

## Overview

1. **Sports Tribunal now and how it was established**
2. **What the Sports Tribunal does and how it works**
3. **Cases dealt with by the Sports Tribunal**
4. **Independent Review of Sports Tribunal in 2009 – specific findings and major factors leading to Tribunal's success**

## **The Sports Tribunal 2010 and how it was established**

### **What is the Sports Tribunal?**

**The Sports Tribunal of New Zealand is the independent statutory body that determines certain types of disputes and other matters for the New Zealand sports sector.**

**It was established in 2003 under the name of the Sports Disputes Tribunal of New Zealand.**

## **Mission of the Sports Tribunal**

**The mission of the Sports Tribunal is to ensure that national sports 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.**

## **What factors led to the establishment of the Tribunal in 2003?**

- **No national sports tribunal in New Zealand before 2003**
- **Inconsistent decisions between sports organisations**
- **Concerns that not all decision making bodies acted in consistent and procedurally fair manner – concerns over natural justice and bias**
- **To challenge these decisions meant going to court**
- **Going to court was very expensive**
- **Long delays in court system**
- **General feeling that there needed to be an expert body having experience in both law and sport**

## **Recommendation from Sport, Fitness and Leisure Ministerial Task Force in 2001 (Graham Report)**

**Establish a Sports Disputes Tribunal that will:**

- **Have a primary focus on national sport to assist national sports organisations to avoid lengthy and costly legal battles**
- **Ensure quality and consistent decision making for athletes in New Zealand sport**
- **Add credibility to the operation of elite sport in New Zealand and**
- **Provide for appeals to the Court of Arbitration for Sport**

## **Process leading to formation of Tribunal**

- **Following the Ministerial Task Force recommendations, Sport and Recreation New Zealand (SPARC) commissioned a report into establishing a tribunal. The report concluded that a tribunal should be set up.**
- **SPARC established the Sports Disputes Tribunal in 2003 under the Sport and Recreation Act 2002 (the Act made it a function of SPARC to facilitate the resolution of sports disputes).**
- **Although SPARC established the Tribunal and provided funding and support, the Tribunal operated independently to SPARC and was not accountable to it for its decisions.**
- **Tribunal's powers to act did not come from statute but from constitutions and rules of national sport organisations. Tribunal also drafted its own rules to govern its procedure.**

## **Tribunal given statutory basis in 2006 Act**

- **Sports Anti-Doping Act 2006 continued Tribunal and gave it a clear statutory basis for its independent powers and functions**
- **Act increased jurisdiction of Tribunal in relation to doping**
- **Act gave greater powers to Tribunal in running its proceedings (e.g. issuing witness summons, holding people in contempt)**
- **Act gave Tribunal a new name – the Sports Tribunal**
- **Since the Tribunal was continued under the Act, the Tribunal operates under a Memorandum of Understanding with the Minister for Sports and Recreation and with SPARC. This agreement sets out the parties' responsibilities to each other. The Tribunal receives its funding through this agreement but remains independent to the government and SPARC.**

## **What the Sports Tribunal does and how it works**

## Who makes up the Tribunal?

- **Between 5 and 9 members with extensive sport and/or legal experience (appointed by Governor-General on advice of Minister on recommendation of SPARC Board).**
- **Currently 9 members.**
  - **4 “legal members” including Chairperson and 2 Deputy Chairpersons and another legal member.**
  - **5 other “sports” members.**
- **Each case usually heard by a panel of three.**
- **There is also a Registrar who manages the day to day operation of Tribunal and provides legal research and assistance to the Tribunal as needed.**

## Jurisdiction

### **Tribunal’s jurisdiction comes from:**

- **Sports Anti-Doping Act 2006**
- **constitution, rules and anti-doping policies of National Sports Organisations (NSOs)**
- **Sports Anti-Doping Rules (based on WADA Code) and**
- **the Rules of the Sports Tribunal.**

### **Tribunal hears four main types of application under Act:**

- (1) **Anti-doping violations**
- (2) **Appeals against decisions of NSOs or New Zealand Olympic Committee (NZOC)**
- (3) **Sports related disputes referred by agreement of parties**
- (4) **Matters referred by SPARC Board (yet to happen)**

## 1. Anti-doping

- Drug Free Sport New Zealand (DFS) finds evidence of an anti-doping violation (eg: positive drug test) and notifies athlete and NSO
- On being notified of a positive test, an NSO may apply to the Tribunal to have the athlete provisionally suspended until the Tribunal can make the final decision. The Tribunal will usually need to hold the provisional suspension hearing and give a decision urgently.
- DFS reviews evidence (athlete may have requested B sample test) and may refer case to Tribunal – DFS essentially has a “prosecutor” role
- NSO is automatically joined as a party
- Tribunal hears and decides case - Tribunal has jurisdiction to decide whether an anti-doping violation has occurred and if so to impose a penalty

