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"Taking Sports Out Of The Courts": Alternative Dispute Resolution and the International Court of Arbitration for Sport.

"Traditional litigation is a mistake that must be corrected....For some disputes, trials will be the only means, but for many claims, trials by adversarial contest must in time go the way of the ancient trial by battle and blood. Our system is too costly, too painful, too destructive, too inefficient for a truly civilised people."[1]
Burger C.J.

Introduction

On August 12, 1990, Harry 'Butch' Reynolds, then world record holder in the 400 metres, took part in an international track and field competition in Monte Carlo. After his event, Reynolds took a routine drugs test pursuant to the International Amateur Athletic Federation's (IAAF) regulations. On October 18, 1990, Reynolds learned that he had tested positive for the anabolic steroid, nandrolone. The IAAF acting through the US governing body for track and field (now called USA Track and Field), subsequently suspended Reynolds from all IAAF competition for two years. The two-year suspension was set to rule Reynolds out of the upcoming 1992 Olympics in Barcelona. A complex legal battle ensued.[2]

The Reynolds case clearly demonstrated that the IAAF's internal, dispute resolution, mechanisms failed to earn the authoritative respect of who mattered most i.e., the athlete. Accordingly, it has been suggested, that if they are to avoid similarly expensive legal battles, the major international sports administration bodies would be advised to install properly founded, arbitral mechanisms.[3]

It will be suggested the major sports bodies have been proactive in this regard. In this light, reference will be made to the biggest sports organisation of them all, the International Olympic Committee (IOC), which has recently remodelled its sports arbitration 'court'. In fact, the key objective of this paper is to provide an answer to the following question: can the IOC's Court of Arbitration for Sport (CAS) be seen as a blueprint for the use of alternative dispute resolution (ADR) in international sports?

The writer suggests that it can. The CAS is more than just an internal system of appeal that prevents sport from clogging up and getting clogged up in the ordinary court system. It will be demonstrated that the CAS can be seen as a satisfactory means of taking sports out of the courts.

Court of Arbitration for Sport[4]

With the increased intrusion of law into sport, particularly related to challenges on substance abuse allegations, the IOC became concerned that instead of sport being decided on the field of play, it would regrettably spend more of its time in laboratories and courtrooms. Moreover, the IOC realised that despite its obvious worldwide appeal, neither its own national bodies nor its international administration enjoyed any immunity from domestic jurisdictions. Thus, in the 1980s the need for a proper, independent, international arbitration panel became a priority.

The IOC realised that in order to be recognised by national courts as adequate, their system of internal dispute resolution would have to satisfy a number of tests. In particular, the International Olympic Committee's ADR mechanism would have to fulfil certain criteria as regards competent jurisdiction and the protection of due process. On reviewing the CAS in 1991, an international conference on sport and the law held that it basic charter would have to incorporate four fundamental standards:

- Its arbitration proceedings would have to be fully independent from the governing bodies of sport.
- Recourse to the CAS's arbitral procedures would have to be mandatory for the athletes either through some form of clear, contractual declaration or by way of a chain of reference from the constitutions of the respective individual clubs to the rules of the governing national and international federations.
- The CAS's arbitration procedures would have to provide the maximum legal protection for the athlete in the form of fair procedures.

- So also must the structure and substance of CAS hearings safeguard the fundamental rights of the sports participant, namely the athlete's right to earn a livelihood and more generally the right to bodily integrity.[5]

With the above fundamental principles in mind, the IOC remodelled its Court of Arbitration for Sport (CAS).

The original structure and aims of the CAS

The CAS actually began life in 1983 when at the instigation of the President of the IOC, Juan Antonio Samaranch, the 85th Session of the IOC, held in Rome in 1982, ratified the creation of a Court of Arbitration for Sport as based in Lausanne, Switzerland. Statutes and Regulations were drawn up and the CAS was duly constituted in March 1983 with the worthy purpose of *"Facilitating the settlement of disputes of a public nature arising out of the practice or development of sport, and, in a general sense, all activities pertaining to sport."*[6]

The jurisdictional remit of the CAS was carefully outlined. The governing law of the CAS was to be Swiss law and this remains the case. In fact, according to the current rules of the CAS, Swiss law is applied in cases where the parties choose it[7] but also in cases where they do not choose another national law or where they allow a decision in equity.[8] It was also well established under the initial CAS charter that where a panel award was made by majority decision, it would be deemed final and binding on the parties as soon as it was communicated to them. Generally, the grounds of appeal from the CAS remain limited[9] and can only be made to the Swiss Federal Court.[10]

