

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

**AND**                              **RICKY WELSFORD**  
  
   **Respondent**

**AND**                              **NEW ZEALAND OLYMPIC WRESTLING UNION  
AND ASSOCIATED STYLES INCORPORATED  
("WRESTLING NEW ZEALAND")**  
  
   **Interested Party**

---

**DECISION OF TRIBUNAL  
DATED 25 NOVEMBER 2011**

---

**Tribunal:**                      Alan Galbraith QC (Deputy Chairperson)  
   Chantal Brunner  
   Rob Hart

**Present:**                      Ricky Welsford, athlete  
   Ian Hunt, counsel for Ricky Welsford  
   Wayne Smith, in support of Ricky Welsford  
   Chris Evans, witness for Ricky Welsford  
   Isaac Hikaka, counsel for Drug Free Sport New Zealand  
   Jayne Kernohan, Drug Free Sport New Zealand  
   Iain Adamson, Wrestling New Zealand

**Registrar:**                      Brent Ellis

1. A provisional suspension order was made by this Tribunal on 11 October 2011 provisionally suspending Mr Welsford as a result of an adverse analytical finding for metabolites of the substance JWH-018 [JWH-018 N-(5-Hydroxypentanyl) and JWH-018 N-Pentanoic Acid] arising out of an in-competition drug test at the New Zealand Wrestling Championships on 27 August 2011. This is a prohibited substance under the World Anti-Doping Code Prohibited List for 2011. It is a Specified Substance. Its presence is commonly associated with synthetic cannabis use.
2. The hearing of the substantive Application for an Anti-Doping Rule Violation by Drug Free Sport New Zealand was heard by telephone conference on Tuesday 22 November 2011. Mr Welsford was represented by Ian Hunt as counsel.

### ***Background***

3. Ricky Welsford is an extremely talented wrestler. He is only 20 years of age and is one of the rising stars for wrestling in New Zealand. He has represented New Zealand at the Youth Commonwealth Games, the Commonwealth Wrestling Championships and the Oceania Wrestling Championships.
4. On 24 August 2011 he was celebrating a friend's birthday with a group of five friends. After a few drinks one of the group began handing around "roll your own cigarettes" which had Kronic in them. Kronic is a synthetic cannabis product. It used to be widely available for sale but its sale is now banned in New Zealand. It was explained by the person handing around the cigarettes that he had bought the Kronic from a dairy, before the sale of Kronic was banned.
5. Everyone in the group was smoking those cigarettes but Mr Welsford was not keen to do so. However, he ultimately succumbed to pressure from the rest of the group not to be precious and ultimately took some puffs from one of the cigarettes.
6. At the time it did not occur to him that this could be an issue for his participation in the wrestling championships three days later. Certainly at

the time he did not register that Kronic might be a performance enhancing substance or that it might be a banned substance.

7. Mr Welsford has had some drug education as a result of his sport. He went to a seminar about drugs in sport about four years ago which was organised by Wrestling New Zealand. He recalls that cannabis was referred to as a banned drug but most of the seminar was about performance enhancing drugs. His evidence was that he does pay attention to what he consumes and does check that what he is using is not on the banned list if he ever does take a supplement. He regards himself as generally careful in that respect.
8. Obviously he regrets ever smoking that cigarette and the consequences that it has caused for him and his family. As he said in evidence, his family have been very upset and rightly so because they have been very supportive of him in his sporting endeavours.
9. When Mr Welsford was informed of the adverse finding in a letter dated 21 September 2011 from Drug Free Sport New Zealand he promptly waived his option to have the B sample tested and admitted the doping violation in a letter dated 25 September 2011 to Drug Free Sport. His explanation of the circumstances in which he had taken the substance in that letter was consistent with his explanation given in evidence to the Tribunal. Mr Welsford's evidence was corroborated by evidence provided to the Tribunal by a friend, Chris Evans, who had been present on the evening in question. Mr Evans confirmed that the group had given Ricky a hard time and that Ricky had eventually taken one of the smokes "to shut us up so we could leave him alone". Mr Evans went on to say "I feel bad now that Ricky has got into trouble with his wrestling because of us pressurising him."
10. At the telephone conference questions were asked of Mr Welsford and also of Chris Evans. Their answers are regarded by members of the Tribunal as open and honest. It is unfortunate in the circumstances at the time that nobody thought of the consequences to follow.