## 2. Appeal Application

- Involves an appeal against a decision of an NSO (or the NZOC)
- NSO's rules have to specify that athletes can appeal to the Tribunal on that type of matter
- Most common types of appeal are:
  - Selection appeals - appeals by athlete against not being nominated or selected for a NZ representative team – appeal can be against decision of NSO or NZOC
  - Disciplinary appeals (eg: disciplinary decision where NSO penalises player for misconduct)
- Appellant pays filing fee (\$500) and must:
  - show there is a right of appeal in NSO or NZOC Rules to Tribunal
  - first exhaust all internal appeal rights within NSO or NZOC
  - have recognised grounds for appeal (eg: breach of natural justice, ultra vires)
  - lodge appeal within time limit

### **3. Sports Related Disputes Referred by Agreement**

- **Commenced by parties to a sport related dispute who need assistance to resolve the dispute**
- **All parties have to agree to Tribunal's jurisdiction - filing fee \$250 each**
- **Dispute does not have to involve an NSO or be at national level (eg: it could be at club level) but dispute must be "sports related"**
- **Tribunal has discretion to refuse to hear case**

### **Pre-hearing Conference**

**Tribunal often conducts pre-hearing telephone conference with parties to discuss initial matters including:**

- **Whether Tribunal has jurisdiction**
- **Witnesses required and evidence that needs to be presented**
- **Possibility of alternative dispute resolution, eg: mediation**
- **Date and venue for hearing**



## Hearings

- Hearings conducted as informal court proceedings
- Hearings usually confidential and not open to public
- Parties present evidence and submissions
- Hearings are often now conducted by teleconference

## Mediation

- Rather than having a hearing to decide the dispute, Tribunal can also offer mediation assistance
- Mediation means assisting the parties to reach a mutually acceptable and legally binding agreement over their dispute (if the parties can agree)
- Tribunal now has power to order parties to undertake mediation in appropriate cases

## Legal Assistance Panel

- Formerly called pro bono lawyer scheme
- In 2005 the Tribunal set up a scheme allowing parties before the Tribunal access to low cost legal assistance
- Tribunal advertised for and recruited skilled and experienced sports lawyers who were willing to offer free or low cost legal assistance to parties before the Tribunal
- Registrar keeps a list of contact details of these lawyers (grouped by region) and offers this to parties
- Scheme has been very successful and has allowed parties access to legal representation they otherwise could not afford
- Also helps Tribunal by having the relevant and important issues identified and well presented

## Decisions and Form of Decision

- Decision by majority of sitting members (although decisions have to date been unanimous)
- Tribunal has now built up a body of precedent case law of its own decisions and will follow that – also considers CAS decisions and decisions of overseas Tribunals as appropriate
- Costs usually lie where they fall but Tribunal has power to order a party to pay costs and expenses as the Tribunal thinks fit.
- Tribunal may sometimes deliver oral decision at end of Hearing
- Tribunal always releases written reasons for its decision
- Decision and accompanying media release distributed to parties, Minister, SPARC, media and other interested parties and placed on ST website

## Enforcement and Appeals of Decisions

- Decisions of Tribunal are enforceable in ordinary New Zealand courts under contract law
- No right of appeal to ordinary courts from decision of Tribunal
- Limited rights of appeal to Court of Arbitration for Sport (if rules of NSO or NSO's International Federation provide for this)

## Cases dealt with by the Sports Tribunal - 2003 to 30 June 2009

## Cases dealt with by the Tribunal from 2003 to 30 June 2009

- 84 decisions (or records of settled cases) on the Sports Tribunal website as at 30 June 2009.
- Approximately two-thirds were anti-doping cases.
- The remaining 29 decisions relate to appeals against decisions of NSOs.
- As at 30 June 2009, the Tribunal had decided 54 anti-doping cases.
- The majority of anti-doping cases involve cannabis violations, where athletes have smoked cannabis in social situations such as parties.
- Athletes often claim first time ever smoked cannabis.

## Analysis of Anti-Doping Cases from 2003 to 30 June 2009

Of the anti-doping cases decided by the Tribunal, there were:

- 32 cases of Cannabis, when not used in conjunction with another prohibited substance (i.e. 59 % of anti-doping violations were for cannabis)
- 5 cases of a failure or refusal to provide a sample
- 2 cases of BZP (Benzylpiperazine) - active ingredient in certain "party pills"
- 2 cases of Terbutaline
- 2 cases of Clenbuterol
- 2 cases of Probenecid
- 1 case of Morphine
- 1 case of Nandrolone
- 1 case of Furosemide
- 1 case of Stanozol/Hydrochlorothiazide/Amiloride
- 1 case of Stanozol/Nandrolone/Furosemide
- 1 case of methamphetamine/amphetamine/cannabis
- 1 case of boldenone and testosterone

## Sanctions in Cannabis Cases 2003 to 30 June 2009

Sanctions imposed in the 33 cases involving cannabis were:

suspensions	21 cases
deferred suspension (education programme)	1 case
warnings and reprimands	9 cases
fines and warnings	2 cases

Suspensions imposed for cannabis are generally in the range of 1 to 2 months. However, Tribunal has indicated it is likely to increase sanctions soon.

3 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.

Tribunal recently (March 2010) imposed 10 years' suspension on athlete who committed third cannabis violation.

