BEFORE THE NEW ZEALAND RUGBY UNION INCORPORATED ANTI-DOPING JUDICIAL COMMITTEE

BETWEEN	**SPORT INTEGRITY COMMISSION** **Applicant**
AND	**CARLIN LESLIE WILKINSON- BALLANTINE** **Respondent**

DECISION ON ANTI-DOPING VIOLATIONS

Judicial Committee:	Helen Morgan (Chair) Dr Deborah Robinson Henry Moore
Registrar:	Fiona Martin

Introduction

1. The Applicant has brought Anti-Doping Rule Violations (**ADRVS**) proceedings against the Respondent alleging breaches of the Sports Anti-Doping Rules 2024 (**SADR**).

2. These breaches relate to a parcel addressed to the Respondent that was intercepted by the New Zealand Customs Service addressed to the Respondent at his home address, which included:

    a. Clen-Max, clenbuterol, 40mcg, 300 tablets (**Clenbuterol**); and
    b. Tamofen-20, tamoxifen, 20mg, 10 tablets **(Tamoxifen**).

3. Clenbuterol is prohibited at all times under S1 (Anabolic Agents) of the Prohibited List 2022 (which is incorporated into SADR) and is a non-specified substance.

4. Tamoxifen is prohibited at all times under S4 (Hormone and Metabolic Modulators) of the Prohibited List 2022 and is a specified substance.

5. The Respondent has admitted the ADRVs in relation to the Clenbuterol but denied them in relation to the Tamoxifen.

6. This matter has taken some time, and the Committee has received the following key documents over several months:

    a. Notice of Intent Letter from Hayden Tapper 7 March 2024 (**March Letter**);
    b. Submissions from Counsel for the Respondent 27 March 2024 (in relation to jurisdiction);
    c. Notice of ADRV, application for ADRV and statement of Hayden Tapper 9 May 2024 (**May Documents**);
    d. Application for Provisional Suspension 10 May 2024;
    e. Submissions from Counsel for the Respondent 13 June 2024;
    f. Synopsis for Applicant 3 July 2024;
    g. Submissions from Counsel for the Respondent 19 July 2024;
    h. Memorandum for the Applicant 1 August 2024;
    i. Submissions from Counsel for the Respondent 16 August 2024;
    j. Synopsis of argument for the Applicant and Bundle of Authorities 23 September 2024;
    k. Submissions from Counsel for the Respondent 26 September 2024;
    l. Synopsis of argument for the Applicant in reply 3 October 2024; and
    m. Four screenshots from the Respondent 2 October 2024.

Background

1. The background of this matter is as follows:

    a. The Respondent accepts he imported Clenbuterol but denies the importation of Tamoxifen.

    b. The Respondent initially denied he was bound by SADR as he finished playing in 2023 but has subsequently acknowledged registration for the 2023 year ended on 31 March 2024.

    c. The Respondent accepted he had breached SADR and had committed ADRVs (in relation to the Clenbuterol) and was provisionally suspended on 10 June 2024 (**Provisional Suspension**).

    d. He has not played rugby since being provisionally suspended, with his last game being on 8 June 2024.

    e. There are 3 parts to this matter:

i. The applicable sanction for the Clenbuterol ADRVs and the commencement date for such sanction;
ii. Whether the Respondent committed ADRVs in relation to Tamoxifen; and
iii. Whether the Respondent is entitled to non-publication/name suppression in relation to the ADRVs.

Evidence of the Respondent

1. The Respondent gave oral evidence before the Committee through direct from his Counsel and then cross from Counsel for the Applicant.

