NEW ZEALAND RUGBY UNION

JUDICIAL COMMITTEE

Re: Alleged Anti-Doping Violation

Applicant: Drug Free Sport NZ
Respondent: Finn Hart-Strawbridge

DECISION OF JUDICIAL COMMITTEE
Dated 5 June 2015

A. INTRODUCTION

1. Drug Free Sport New Zealand ("DFSNZ") made an application for Anti-Doping Rule Violation Proceedings, dated 22 January 2015.

2. The application was against Finn Hart-Strawbridge ("the Athlete"), based on the New Zealand Rugby Union ("NZRU") having adopted the Sports Anti-Doping Rules ("SADR"), amended under Article 1 of the NZRU Anti-Doping Regulations, dated 26 July 2012.

3. The Athlete is bound by the Regulations under Article 2 of the Anti-Doping Regulations through his membership of a rugby club within the Canterbury Rugby Union. The Sports Anti-Doping Rules 2014 applied at the date of the alleged violation.

The Alleged Violations

4. The proceedings are based on the Athlete having ordered a prohibited substance "GHRP-6*"* over the internet in September 2014. The Athlete admitted this. A package containing the prohibited substance was intercepted by Customs who referred the interception to Medsafe.

5. DFSNZ alleged anti-doping violations by **possession** in breach of SADR 3.6, and **attempted use** under SADR 3.2.

6. SADR 3.2 refers:

> "*Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method. The SADR (2014) definition of "Attempt" includes "Purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an Anti-Doping Rule Violation"*.

7. SADR 3.6 refers:

> *"Possession of Prohibited Substances and Methods. The SADR definition of "Possession" includes "… the purchase (including by any electronic or other means) of a Prohibited Substance or Prohibited Method constitutes Possession by the Person who made the purchase".*

8. DFSNZ said that the two violations could be treated as **one** violation for the purpose of sanction, and sought an Order under SADR 14.2 of ineligibility for the minimum period of two years.

B. THE JUDICIAL PROCESS WHICH FOLLOWED THE APPLICATION

Provisional Suspension

9. Provisional suspension was ordered by consent of the Athlete, and took effect on 4 February 2015.

Facts

10. Ms Ellis of DFSNZ, Programme Director for Testing and Investigations, set out the core facts.

11. DFSNZ received notification of interception by the New Zealand Customs Service ("Customs") of a parcel addressed to the Athlete. The parcel contained one 5 milligram vial of GHRP-6, a prescription medicine under the group listing "*Human Growth Hormone Secretagogues*" under the Medicines Regulations1984. Under the Prohibited List 2014, incorporated into the Sports Anti-Doping Rules 2014, this is a prohibited substance in and out of competition under "*S.2 Peptide Hormones, Growth Factors and Related Substances*".

12. The Athlete is on a Rugby Scholarship at Lincoln University. Faced with a DFSNZ investigation he immediately made a statement. He had ordered the GHRP-6 from a website after reading newspaper articles written by a reporter who described his experiment in ordering and using the substance. The Athlete thought he remembered reading the first two of these articles, but thought there were three. Articles were published in the New Zealand Herald in April/May 2013 by Mr Dean, a reporter.

13. The Athlete recalls paying $18.50 for the order by credit card. His explanation was that he ordered it as a "*joke*" and he had no intention of using it. He did not think that this was of any consequence as it was such a small amount, and his intention was to show it to his mates, who would have thought it "*hilarious*". After he attended a DFSNZ Education Seminar in Taupo in October 2014 he realised what he had done was wrong. The parcel had not been received by then, and on enquiry he learned that it was likely to have been intercepted by Customs.

14. The Athlete said he had never ordered or used any other performance enhancing drug. He said that he had never purchased any of the equipment which is required for administration of the Prohibited Substance.

15. A Statement signed by the Athlete developed the explanation above. He knew it was banned but he said he did not think it was unlawful simply to "*order it*". He thought one vial would not be enough to obtain any benefit, and that would make it "*ok to order"*.

16. When asked why he ordered it if he did not intend to use it he developed his explanation that - *"because my mates would have found it hilarious and I would have taken it around and shown everyone. It would have been quite a laugh but it backfired"*.

17. The Judicial Committee read the articles in the New Zealand Herald, which diarise the reporter's account of using this substance. Part 1 of the "Diary" was dated 29 April 2013 and referred to a performance enhancing substance being "*… so new no one really knows what, if any, the long term effects might be".* The reporter went on to say

"I want to show how easy it is to cheat". The diary detailed other steps to enhance his fitness and physique. A third shipment to the reporter was seized by Customs and forwarded to Medsafe. The Committee sees no purpose in tracking further detail in the reporter's diary.