Under Article 4 of its founding charter, the CAS was to have competent jurisdiction over disputes of a private nature arising in the field of sports if the settlement was not otherwise provided for in the Olympic Charter itself. International Federations, Sporting Committees or Associations and any natural person or body corporate could approach the CAS and avail of its services.[11] In a practical sense, therefore, the original procedural jurisdiction of the CAS was limited to what were described as 'non-technical' as opposed to technical disputes where the former were defined as cases which either concerned differences relating to the general principles which govern sport and/or litigation concerning matters of commerce which arose from activities relating to sport.[12] As the precedent of the CAS grew so the remit of the CAS became more sophisticated.[13]

It is now clear that the CAS will hear two major types of disputes.[14] Firstly, the CAS will hear cases arising from legal relations between parties *i.e.,* contractual issues as arising, for example, from sponsorship contracts, television rights agreements and management-competitor relationships. The second type of dispute generally heard by the CAS usually arises from a decision of a sports administration body to internally discipline or otherwise question the eligibility of an athlete. The most prevalent example of this category of dispute is that which concerns the adequacy of protections for individual athletes during drug testing.

The first type of dispute goes to ordinary arbitration proceedings within the CAS and the second goes to appeal arbitration proceedings, the CAS being divided into two legal divisions. The CAS can hear ordinary arbitration proceedings where the contract between the parties contains a clause stating that disputes will be decided by the CAS.[15] All contracts that the IOC now enters contain a clause that disputes will be referred to the CAS for final decision; for example, the Host City Contract for the 2000 Olympic Games between the IOC, the City of Sydney and the various organising committees includes such a clause.[16] Moreover, even if a contract does not contain such a clause, the CAS can still resolve a dispute if, once the dispute arises, the parties agree to submit it to the CAS.[17]

Access to the appeal arbitration division requires that the rules of the sports body in question *e.g.,* IAAF etc., provide that appeals from its internal disciplinary procedures can ultimately be petitioned to the CAS. The link is usually provided for by the insertion of a clause contained in the sports federation's constitution. This is supported by acceptance of this arbitral procedure by the individual members when signing membership forms.[18] These agreements are of vital importance as they establish the basis for enforcing the court's awards against individual athletes. In order to participate in international competition sanctioned by international federations, individual athletes must enter into contracts with national sports organisations. Mandatory clauses in these contracts, which authorise agreements between the federations and the CAS, ensure that the court's awards

may be seen as binding on the individual athlete.[19]

Since it began its work in 1984, the CAS has gradually become more accepted and respected among the various strands of the Olympic movement. It has had over 170 cases referred to it.[20] In fact, in 1993, the Swiss Federal Court confirmed in **Gundel v FEI/CAS**[21] that the CAS was a real, neutral and independent institution whose decisions adequately respected the inalienable and fundamental rights of the athletes while *inter alia* constituting arbitration awards at international level.[22] Nevertheless, the *Gundel* case also raised serious doubts concerning the actual impartiality of the CAS *vis a vis* the IOC.

While the *Gundel case* confirmed that the CAS presented sufficient guarantees to allow two parties to bring a case to the court and avoid the ordinary legal challenges, the federal court did see the need to highlight the overly dependent administrative and financial relationship the CAS had with the IOC.[23] In *Gundel* the Swiss Federal Tribunal strongly recommended that the CAS be given greater autonomy from its parent, the IOC. This ruling prompted the restructuring of the IOC's whole arbitral regime.[24]

The modified structure and aims of the CAS

An International 'Law and Sport' Conference held at Lausanne in September 1993 also raised a number of points regarding the existing operation of the CAS. This resulted in the constitution of the CAS being heavily amended. The restructuring was based essentially on the creation of an 'International Council of Arbitration for Sport' (ICAS), which would independently administer and finance the CAS, thereby taking the place of the IOC.[25] Before outlining this new body, it is well to note that the conference also raised a number of general issues on the administration of the CAS.

Primarily, it was felt that despite the effectiveness of the CAS, it should remain largely a last resort in sports disputes. The conference was strongly of the opinion that each individual sports federation should retain the primary responsibility in avoiding and resolving disputes, from playing field infractions to eligibility issues. Individual sports federations were encouraged to develop their own dispute settlement procedures while making use of the CAS as an appellant structure to supervise their decisions.[26] The conference felt that the CAS should be seen as the apex of a single hierarchy of authority and jurisdiction in this process, rendering that whole process more effective, efficient and transparent.[27]

The conference was also aware that the proposed apex of this arbitral system *i.e.*, the CAS itself was not without fault. There was concern on a number of internal issues. The cost involved in taking a hearing to the CAS seemed prohibitive and the independence of the CAS appointees was questionable. It seemed that in administrative terms the CAS was merely a 'creature' of the IOC.