2. The Respondent's direct evidence was:

   a. He admitted the Clenbuterol ADRVs and confirmed he was a registered member of New Zealand Rugby at the time he committed the breach as such captured by SADR.
   b. He started playing rugby when he was in the army but has played most of his club rugby in Dunedin.
   c. He has played rugby for 18 years, 7 of those at senior level.
   d. At the end of the 2023 season, he did not intend to play rugby in the 2024 season.
   e. He purchased Clenbuterol in January 2024 on a whim to use to allow him to put his time into his work and spend less time in the gym.
   f. His intention was to retain muscle and lose fat.
   g. He purchased the Clenbuterol from an overseas company, he purchased 3 packets as that was the minimum on the website.
   h. He spoke to four screenshots which he had forwarded to his Counsel on 2 October 2024, being:
      i. A screenshot of the purchase of three packets of Clenbuterol at the price of $US42.90 per packet;
      ii. A screenshot of the cart for the purchase with the three packets of Clenbuterol and postage;
      iii. A screenshot of a payment from his Westpac account to a PayPal account.
      iv. A graph of the current New Zealand dollar to US dollar exchange rate.
   i. He did not purchase anything else from the website.
   j. He confirmed that he had enrolled with the Dunedin Rugby Club to play rugby for them this year. He had attended a fitness session and registered following that. This was in February 2024.
   k. This would be his last season of rugby; he is a club level player, he is not a representative player.
   l. In April 2024 he started a new business which he is still operating. He did this to get away from being an employee and it is the best thing for him and his family. It is a roofing business, that also does spouting and home maintenance. He has three employees, and he gets some business from his rugby connections.
   m. He was unable to comment on where the money went to after it left his Westpac bank account.
   n. He did not order anything else other than the Clenbuterol and when he was advised there were other items in the parcel, he wanted to know what they were. He does not know why he was sent these. He speculated that they were freebies to try to entice future purchasing.
   o. He did not admit the Clenbuterol ADVRs initially as he did not know what the other substances were.

3. The Respondent's evidence under cross was:

   a. At the time of his affidavit of 26 July 2024 he was not aware of any documentation he had in relation to the purchase, hence his statement in paragraph 7 that he no longer had any information.
   b. Despite looking at that time he had been unable to locate any documentation.

c. He had not been able to find any information on PayPal that would link to the purchase, and he did not take screenshots at the time he made the purchase.
d. He did not have any emails from the supplier.
e. He could not comment on whether there were any promotions running on the website, he does not shop often.
f. He had no communication from the vendor, the only notification he received was in relation to the intercept of the parcel.
g. He agreed that he received from the Applicant the notice of intention in relation to the ADRVs which set out the allegations against him and the consequences in plain language and good detail.
h. Following the March Letter, he engaged Counsel, asked for (and obtained) an extension and through his Counsel, submissions were filed with the Commission on 27 March 2024.
i. He accepts he received the May Documents.
j. This led to lengthy negotiations with the Commission involving the request that if the Commission dropped the Tamoxifen ADRVs he would agree to the Clenbuterol ADRVs, but the Commission maintained its position.
k. He confirmed he admitted the Clenbuterol ADVRs in relation to the breaches but requested consideration of discretionary reductions to the sanction.

4. In redirect from his Counsel, he confirmed there were lengthy discussions to try to resolve matters and that he always accepted the Clenbuterol ADRVs but could not formally admit them because of the disputed Tamoxifen ADRVs.

5. He confirmed he was registered with Dunedin Rugby Club and had played about 6 games for the club this 2024 season. He had been unable to play more due to his work commitments. The last time he played was 8 June 2024.

6. He has not coached this season, but it is something he would like to do in the future.

7. The comment in his affidavit that the Clenbuterol was ordered to assist with his rugby is a mistake. It was not to do with rugby, it was to help him outside of rugby.

Submissions in relation to Clenbuterol

1. With the Respondent's admission of the ADVRs breach in relation to the Clenbuterol, being Possession (SADR 2.6) and using or attempting to use (SADR 2.2), submissions from the Applicant and the Respondent related to the applicable sanction.

2. The Respondent conceded the breach was intentional, meaning, pursuant to SADR 10.2.1.2 the period of ineligibility shall be four years for each ADRV, subject to any applicable increase or decrease, served concurrently.

3. The Applicant and the Respondent differed as to whether any reduction to the period of ineligibility was available to the Respondent.

