

**BETWEEN**                            **DRUG FREE SPORT NEW ZEALAND**  
Applicant

**AND**                                   **WILLIAM MORUNGA**  
Interested Party

**AND**                                   **TOUCH NEW ZEALAND INCORPORATED**  
Interested Party

---

**DECISION OF THE SPORTS TRIBUNAL ON THE APPLICATION FOR  
RECONSIDERATION OF PERIODS OF INELIGIBILITY  
UNDER SADR 19.3 IN THE MATTER OF WILLIAM MORUNGA  
1 JUNE 2023**

---

<b>Decision</b>	At the request of the Applicant the decision was made on the papers
<b>Tribunal</b>	John Macdonald (Chair) Pippa Hayward
<b>Representation</b>	Adam McDonald, counsel for Drug Free Sport New Zealand
<b>Interested Parties</b>	William Morunga, Athlete Joe Sprangers, Touch New Zealand Incorporated
<b>Registrar</b>	Helen Gould

1. An application was filed with the Sports Tribunal (“the Tribunal”) by Drug Free Sport New Zealand (“DFSNZ”) pursuant to Rule 19.3 of the Sports Anti-Doping Rules 2023 (“SADR”) following an application from William Morunga (“Mr Morunga”) for reconsideration of the periods of ineligibility the Tribunal imposed on him for Anti-doping Rule Violations (“ADRVs”) in 2005 and 2006.
2. The basis of the application is that Rule 19.3 and the doctrine of *Lex Mitior*, explicitly referred to in Rule 19.2, allows for reconsideration of the ineligibility periods and for Mr Morunga to be re-sanctioned under the new Rule 10.2.4.1 relating to Substances of Abuse.
3. DFSNZ submits that this application can be determined on the papers and the Tribunal agrees. Further, the Tribunal recognises that this is, in effect, an application by consent by DFSNZ meaning there is no contention over the outcome sought by Mr Morunga.
4. Given there is no opposition from DFSNZ for Mr Morunga to be re-sanctioned in light of the updated rules, the issue for the Tribunal to determine is whether it is in fact open and appropriate for the Tribunal to do so by assessing whether Rule 19.3 can apply and, if it does, whether Mr Morunga met the criteria set out in Rule 10.2.4.1 in order to reduce the ineligibility period of his original sanctions, and for Rule 10.9.2 to apply.

### **The Anti-doping Rule Violations**

5. Mr Morunga received a period of ineligibility of two months for the presence of cannabis in August 2005, his first ADRV. He received a further period of ineligibility of two years for the presence of cannabis in July 2006, his second ADRV.
6. In December 2010, Mr Morugna received a lifetime ban from sport, imposed by the Australian Rugby League, for the presence and use of cannabis on the basis that, under the Australian Rugby League Anti-Doping Policy, a third ADRV receives an automatic lifetime ban.

### **The arguments for re-sanctioning**

7. Mr Morunga wishes to have his lifetime ban reconsidered. The basis on which this could be achieved is if the ADRV from 2005 and 2006 are not counted as cumulative or multiple violations due to the retroactive application of new Rule 10.2.4.1 (relating to ingestion or use of Substance of Abuse out-of-competition and unrelated to sport

performance) and Rule 10.9.2 which specifies that ADRVs sanctioned under Rule 10.2.4.1 are not to be considered violations for the purposes of Rule 10.9 (which provides for multiple violations).

8. DFSNZ submits that Mr Morunga can apply to have his ADRVs considered under Rules 10.2.4.1 and 10.9.2 of the SADR because of Rule 19.3 which explicitly allows for an athlete to apply to DFSNZ to consider a reduction in the period of ineligibility in light of the 2023 Rules, providing the ineligibility period has not expired. DFSNZ also submits that the doctrine of *Lex Mitior* (where regulations are amended, the more lenient law applies) allows for reconsideration of Mr Morunga's sanction. If Mr Morunga's sanction can be reduced under these principles, Rule 10.9.2 can be applied.
9. If it is established that Rule 10.2.4.1 can apply, the Tribunal needs to be satisfied that Mr Morunga's ADRVs and his responses to them meet the provisions of Rule 10.2.4.1: that (i) he used the substance out-of-competition and unrelated to sport performance, and that (ii) he satisfactorily completed a Substance of Abuse treatment programme.

