

**BEFORE THE SPORTS TRIBUNAL
OF NEW ZEALAND**

ST 24/10

BETWEEN **SWIMMING NEW ZEALAND**

Applicant

AND **BLAIR JACOBS**

Respondent

DECISION OF TRIBUNAL AS TO PROVISIONAL SUSPENSION

Dated **14 DECEMBER 2010**

Tribunal: Nicholas Davidson QC (Chairperson)
 Adrienne Greenwood
 Chantal Brunner

Hearing: By telephone conference on 13 December 2010

Present: Mike Byrne, Swimming New Zealand
 Michael Smyth, counsel for Swimming New Zealand
 Jayne Kernohan, Drug Free Sport

Registrar: Brent Ellis

**DECISION OF TRIBUNAL ON APPLICATION
FOR PROVISIONAL SUSPENSION**

Application and disposition

1. The applicant Swimming New Zealand ("Swimming NZ") has applied under Rule 12.1 of the Sports Anti-Doping Rules 2010 ("the Rules") for provisional suspension of Blair Jacobs.
2. Mr Jacobs was advised of a teleconference hearing held on Monday 13 December 2010, but did not attend. He was then advised that the Tribunal would reconvene if he requested, but he agreed that the Tribunal should proceed without hearing from him.
3. Mr Jacobs was tested In-Competition on 14 November 2010 in Mount Maunganui. An adverse analytical finding for the presence of the prohibited substance 1,3-dimethylpentylamine (methylhexaneamine) was reported.
4. Sports Anti-Doping Rule 12.8 empowers the Tribunal to impose provisional suspension where there is a prima facie case of violation by the presence of a Specified Substance. 1,3-dimethylpentylamine (methylhexaneamine) will be classed as a Specified Substance in the 2011 WADA International Standard for the Prohibited List which comes into force on 1 January 2011. The Sports Tribunal has applied such future classification, and treated this substance as a Specified Substance, in the recent decision of *Drug Free Sport v Rangimaria Brightwater-Wharf* (ST 14/10, decision 29 November 2010). This was in light of WADA advising its pragmatic view that an interpretation of the "*lex mitior*" principle might be applied to current cases involving dimethylpentylamine and allow sanctioning bodies to treat the substance as a Specified Substance before 1 January 2011. The Tribunal also noted that some other overseas tribunals had treated this substance as a Specified Substance in their recent decisions. However, the Tribunal has not made a final decision in this case regarding treatment of this substance as

Specified or Prohibited, but on a provisional basis will treat it as a Specified Substance.

5. There is no reason not to impose provisional suspension in this case in accordance with the practice of this Tribunal, and the athlete has not sought otherwise.

Effect of provisional suspension

6. A provisional suspension prohibits participation in any event or activity authorised by Swimming NZ, or any member organisation, or club within Swimming NZ. It applies to other sports as a result of a 2010 amendment to Rule 12.9.
7. A provisional suspension remains confidential until publication of the final decision on the alleged Anti-Doping Rule violation, unless the Tribunal orders otherwise.

Order

8. Blair Jacobs is provisionally suspended under Sports Anti-Doping Rule 12 with immediate effect from the date of this Decision.

Dated this 14th day of December 2010



Nicholas Davidson QC
Chairperson (for the Tribunal)

Adrienne Greenwood

Chantal Brunner