4. In relation to this, the key submissions from the Applicant were:

a. It is accepted that the Clenbuterol ADVRs were intentional pursuant to SADR 10.2.3.
b. SADR is a code, meaning sanction is to be determined by application of the relevant rules.
c. There are no discretionary discounts available under SADR.
d. SADR 10.8.1 sets out that an Athlete may receive a one-year discount based on early admission, that being an admission within 20 days of receiving notice from the Commission.
e. The rationale for the rule is that a reduction may be granted where an early and complete admission avoids the cost of a hearing on those ADRVs.

f. In order for the one-year reduction to be available an Athlete must both admit the violation and accept the asserted period of ineligibility.
g. SADR 10.8.1 is not able to be applied to the sanction for the Respondent as he did not accept the ADVRs without the need of going to a hearing and the limited admission was not prompt nor timely, but four months after he was first notified of the ADRVs.
h. The Respondent did not accept the asserted period of ineligibility until 26 September 2024, more than two months after accepting the Clenbuterol ADRVs.
i. The sanctions for possession and use under SADR 10.2 are for first violations only. A previously clean record is considered within the sanctioning structure.
j. Any discretionary departure from SADR is unwarranted in the circumstances of the case and there is no precedent for any departure.
k. The applicable sanction for the Clenbuterol ADRVs should be 4 years each served concurrently commencing from the date of Provisional Suspension.
l. There is no ability for the Commission to plea bargain or to drop any ADRV once brought against a Respondent.

5. The key submissions from the Respondent were:

a. The Clenbuterol ADRVs are accepted.
b. The Respondent's actions were intentional.
c. The sanction for each violation should be concurrent as it is one transaction, and it would not be in the interests of justice for the Respondent to receive a sanction of eight years for an attempt only.
d. The Respondent was notified on 7 March 2024 of the allegations following which he sought Counsel. It took several months for the allegations to be outlined in detail and for discussions between the parties to be held. During this time negotiations were based on admitting to the Clenbuterol ADRVs and having the Tamoxifen ADRVs withdrawn.
e. The Respondent was not in a position to make an early admission as he did not accept the Tamoxifen ADRVs.
f. When it became clear that the Applicant did not accept the Respondent's explanation in relation to Tamoxifen, the Respondent admitted the Clenbuterol ADRVs prior to the Provisional Suspension hearing. This is an early admission in the circumstances of this case.
g. The sanction for the Clenbuterol ADRVs should be four years less a discount of one year for his early admission.

Submissions in relation to Tamoxifen

1. The Respondent denied the Tamoxifen ADRVs, being Possession (SADR 2.6) and using or attempting to use (SADR 2.2).

2. The key submissions from the Applicant in relation to the Tamoxifen ADRVs were:

a. The Committee can be comfortably satisfied on the evidence that the Tamoxifen ADRVs are established.
b. An Athlete will be liable for possession under SADR 2.6 where they have purchased, including by electronic or other means a Prohibited Substance, even if they never actually received the product.
c. An Athlete will be liable for Attempted Use under SADR 2.2 where they have purposely engaged in conduct that constitutes a substantial step towards Use.
d. The Applicant has the burden of proof to establish the ADRVs, the standard of proof being that of "comfortable satisfaction".
e. From prior cases, "comfortable satisfaction" is materially lower than that of beyond a reasonable doubt. The Applicant is not required to eliminate all possibilities and the proper approach is to evaluate all relevant and credible items of evidence and ask whether, considered cumulatively, the test is satisfied.

f. There is no documentary evidence to corroborate the Respondent's sworn statement, he has not produced any invoice, receipt, bank statement or any correspondence with the vendor or any other person in connection with the transaction.
g. The purchase was made in January 2024, at most, two months before he was first contacted regarding the attempted import. That is not a significant period of time that might prevent the relevant information from being located.
h. The Respondent says he thought the Clenbuterol would assist his playing during the season suggesting some prior research into its use and effects.
i. It is implausible that the Respondent would have no record of the order nor be able to depose any details as to the vendor.
j. The Respondent was the intended recipient of the parcel, the natural conclusion being all of the material within the parcel was purchased by him for his personal use.
k. Speculation the Tamoxifen was provided to him for free as an incentive is unlikely and should be rejected.
l. Once Possession is proved, the next step is to consider what the Respondent intended to do with the Tamoxifen. It was purchased for personal use by the Respondent.
m. The Applicant does not seek to establish the Tamoxifen ADRVs were intentional.