11. Mr Welsford's evidence was that the wrestling season starts again in February. However, he is the senior coach at his local Taieri club. Coaching would normally start in January. At the moment he is engaged in pre-season training, largely by running for general fitness. Normally he would be playing touch rugby but the provisional suspension stops him from competing in affiliated sports.
12. More importantly, 2012 is an Olympic year and Olympic qualifying events are scheduled for the early part of the year. The first step for Olympic qualifying is the Oceania Championship in January 2012. Mr Adamson of Wrestling New Zealand said that, had it not been for his suspension, Mr Welsford would have been an almost certain nominee by New Zealand to that championship. As it was, with his provisional suspension, Mr Welsford was not nominated.
13. Accordingly this is not a case where a suspension is of little impact to an athlete because it is occurring out of season. Mr Welsford is affected in respect to his touch rugby participation, potentially in relation to his coaching activities, and most importantly he has lost the opportunity of competing at the Oceania Championship.

### ***Penalty***

14. Rule 14.4 of the Sports Anti-Doping Rules 2011 allows for the elimination or reduction of the period of ineligibility for violations relating to specified substances under certain circumstances. For a first violation the sanction may range from a reprimand up to a period of ineligibility of two years. As Mr Welsford has no previous doping violations the maximum period of ineligibility under Rule 14.2 is two years.
15. A reduced period of ineligibility can be imposed under Rule 14.4 if Mr Welsford:
  - (a) Shows how the prohibited substance entered his system; and
  - (b) Establishes to the comfortable satisfaction of the Tribunal that there was no intention to enhance sporting performance. Corroborating evidence is required in this respect.

The Tribunal must then assess the degree of fault in order to determine the appropriate penalty.

16. Mr Hikaka for Drug Free Sport accepted that on the evidence Mr Welsford had discharged the obligation to show how the prohibited substance had entered his system and that there was no intention to enhance sporting performance. Accordingly the issue then becomes one as to the appropriate penalty taking into account Mr Welsford's degree of fault.
17. In 2010 the Tribunal adopted a starting point for a period of ineligibility in cannabis cases of four months. This was because of the Tribunal's concern that in a number of sports there seemed to be a lack of appreciation of the obligations of observance of the Code, at least in respect to cannabis use. However, the Tribunal must and will always consider any aggravating or mitigating factors to either extend or reduce the period of ineligibility.
18. Mr Hikaka suggested that there were some aggravating factors in the present case, in that an athlete has a fundamental obligation to control what substances he takes and Mr Welsford had acknowledged that he knew that Kronic was a cannabis substitute. Mr Hikaka, fairly, acknowledged that Mr Welsford's age was a mitigating factor and this was not a situation where the suspension would not have impact on Mr Welsford because it was out of season.
19. Mr Hunt submitted that there were no aggravating factors and that the matters pointed to by Drug Free Sport were simply incidents of the breach itself. In his submissions he emphasised a number of factors as potentially relevant to a reduction from the Tribunal's four month starting point:
  - (a) The fact that the substance was Kronic and at the time not illegal as compared to cannabis which is an illegal substance. Mr Hunt accepted without reservation that Kronic was a specified substance prohibited under the Code but made the proper submission that there was some room for understanding why Mr Welsford and his

group of friends might have seen the Kronic cigarettes somewhat differently than cannabis laced cigarettes.

- (b) Mr Hunt also emphasised Mr Welsford's age. At the time of providing the test Mr Welsford was 19 years old. Age has been recognised as a mitigating factor in a number of cases, e.g. *Drug Free Sport New Zealand v Joshua Poasa* (ST 21/10, 4 February 2011).
  - (c) Mr Hunt also emphasised as a mitigating factor Mr Welsford's prompt admission of the doping violation, his waiving of the right to test the B sample and his immediate explanation to Drug Free Sport.
20. In the Tribunal's view it has to assess the degree of fault in all the circumstances of the case, including Mr Welsford's age, the circumstances of his peer group of friends pressuring him, possibly some failure to immediately recognise that Kronic is likely to have the same consequence as cannabis, his immediate acceptance of responsibility and his openness and honesty, the fact that this violation is out of character with what his sporting results show must be a disciplined and determined character, his contribution to the Taieri club as coach, and the loss of his Olympic qualifying chances. These factors, in the Tribunal's view, do justify a reduction from the usual base line of four months' suspension for cannabis violations.
21. On the other hand the Tribunal does regard it as important to emphasise the care and responsibility which an athlete has in respect to substances which the athlete consumes. The Tribunal is hopeful that Mr Welsford will, given his personal unfortunate experience, drive home that message to those whom he is coaching and involved with in his club and sport.
22. Balancing those factors the Tribunal has determined that a period of ineligibility of three months commencing from 11 October 2011, the date of provisional suspension, is appropriate. That period of ineligibility will therefore end on 11 January 2012. As with the provisional suspension, that suspension prevents Mr Welsford participating in any affiliated sports prior to that date. It also means the disqualification of Mr Welsford from

any competition which he participated in at the New Zealand Wrestling Championships in August 2011.

Dated: 25 November 2011

A handwritten signature in blue ink, appearing to read 'Alan Galbraith', is written on a light blue background.

---

**Alan Galbraith QC**  
**Deputy Chairperson**