## **Discussion**

### *Rule 19.3*

10. For Mr Morunga to take advantage of the provisions of Rule 19.3 it must be established that his period of ineligibility has not expired.
11. Mr Morunga's ineligibility periods were of two months in 2005 and two years in 2006 – periods which have clearly expired. DFSNZ submits, however, that the ineligibility periods are, in effect, still active because they collectively led to the imposition of the lifetime ban and he is therefore still subject to their effects.
12. DFSNZ submits that this interpretation of Mr Morunga's position allows the intent of Rule 19.3 to be preserved.
13. A technical reading of Mr Morunga's circumstances would mean that he would fall foul of Rule 19.3 as the ineligibility periods of his first two sanctions expired on 4 October 2005 and 4 July 2008 respectively. DFSNZ's position is compelling, however, because were it not for the first and the second ADRVs, Mr Morunga would not have had a lifetime ban. The lifetime ban has only come about because of the first two sanctions and consequently Mr Morunga is still subject to their effects.
14. The Tribunal accepts DFSNZ's interpretation of Rule 19.3

*Rule 10.2.4.1*

15. Mr Morunga needs to be sanctioned under Rule 10.2.4.1 in order to qualify for multiple violations not to be counted.
16. DFSNZ have established that Mr Morunga used cannabis, the Substance of Abuse, out-of-competition and not for sport performance by filing the decisions of the Tribunal which dealt with the first and second ADRVs. The Tribunal accepted in those decisions that Mr Morunga's use of cannabis had been social and had not been taken with the intention of enhancing his performance. The first part of 10.4.2.1 can therefore apply, and ineligibility periods of three months could be applied to both ADRVs, thus reducing the ineligibility period which Rule 19.3 provides for the second ADRV and not the first.
17. Applying a three-month ineligibility period to his first ADRV would increase his sanction rather than reduce it.
18. Mr Morunga voluntarily undertook a substance of abuse treatment plan once he was notified of the second ADRV. This was favourably viewed by the Tribunal in its sanctioning decision. DFSNZ submits that the undertaking of this programme should qualify Mr Morunga for the additional reduction to the ineligibility period provided for in Rule 10.2.4.1 for the second ADRV. The Tribunal agrees.
19. The issue is that Mr Morunga did not undertake a treatment programme after the first violation, meaning that the additional reduction would not apply. For Mr Morunga to be considered under Rule 19.3 he would have to accept an increase in his original sanction for his first ADRV.
20. This is a conundrum for the Tribunal because Rule 19.3 refers explicitly to a 'reduction'. If Mr Morunga is sanctioned under 10.2.4.1 for the first ADRV (and he needs to be sanctioned under that rule in order for the violations not to be counted as multiple violations) he would need to have an increase in sanction.
21. DFSNZ submits that it is appropriate for both sanctions to be reduced to one month and they are satisfied that he has met the requirements for both the ADRVs. Given that Rule 10.2.4.1 states that the treatment programmes are to be approved by DFSNZ, and because of the doctrine of *Lex Mitior*, the Tribunal is prepared to accept this submission.


## Conclusion

22. The Tribunal determines the principle of *Lex Mitior* appropriately applies in the circumstances of this case.
23. The Tribunal is satisfied that the provisions of Rule 19.3, 10.2.4.1 and 10.9.2 can apply in Mr Morunga's case.
24. The Tribunal agrees that Mr Morunga's ADRVs do not count towards multiple violations.

## ORDERS

25. The Tribunal orders as follows:
  - 1) The first ADRV is sanctioned under Rule 10.2.4.1 and the period of ineligibility is reduced to one month;
  - 2) The second ADRV is sanctioned under Rule 10.2.4.1 and the period of ineligibility is reduced to one month;
  - 3) Rule 10.9.2 applies and neither the first ADRV nor second ADRV are to be considered a violation, and provisions regarding multiple violations do not apply.

Dated: 1 June 2023



**John Macdonald**  
Chair



**Pippa Hayward**  
Member