3. The key submissions from the Respondent in relation to the Tamoxifen ADRVs were:

a. The Respondent denies he purchased Tamoxifen.
b. The Applicant has the burden of establishing the Tamoxifen ADRVs to the standard of "comfortable satisfaction", which is materially lower than that of "beyond reasonable doubt".
c. The Respondent has made it clear that he did not purchase the Tamoxifen and he is not sure why he was sent it. His assumption is that he was provided them as a "taster" in the hope he would order more.
d. The Respondent cannot verify that he did not purchase Tamoxifen, no records can be found. The order was made through PayPal.
e. As the Respondent did not possess Tamoxifen by electronic purchase, it follows he did not attempt to use it.
f. By email dated 2 October 2024, and used in oral submissions, the Respondent located copies of documents showing a cart containing Clenbuterol in the same quantity as contained within the intercepted parcel, but no Tamoxifen and a payment from his Westpac account to a PayPal account.
g. The payment out of the Respondent's account in New Zealand dollars was approximately equivalent to the US dollar amount as set out in the cart which would not allow for the Tamoxifen to have been purchased.
h. The Respondent is clear about what he purchased, and it did not include Tamoxifen.
i. The Applicant has not established the Tamoxifen ADRVs to the required standard and they should be dismissed.

Submissions in relation to non-publication/name suppression

1. The third matter before the Committee, raised by the Respondent, was for permanent name suppression on the basis of extreme hardship to the Respondent, his family and his new business. This was opposed by the Applicant.

2. The key submissions from the Respondent in relation to this matter were:

a. SADR 14.3.7 sets out when the mandatory Public Disclosure required under SADR 14.3.2 becomes discretionary.
b. The Respondent is a Recreational Athlete.
c. Public disclosure of the case would be out of proportion to the facts and circumstances.
d. Disclosure would bring into question the Respondent's integrity and personal standards.
e. It is highly likely that this would result in a loss of work for the Respondent in his new business and have a detrimental impact on him, his business, his family and those he works with.

3. The key submissions from the Application in relation to this matter were:

    a. Public disclosure is expressly recorded as one of the possible consequences of an ADRV with SADR 14.
    b. SADR sets out the obligations borne by the Commission to ensure results of ADRVs are appropriately disclosed.
    c. There are sound policy reasons for publishing decisions and issuing media releases, including ensuring that persons subject to SADR are prohibited from associating with a person who is subject to a period of ineligibility. Such association constitutes an ADRV meaning it is in all participant's interests to be advised when a period of ineligibility is imposed under SADR.
    d. Publication under SADR is solely a decision for the Commission.
    e. The Committee has its own, separate discretion and responsibility, but it has no power to direct the Commission on publication.
    f. The cases of *ST01/23 DFSNZ v Anon*, *DFSNZ v Player A* and *ST12/18 DFSNZ v XYZ* (Sanction) confirm this position, and such cases are distinguishable from this case.
    g. The application should be rejected for lack of jurisdiction.
    h. The Commission will consider its approach to publication in accordance with its obligations under SADR.

Findings in relation to Sanction for Clenbuterol ADRVs

1. The Committee acknowledges the Respondent's admission of intentional breach in relation to the Clenbuterol ADRVs.

2. Such admission means the only consideration for the Committee is in relation to the sanction for the Clenbuterol ADRVs.

3. The Applicant and the Respondent differ as to whether SADR 10.8.1 applies in his case. This rule records:

    10.8.1 One-Year Reduction for Certain Anti-Doping Rule Violations Based on Early Admission and Acceptance of Sanction

    Where an Athlete or other Person, after being notified by DFSNZ of a potential anti-doping rule violation that carries an asserted period of Ineligibility of four or more years (including any period of Ineligibility asserted under Rule 10.4), admits the violation and accepts the asserted period of Ineligibility no later than 20 days after receiving notice of an anti-doping rule violation charge, the Athlete or other Person may receive a one-year reduction in the period of Ineligibility asserted by DFSNZ. Where the Athlete or other Person receives the one-year reduction in the asserted period of Ineligibility under this Rule 10.8.1, no further reduction in the asserted period of Ineligibility shall be allowed under any other Rule.

4. For the purposes of this decision, it is noted that **Athlete or other Person** is the Respondent and **DFSNZ** is now the Commission (the Applicant).