18. Whatever the Athlete made of this, there was a constant refrain in his explanations that he had not intended to use the prohibited substance. DFSNZ was prepared to proceed on the basis of the possession violation alone, that the Athlete was a young player who had made a "*very poor decision in buying a prohibited substance over the internet"*, but who had not received or consumed it. The investigation did not reveal any evidence of additional or related doping activity.

The Further Judicial Process

19. The outcome is for the Judicial Committee, as counsel recognised. A Minute dated 5 March 2015 recorded that a hearing was required. The significance of a breach such as this requires some formality and thoroughness. We were not prepared to deal with this on the papers.

20. We therefore asked a set of questions which we record from paragraph 3.3 of the Minute of 6 March 2015, in context:

> *"3.1 We consider a hearing of some sort is required. This is an issue which requires some formality and thoroughness before it concludes and our decision disseminated. We will not do so simply on the papers.*
>
> *3.2 The intended course provides insufficient in the way of material for us to consider the seriousness and surrounding circumstances of the violation which may be formally admitted. The explanation that is given on the papers leaves us uncertain as to how we could accurately assess why Finn sought to obtain possession, and how this could be addressed in our reasons. For example, if this was simply a "joke" we need to know why this was a "joke".*
>
> *3.3 The factual issues which remain of interest to the Judicial Committee are these:*
>
> *(1) When Finn read the articles in the New Zealand Herald about a reporter ordering and using GHRP-6, what did he make of that?*
>
> *(2) What prompted him to order and pay for this prohibited substance on or about 23 September 2014?*
>
> *(3) What was it about the DFSNZ Education Seminar in October 2014 which led Finn to believe that what he had done was "wrong" and he should get rid of it when it arrived?*
>
> *(4) What date did Finn email the website from which he ordered the product?*
>
> *(5) What did Finn say in that email?*
>
> *3.5 The other questions we consider do require an answer because the idea that the prohibited substance could arrive in this way, and be shown to others, as a "joke" is difficult to understand. We are left uncertain about the notion of a "joke".*
>
> *3.7 Counsel clearly recognize that the Committee may be short of a full understanding of the reasons that use was not intended. We recognize the procedural difficulty here but need to make our position clear."*

21. Mr Lloyd of counsel for the Athlete responded by Memorandum dated 2 April 2015. He explained that the Athlete was interested in how the reporter got hold of the prohibited substance, and reflected on how easily he did so. That prompted him to see if he could replicate the reporter's actions. Had he read the article which referred to the interception of the substance ordered by the reporter, he might have thought twice. In writing, and then in response to questions asked of him at a hearing by Teleconference on 11 May 2015, he did not deviate from his explanation that he was trying to prove *"how easy it was to get it"*.

22. The Judicial Committee did not really understand the explanation that he did this for a "*laugh*", but that may be as much because of the idiom of a young athlete compared with a Judicial Committee comprised of members of other vintages. This was not a "*laugh"* in the sense that it was "*funny*" or "*hilarious*", as the Judicial Committee comprehends it, but rather of "*showing off*".

23. The Athlete began to have his doubts about what he had done, which he puts down to the Drug-Free Sport briefing. He decided that when it was delivered, he should not keep it. The DFSNZ Seminar made *"such a big deal of things"* that he realised *"how serious the substance was"*. That is when he realised "*this wasn't a game to have a laugh about"*. He did not realise that simply by ordering it, he was already in breach.

24. He knew the substance had been sent because he received an email the day after he ordered it. On 18 October 2014 the Athlete wrote to the website, saying that there was *"no sign of my order yet"*. He then asked if it was likely Customs would have seized it. The answer by email of 19 October 2014 acknowledged this was possible, especially in New Zealand where *"they are very strict at customs"*.

25. The Athlete said that *"I made a massive mistake"* and he acknowledged that this had:

> *"ruined my sporting chances for a long time, all because I thought I was having a bit of a laugh and wanted to be a bit of 'the man' with my mates".*

Teleconference Hearing

26. At the Teleconference hearing on 11 May 2015, the Judicial Committee tested the Athlete's explanation but he did not waiver from the explanation given above.