## Appeal Cases by type 2003 to 30 June 2009

### Disciplinary Appeals - 13 decisions (relating to 11 cases)

- 10 appeals by athletes or officials against being suspended by NSO for misconduct
- 1 appeal against being disqualified from a race
- 1 decision relating to costs in disciplinary appeal
- 1 case settled by formal mediation conducted by Tribunal

### Selection or Nomination Appeals - 11 cases

- 6 appeals against non-nomination or non-selection for the Olympic Games
- 1 appeal against non-nomination or non-selection for the Commonwealth Games
- 4 appeals against not being selected for a New Zealand team

### Other Appeals - 5 cases

- 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 decision not to grant approval for a roll bar on a racing car.

## Appeal cases upheld 2003 to 30 June 2009

The Tribunal allowed, or allowed in part, approximately one third of the appeals it heard. Of the 9 appeals upheld or partially upheld by the Tribunal:

- 2 appeals related to non-nomination/non-selection for the Olympic Games
- 4 disciplinary appeals were upheld
- 2 disciplinary appeals were partially upheld
- 1 appeal related to non-approval of a roll bar on a car.

## Independent Review of the Sports Tribunal (May 2009)

**specific findings and major factors  
leading to Tribunal's success**

## Independent Review of the Tribunal (May 2009)

In 2009, SPARC contracted a research firm to undertake an independent assessment of current dispute resolution needs in the New Zealand sport and recreation sector, including the role of the Sports Tribunal.

The research team consulted with and interviewed a variety of relevant stakeholders including athletes, representatives of NSOs and lawyers who had been involved in proceedings before the Tribunal. The outcome from the report was positive:

*It is therefore important to consider whether the original policy intent that led to the establishment of the Tribunal is being met. The overall conclusion of this research is positive in that regard. Stakeholders consider the Tribunal to be accessible, fair, timely and, for the most part, affordable. The Tribunal is seen as delivering outcomes that are significantly better than those associated with the pre-Tribunal landscape. The Tribunal has a strong level of support amongst the parties we spoke to...*

## **Specific findings about the Tribunal**

The Independent Review found that the Sports Tribunal overall was:

- Accessible
- Fair
- Timely
- Credible
- Affordable

## **Major Factors leading to Tribunal's success**

The Independent Review found that major factors underpinning the Tribunal's effectiveness included:

- Membership
- Process and flexibility
- Transparency
- Leadership
- Registry function

## Major Factors leading to Tribunal's success

### 1. Membership

The Review stated:

- *The high calibre and mixed membership of the Tribunal, comprising people with legal and sports administration backgrounds and former athletes, is seen as a major reason for the success of the Tribunal.*

## Major Factors leading to Tribunal's success

### 2. Flexibility of Process

The Review stated:

- *A major asset of the Tribunal is its ability to tailor its processes to the wide range of disputes it hears.*
- *Examples of flexibility include:*
  - *An ability to hear time critical cases at very short notice, including sometimes within 24 hours and over the weekend if necessary*
  - *Its willingness to hear matters by teleconference to minimise cost and inconvenience*
- *Such flexibility directly contributes to the timeliness and efficiency of the Tribunal and has been achieved without compromising the integrity of decision making.*



## Major Factors leading to Tribunal's success

### 3. Transparency

The Review stated:

- *The Tribunal is highly transparent and publishes its decisions.*
- *The decisions are clear and can be understood without detailed legal knowledge, while at the same time being rigorous.*
- *This means that that body of decisions is highly accessible to sports organisations, athletes and the general public.*
- *The summaries and media releases are also valued by people within the sector as maintaining awareness of the Tribunal and providing basic information on the nature of cases heard and decisions flowing from them.*
- *This has contributed to improvements in the policies and dispute resolution practices of organisations in the sector.*

## Major Factors leading to Tribunal's success

### 4. Leadership

The Review stated:

- *The Chair of the Tribunal\* is widely viewed as guiding the Tribunal to the position of credibility it enjoys today.*
- *A number of people have commented that because of the strong leadership of the Chair, the Tribunal has become more efficient and effective over time.*

\*The Chair of the Tribunal is a retired High Court Judge who has also had considerable sports law and sports administration experience including serving on the Board of NZ Cricket for 25 years.

# Major Factors leading to Tribunal's success

## 5. Registry Function

### The Review stated:

*A number of interviewees commented positively on the performance and efficiency of the registry function. The Registrar has been variously described as approachable, responsive, efficient, accessible and helpful to Tribunal members and parties alike. The timeliness of the Tribunal process is in no small part due to the organisational abilities of the Registrar, who is skilled at assembling Tribunal members and parties for hearings at short notice and advising on the process to be followed. The Registrar is regarded as very proactive in dealing with enquiries from potential parties and advising them on their options for dispute resolution.*

*A number of positive developments have been led by the Registrar including the development of an information guide, upgrading of the website, the development of decision summaries and media releases, and online publication of statistics on case load. The Registrar also played a key role in the introduction of the "pro bono lawyer" scheme.*

*The role is more than simply an administrative role. The Registrar is a qualified lawyer and contributes legal research in support of Tribunal decisions and from time to time acts as a sounding board for Tribunal members.*