5. The rule is applicable for the Clenbuterol ADRVs as the applicable period of ineligibility is four years.

6. With this rule applying, the next step is for the Respondent to have admitted the violation **and** (*emphasis added*) accepted the asserted period of ineligibility no later than 20 days after receiving notice of the ADRV charge and then the Respondent may receive the one-year reduction against the period of ineligibility.

7. This necessitates an analysis of the timeline of events to determine whether the reduction is available here.

8. The timeline of events is as follows:

   (a) 7 March 2024 notice of intent letter from Applicant to the Respondent.
   (b) 8 March 2024 the Respondent confirmed receipt of notice of intent letter.
   (c) 27 March 2024 written submissions from Respondent's counsel that Respondent not bound by SADR.
   (d) **9 May 2024** Notice of ADRVs and Statement.
   (e) 10 May 2024 Application for Provisional Suspension.
   (f) 10 June 2024 Provisional order and directions of Committee.
   (g) 13 June 2024 Submissions on behalf of Respondent.
   (h) 3 July 2024 Synopsis for the Applicant.
   (i) **19 July 2024** Submission on behalf of the Respondent in which he accepted he purchased Clenbuterol in line with the allegation made.

9. The Respondent had notice from 7 March 2024 of the matters now before the Committee. In his own evidence, he confirmed letter was in plain English and that he had obtained Counsel shortly after receiving the letter to assist him in relation to the matter.

10. The key date for the commencement of the 20 days under SADR 10.8.1 is 9 May 2024, being the date on which the Notice of the ADRVs was issued by the Applicant. For the deduction under 10.8.1 to apply, the Respondent had until 30 May 2024 to admit the Clenbuterol ADVRs and accept the asserted period of ineligibility.

11. The Respondent's admission to the Clenbuterol ADVRs was made on19 July 2024, 71 days after receipt of the May Documents with the following wording:

    Mr Wilkinson-Ballantine accepts that he purchased Clen-Max, clenbuterol, 40mcg, 300 tablets in line with the allegation made.

12. The admission is ambiguous as to whether the second Clenbuterol ADRV, relating to use or attempted use is accepted but, in any event, is silent as to whether he accepted the asserted period of ineligibility.

13. Such is repeated in his affidavit of 26 July 2024, where the purchase of Clenbuterol is confirmed and accepted and goes further to confirm that "*I obviously did not end up taking the drug so what I was doing was essentially an attempt*". The ambiguity of the acceptance of the second Clenbuterol ADRV is at least resolved by this statement.

14. However, it is not until the additional memorandum of counsel for the Respondent of 26 September 2024, 140 days after receipt of the May Documents, that there is acknowledgement of the second requirement of SADR 10.8.1, being acceptance of the asserted period of ineligibility.

15. It was accepted by Counsel for the Respondent that the requirements of SADR 10.8.1 were known, but that admission within that period was not able to be made due to the negotiations between the Applicant and the Respondent in relation to the ADRVs. This was effectively a "plea bargain" where the Respondent indicated a willingness to plead to the Clenbuterol ADVRs should the Tamoxifen ADRVs be withdrawn by the Applicant.

16. It is unfortunate that time was spent on such negotiations. Under SADR, there is no power for the Applicant to withdraw ADVRs once they have been notified. Once notified under SADR 7.2, the ADVRs are then referred to the Sports Tribunal (in this case, the Committee) and it is then the Committee's role to determine the ADRVs under the steps set out in SADR.

17. Counsel for the Respondent took the position that the Clenbuterol ADRVs could not be admitted while they were tied in with the Tamoxifen ADRVs. Such position was erroneous for the following reasons:

    a. There was no change between 9 May 2024 and 19 July 2024 of the ADRVs;
    b. The charges as set out in the March letter and then repeated in the May Documents are separate as between Clenbuterol and Tamoxifen, both in relation to the ADRVs and the sanctions for them;
    c. SADR sets out the ADRVs and the charges for them and also confirms they are separate; and
    d. The Respondent was able to admit the Clenbuterol ADRVs on 19 July 2024 without any change to the ADRVs.

18. The Committee is concerned about the emphasis from the Respondent for the sanctions to not be consecutive, which continued through to the submissions for the hearing. SADR clearly sets out that sanctions will be served concurrently, and this concern should have been resolved several months earlier and not coloured the position in relation to the Clenbuterol ADRVs.

