the Tribunal would have accepted jurisdiction. Binbin would then have had the onus of establishing either a breach of natural justice or that TTNZ acted ultra vires. Whether either ground could be established is a matter for a substantive hearing and is not a matter of jurisdiction.
48. In these circumstances, it is not necessary to address the grounds that further evidence has now come to light. If some of the information provided informally at the hearing is correct, this ground would probably not have succeeded on its merits.
49. The remaining ground is that this is an appeal against TTNZ's Board's decision not to apply for a further scholarship. The Tribunal, apart from the procedural point taken on behalf of TTNZ, does not accept that Binbin has any right to insist that the Board make an application for a further Scholarship. The terms of the scholarship awards were agreed between TTNZ and SPARC and only five scholarships were granted to TTNZ. These have been awarded and for the reasons given the Tribunal cannot revisit that matter. In the Tribunal's view, a member of an organisation cannot create an appeal right by requesting that the Board consider something, and when it declines to consider the matter, then appeal to this Tribunal. This is particularly so where the member has no legal right to request that the Board make an application to SPARC which was the request in this case. Even if the Tribunal had been prepared to entertain this ground at this late stage, it could not give the Tribunal jurisdiction.
50. It is also noted that Mr Zhu was aware by 15 March 2006 that TTNZ was not going to apply for an additional scholarship. Any right of appeal would have been time barred by 26 May 2006.

DECISION

51. For the reasons given, this Tribunal has no jurisdiction to hear this appeal and the appeal is dismissed.

A handwritten signature in black ink, appearing to read 'B. Paterson', is centered on the page.

**Hon Barry Paterson QC
Chairman**

4 August 2006