

MINUTE OF SPORTS DISPUTES TRIBUNAL

To: National Sports Organisations

Re: Cannabis sanctions

Purpose of Minute

1. The Sports Disputes Tribunal has recently undertaken a review of its approach to anti-doping violations involving cannabis.
2. This review has resulted from the number of cannabis cases coming before the Tribunal, widespread publicity about such violations, the impact of second violations with very severe mandatory sanctions, and widely differing approaches within and between different sports, and countries.
3. A sad reflection on the use of cannabis is the fact that the Tribunal has had to deal on more than one occasion with an athlete who has used cannabis for recreational purposes, and tested positive for the second time. **Provided the use is not intended to be performance enhancing**, the mandatory sanction prescribed under the WADA Code is a period of 2 years ineligibility, which may prevent the athlete playing other sports, where such are signatories to the WADA Code. This is sometimes called the “*cross-code*” effect. Ineligibility is of serious consequence, precluding any organised activity within the sport.
4. A second observation, derived from several cases, is that once it is known that an athlete has tested positive, there is in some quarters a distinctly adverse public reaction, including that from other athletes. This is felt keenly, and puts in perspective the fact that cannabis remains on the Prohibited List, notwithstanding that there are those who feel it should not be included.

The approach of the Tribunal to date

5. In **Stewart** (2004) the Tribunal noted that where there was no element of performance enhancement, and no danger to other competitors, some deterrence

was still appropriate. Together with the sting of publication, a penalty of \$250 and costs of \$250 was imposed.

6. In **Mene** (2004) a review of sanctions in overseas jurisdictions identified a range of penalties including lengthy suspensions, deferred decisions, and for “*recreational use*” in Canada, a reprimand with no ineligibility (suspension).
7. The Tribunal’s inquiry focussed on whether the use was recreational, represented no danger to any person, and that there were no “*aggravating circumstances*”.
8. After **Mene** a reprimand and warning was seen as the most appropriate penalty, absent “*aggravating circumstances*”. If there was an element of performance enhancement, or impairment of the athlete’s faculties, a different approach would be taken. The timing of use might be an issue, for example if closely associated with competition.
9. In **Soloman** (2005) an athlete smoked marijuana before a Touch New Zealand tournament. Touch New Zealand referred to its frustration with the scale of cannabis use despite strong measures to advise and warn athletes against that. The Tribunal noted that lengthy suspensions were imposed in some overseas jurisdictions. A “*participation agreement*” was signed by the athlete specifically acknowledging that there would be no unlawful use. This was held to be an “*aggravating circumstance*”. There were strong mitigating circumstances brought to account.
10. This general approach was followed through until 2006.
11. In **Dickel** SDT/18/06 (2006) the athlete smoked cannabis out of contract, and out of competition. He did not contest the breach, was given and accepted a two match suspension within the sport, **before** he came before the Tribunal, and Basketball New Zealand did not identify any aggravating circumstances. He was an elite athlete but the Tribunal did not consider that of itself an aggravating circumstance. The Tribunal considered that he came within the criteria for a reprimand and warning for a first offence. FIBA (the International Federation) did not agree with this approach and imposed further sanction (see below).

Summary of the Sports Disputes Tribunal approach to date

12. For a first offence, and used for recreational purposes only, not closely connected with any sporting activity, a warning and reprimand has been the usual response. The penalty will be increased if there are aggravating circumstances (such as a

lack of contrition, specific warnings within the sport, and timing of use), balanced by mitigating circumstances which might include the effect of an interim suspension prior to the Tribunal's decision.

Revisiting of the issues for the Tribunal

13. The Tribunal is conscious that some sports remain outside its jurisdiction. For example Rugby has its own New Zealand tribunal. Lengthy suspensions have been imposed by the IRB. A recent case involved cannabis use during a tournament in Portugal, in a social setting, with no intention to enhance sports performance. The IRB panel said an "*in competition*" breach warranted a six month period of suspension, but with mitigating elements reduced that to four months.
14. In **Dickel** FIBA reviewed the decision of the New Zealand Sports Disputes Tribunal, and increased the sanction by three games, at the World Championships. The Tribunal has since become aware that within basketball, in Australia, there has been a different approach to sanctions.
15. There are still widespread differences within and between sports and different national and international jurisdictions.
16. The Tribunal has reached the view that notwithstanding the strong views of authoritative persons that cannabis should not be on the Prohibited List, while it remains on the List and there is a proliferation of breaches, the Tribunal's stance should reflect and discourage such use.

The approach now to be taken

17. The Tribunal cannot mould the position within different sports and jurisdictions to a common result. Each case must be considered on its own facts, and the Tribunal will consider the position taken by the particular sport, both within its rules and at any hearing. The Tribunal will strive, however, to ensure consistency of approach so that like cases are treated in a like fashion.
18. The Tribunal wishes to advise sporting organisations and athletes of the general approach the Tribunal will adopt in the future. This is as follows:
 - (1) "*Entry level*" for breach will be a **suspension** (ineligibility) for a period of time which reflects the sporting activity of the athlete in that period. For example there may be periods during which the athlete will not be in any form of training and/or competition. There may be a tournament or series

of games imminent, which will have real effect on the athlete should he/she be suspended. The Tribunal reserves the weight of suspension it will adopt with regard to the “*entry level*” but it will likely be the equivalent of one month of ordinary competition, which may be reduced to reflect the immediate sporting activity and the consequence of suspension. To be effective the suspension may be for a longer period bearing in mind that suspension extends beyond competition into activity organised within the sport.

(2) “*Aggravating circumstances*” may increase the period of suspension.

Examples are:

- lack of contrition;
- any effect on performance;
- any effect on other competitors;
- the extent of education and athlete obligation within a particular sport (for example the execution of a participation agreement specifically recording there will be no breach, and express cautions);
- a particular problem within a Sport;
- use at or in close association with the sporting activity;

(3) “*Mitigating circumstances*” may reduce the period of suspension.

Examples are:

- excusable lack of knowledge regarding obligations through inexperience or lack of anti-doping education within the sport;
- degree of contrition;
- preparedness to accept responsibility and educate others (where such would have practical effect);
- degree of publicity and exposure to public scrutiny and comment;
- any “*cross code*” effect;
- any “*interim suspension*” taking effect before the Tribunal considers sanction;
- unusual and harsh effect of suspension.

Conclusion

19. This Minute is to advise athletes of a general change in approach. It should be heeded. It is not prescriptive and the Tribunal may depart from it in circumstances which warrant that in the interests of justice. It will be a measure for the Tribunal and the athlete concerned.

A handwritten signature in blue ink, appearing to read 'B. J. Paterson', is written over a light blue rectangular background.

Honourable B. J. Paterson QC
(Chair, Sports Disputes Tribunal of New Zealand)

15 December 2006