19. The Committee, from the evidence presented to it, is unable to find any reason for the Respondent to have not admitted the Clenbuterol ADRVs and the asserted period of ineligibility for them by 30 May 2024, even with his position in relation to the Tamoxifen ADRVs. This could have been completed in writing setting out the regulatory acceptance in relation to Clenbuterol ADRVs but denying the Tamoxifen ADRVs. Such would have made SADR 10.8.1 applicable to the sanction.

20. The requirements of SADR 10.8.1 were not satisfied within the regulated time period and as such the one-year reduction in the period of ineligibility is not available to the Respondent.

Findings in relation to Tamoxifen

1. The Tamoxifen ADRVs are denied by the Respondent, and he has remained consistent in relation to this. As such, the Applicant carries the burden of proof for these to the standard of "comfortably satisfied" pursuant to SADR 3.1:

   DFSNZ has the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether DFSNZ has established an anti-doping rule violation to the comfortable satisfaction of the Sports Tribunal or NSO Anti-Doping Tribunal, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.

2. The Tamoxifen ADRVs are for possession and attempted use under SADRs 2.6 and 2.2 respectively and at all times the Applicant has confirmed it was not attempting to prove the ADRVs were intentional.

3. The submissions from the Applicant centre around the Tamoxifen being included in the parcel intercepted at the boarder which contained the Clenbuterol with the assumption being that it was included in the parcel because it was ordered with the Clenbuterol by the Respondent in January 2024.

4. The Applicant points to the Respondent being unable to produce any documents or correspondence to confirm his January 2024 order was only for Clenbuterol.

5. While the Committee finds the lack of documentary evidence available from the Respondent to be unusual and frustrating, it is not for the Respondent to disprove the Tamoxifen ADRVs.

6. The Committee agrees with the Applicant in that any evidence should have been available to be produced by the Respondent in March 2024 when the intercept was brought to the Respondent's attention, especially in light of some documentary evidence, in the form of screenshots, being

made available by the Respondent on 2 October 2024. The Committee is frustrated by the timing of availability of this evidence, which was forwarded by email only, not included in an affidavit of the Respondent or the submissions of his Counsel.

7. This evidence must have been available to the Respondent in March 2024 and for his July 2024 affidavit despite his protestations otherwise.

8. However, the absence of evidence from the Respondent does not dissuade the burden of proof of the Applicant.

9. Of interest to the Committee are the pictures attached to the statement of Haden Tapper within the May Documents. These pictures show boxes for the Clenbuterol, but the Tamoxifen was unboxed and a single strip of tablets. Furthermore, the Tamoxifen was 10 tablets of 20mcg each, a low number in comparison to the Clenbuterol.

10. The last-minute screen-shot evidence from the Respondent indicates the January order may have been for Clenbuterol only, the Committee expresses exasperation and surprise that there is not further definitive evidence, perhaps in the form of order confirmation emails from the Vendor. However, we are not persuaded that an adverse conclusion should be taken by the absence of this evidence.

11. Given the sanction for the Tamoxifen ADRVs, being two years for unintentional, falls within the sanction for the Clenbuterol ADRVs, it would have been convenient for the Respondent to admit all of the ADRVs, knowing that the total sanction served would be that attaching to the Clenbuterol ADRVs. However, throughout, he has remained adamant that he did not purchase nor attempt to use the Tamoxifen.

12. Helpfully, the Applicant directed the Committee to *Bellchambers* and the determination of the proper approach for evaluating the evidence before it. The Committee is tasked to evaluate all relevant and credible items of evidence and ask whether when considered cumulatively the test of comfortable satisfaction is satisfied.

13. The relevant items of evidence before the Committee are:

    a. A strip of 10 20mcg Tamoxifen tablets were within the parcel intercepted at the boarder which was addressed to the Respondent.
    b. The Respondent has admitted intentionally purchasing and attempted use of the Clenbuterol.
    c. The Respondent has consistently denied purchasing and therefore any use of the Tamoxifen.
    d. The screen shots from the Respondent show only Clenbuterol and the value associated with that purchase.
    e. The inconvenience suffered by the Respondent by taking the position he has on Tamoxifen.