C. THE PROHIBITED SUBSTANCE

27. Underlying the Judicial Committee's scrutiny of the facts, was a concern as to the truthfulness of the explanation. To reject the explanation the Judicial Committee would have to reach a different view from that of DFSNZ, and reject the evidence given by the Athlete. We have been left with some reservations, but proceed on the basis that this was an ill judged and immature action by a young athlete who has already learned, and will learn, a tough lesson.

28. The Judicial Committee notes that the prohibited substance is a synthetic peptide which has a number of different names including "*growth hormone releasing peptide-6*". This substance acts by stimulating the release of endogenous growth hormone (GH) from the pituitary gland. Proposed clinical uses include growth hormone deficiency and osteoporosis.

29. GHRP-6's utility as a performance enhancing agent remains uncertain. There is some evidence of improvements in body composition with repeated use but the functional

benefits in respect of strength and aerobic function are largely unproven. It has been suggested that it has potential to be used as a masking agent. The substance has been found in nutritional supplements.

30. Recently commissioned research into the attitudes of high school rugby players to doping, included a survey of players from seven high schools carried out by the University of Otago School of Medicine. The conclusion was that *“the potential risk of high school rugby players being engaged in doping was real”.* A summary of the Report is on the DFSNZ website.

31. Having considered the concern raised in the research commissioned by DFSNZ and the ease and manner by which this substance can be obtained, the Judicial Committee is concerned to ensure that future anti-doping education programmes continue to emphasise the risk posed to athletes. This should include what circumstances constitute an anti-doping violation.

D. DISPOSITION AND REASONS

32. DFSNZ through counsel said it had carefully considered the outcome, based on the possession violation alone and concluded that with “*the prompt admission”* provisions, a 2 year period of ineligibility was appropriate.

33. The Judicial Committee essentially proceeds on the basis of the position agreed between DFSNZ and the Athlete after careful thought. The Athlete did order this prohibited substance, and but for Customs’ interception, would have received it, to allow a range of possible outcomes.

34. It may be that the Athlete would have shown the prohibited substance to his friends, and explained how easy it was to obtain. That might be amusing or of interest to those who knew the properties of the substance. Without knowing that much, this would be a rather hollow “*joke”*. However, the Judicial Committee is mindful that it may not have been as easy as that for the Athlete, because if the substance was physically available there was no security around its possible possession by another.

35. To be consistent with the order being placed as a “*joke”*, the substance would have to have been shown to others, but immediately disposed of when the *“joke”* was complete. The Athlete put himself at risk and in this regard the Judicial Committee concludes that he did not think much about this at all, and was naive as to the potential outcomes.

36. The Judicial Committee is left with a sense of considerable unease that despite the education through DFSNZ and National Sporting Organisations, there should be such a relaxed attitude to ordering a prohibited substance, without recognition of the seriousness of breach. Publicity attending this decision will be instructive and we apprehend that there will be many Athletes’ parents, supporters, coaches and organisations who and which will reflect with concern on the circumstances surrounding this breach.

37. The Athlete was young and made a bad decision. We do not pass a more censorious judgment on him because he made a mistake, from which he must, and we apprehend will, recover and move on.

38. The lesson that must come from this case is that interception is likely, and the consequences are severe. It is only the frank recognition of breach and recognition of his youth, that leads the Judicial Committee to adopt the approach advanced jointly for

the Athlete and DFSNZ and find a breach established under SADR 3.6 based on possession, through his purchase of the Prohibited Substance. The application under SADR 3.2 is not advanced on the evidence and would not have added to sanction and is thus dismissed.

39. We have considered whether the sanction should be imposed from the date of the breach under the "*early admission*" provisions of SADR 14.6. We consider the period of ineligibility should run from the date of breach on 23 September 2014 as there was a prompt admission and before then the Athlete had recognised the import of what he had done.

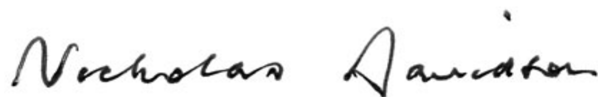
Formal Disposition

40. Finn Hart-Strawbridge is ineligible from participation in rugby and otherwise under the Regulations for a period of two years, from and including 23 September 2014.

41. There is no Order as to costs.

42. We reserve leave for any further application needed, for direction, until 4pm Friday 12 June 2015.

DATED this 5th day of June 2015



…………………………………………………...

Nicholas Davidson QC

For New Zealand Rugby Union Judicial Committee

Nicholas Davidson QC

Dr. Ian Murphy

Johnny Leo'o