14. When considered cumulatively there is enough doubt for the burden of proof to not have been satisfied and as such the Tamoxifen ADRVs are not proven.

Findings in relation to non-publication/name suppression

1. The Respondent seeks name suppression and suppression of public disclosure in relation to the ADVRs against him. This was raised within his Counsel's submissions of 19 July 2024, the Respondent's affidavit of 26 July 2024 and his Counsel's submissions of 26 September 2024.

2. SADR 14 deals with reporting, confidentiality and public disclosure, with SADR 14.3 being relevant for these findings.

3. Under SADR 14.3.2 the **Commission** (*emphasis added*) must publicly disclosure the disposition of the matter with certain information subject at all times subject to SADR 14.3.7 where the mandatory disclosure is not required for a recreational athlete (which the Respondent is) and any disclosure shall proportionate to the facts and circumstances of the case.

4. The Committee notes that this is for the Applicant, there is no power within SADR for the Committee to order or direct the Commission in relation to public disclosure.

5. Quite separately, the Committee has a discretion and responsibility to decide on the issue of redaction within its decision and indeed there are precedent cases where the name of the Athlete has been redacted within the decision of a committee.

6. The submissions from the Respondent's Counsel in relation to this issue centred around disproportionality and the detrimental effect on the Respondent's business and family. These were by way of oral and written statements. No additional evidence was provided to the Committee in relation to this.

7. In prior cases where the name of the athlete has been redated by the committee there have been extraordinary circumstances supported by evidence such as a detailed psychiatrist report in relation to DFSNZ v Player A (9 July 2024) and the sanction having already been served by the time the sanction was ruled such as in ST01/23 DFSNZ v Anon.

8. The Committee has not received any evidence to support the submissions of detrimental effect or hardship.

9. The Respondent is bound by SADR and the Clenbuterol ADRVs have been admitted as being intentional.

10. It is usual for publication to occur for several reasons, but including:

    a. Disclosure is a recorded consequence of committing an ADRV within SADR; and
    b. To try to prevent a breach of SADR 2.10 which prohibits association by an athlete or any other person, and which constitutes an ADRV in itself.

11. If redacted, then those who are bound by SADR will not know of the sanction being served by the Respondent and they may commit an ADRV.

12. With the evidence before it, the Committee does not consider there to be grounds for it to redact the Respondent's name and other identifying information in this decision and indeed disclosure is proportionate to the facts and circumstances of this case.

13. The Committee does not have jurisdiction to direct the Commission regarding public disclosure.

Sanction

1. As a result of the findings, the Clenbuterol ADRVs falls under SADR rule 10.2, being:

    10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substances or Prohibited Methods

    The period of Ineligibility imposed for a violation of Rules 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Rules 10.5, 10.6 or 10.7:

    10.2.1 The period of Ineligibility, subject to Rule 10.2.4 shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance or a Specified Method and DFSNZ can establish that the anti-doping rule violation was intentional.

10.2.2 If Rule 10.2.1 does not apply, subject to Rule 10.2.4.1, the period of Ineligibility shall be two years.

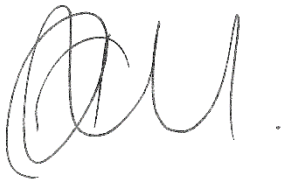
2. With the admission of intent, Rule 10.2.1.1 applies, and with Rule 10.4 not being applicable in this matter, the period of Ineligibility shall be four years commencing on 10 June 2024 and terminating at 11.59pm on 9 June 2028.

3. During the Period of Ineligibility, the Respondent is prohibited from participating in any capacity in a *Competition* or activity (other than authorised anti-doping education or rehabilitation programs) authorised or organised by any *Signatory* or *Signatory's* member organisation, or other member organisation of a Signatory's member organisation or in *Competition* authorised or organised by any professional league or any *International* or *National-level Event Organisation* or any elite or national sporting activity funded by a government agency.

4. There is no sanction in relation to the Tamoxifen ADRVs as they have not been proven.

5. The Respondent is entitled to have the sanction or finding referred to the Court of Arbitration for Sport pursuant to 5.2 of the New Zealand Rugby Anti-Doping Regulations 2024.

Dated 14 October 2024



Helen Morgan (Chair)
Dr Deborah Robinson
Henry Moore