In reality, the administrative costs of the CAS were and are relatively light. Nevertheless, up until 1996 the CAS's only office and means of hearing was in Lausanne, Switzerland.[28] As the parties to the CAS had to bear their own costs on such things as travel, witness costs and other representatives, a hearing for those parties outside Europe was onerous. In practice this also confined the court's initial scope to a predominately European reach. In 1996 in a bid to counteract this inequality, the ICAS recommended the creation of two decentralised offices in Sydney, Australia and in Denver, USA. However, of more concern was that even if a claimant succeeded in raising sufficient resources to have a case heard at the CAS; would they actually get 'fair play'? Were the CAS appointees simply minions for the 'Lord of the Rings' who controlled the IOC?

Originally, the CAS comprised of 60 members.[29] The IOC appointed 15 of them, the International Federations another 15, 15 more were appointed by the Association of National Olympic Committees and 15 by the IOC's President. Therefore, it was clear that at best the independence of these appointees was questionable. Unsurprisingly, this system of appointment was quickly addressed by the ICAS.[30] The ICAS understood that the CAS's appointment procedure needed considerable restructuring. CAS members were now to have greater independence from the IOC and its related structures. In addition, greater attention would be given to the interests of the athletes themselves. Overall, contemporary appointees to the CAS would have a healthy balance between those experienced with the impartiality of the law and those with a competitive knowledge of the peculiarities of sport.[31]

The CAS now comprises of 150 personalities with legal training and acknowledged competence in sports issues. These 'personalities' are appointed by the ICAS as follows;

- 30 arbitrators from among those proposed by the IOC.
- 30 arbitrators from among those proposed by the IFs.
- 30 arbitrators from among those proposed by the NOCs.
- 30 arbitrators chosen with a view to safeguarding the interests of athletes.
- 30 arbitrators chosen from among people independent of the above organisations.[32]

The writer suggests that this restructuring has greatly strengthened the credibility of the CAS inside the Olympic movement, in the national courts and most importantly among the athletes themselves. The IOC and the CAS have gone to considerable lengths to ensure that any suggestions of bias or partiality have been dispelled.[33] In fact, the ICAS regularly reviews the CAS and its structure; for example, the summer Olympics of 1996 held in Atlanta saw the 'ad hoc' appointment of arbitrators under the CAS charter to deal with disputes as they arose at the games. This 'on the spot' arbitration provision enabled the CAS to pronounce final and enforceable decisions within 24 hours of the lodging of a request for arbitration. The stature, quality and independence of these arbitrators whose decisions were often given under extreme pressures, was widely welcomed both at the Atlanta games[34] and subsequently at the Nagano Winter Olympics in 1998.[35]

CAS: a lesson learnt?

The central question posed by this paper was whether the Court of Arbitration for Sport (CAS) satisfied the traditional arbitral criteria of competent jurisdiction and regard for due process? It seems to do so. The jurisdictional link of the CAS through the Olympic Charter, onto the international federations and ultimately binding the individual athlete is strong, authoritative and transparent. Many international sports administrative bodies are now inspired to use the CAS both as a model for their own arbitral procedures and as an appellate body. The independence and impartiality of the CAS adjudicators has been greatly strengthened to the point of striking a welcome balance between the concerns of sports participants and the logic of the law. Finally, the growing respect for the CAS among athletes has been reflected in the ever-increasing number of athletes availing of its services.

Overall then, the CAS *can* be taken as a 'blueprint' for the proper use of arbitration in sport. It has many of the advantages inherent in arbitration, notably; neutrality, efficiency and the input of experts. However, the writer argues that these due process protections may still not be enough to prevent costly and prolonged sports litigation. Case law in the United States in particular, has demonstrated that many athletes may be motivated by more than a sense of injustice in seeking a resolution of their dispute. International sport must be aware that professional athletes will have the necessary funding, motivation and depth of legal resources to sustain expensive litigation. In short, we are talking about money.

If the professional athlete, whose livelihood is provided by the sport in question, is of the opinion that the sports authorities in question have in some way wronged them, they may also seek aggravated monetary compensation for their loss. It is submitted that this lack of a compensatory element in international, as opposed to American, sports arbitration procedures is the principal deficiency of these mechanisms. In the immortal words of one athlete after a positive arbitral decision *"That's all well and good but where can I cash that?"*

This aspect of the 'ADR in sport' debate will however have to be addressed at another time.

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[1] Statement by the former United States Supreme Court Chief Justice, Burger C.J., in his mid-year address to the American Bar Association in 1984, 52 USLW 2, 471.

[2] Reynolds v IAAF, 23 F.3d 110 (6th Cir. 1994), rev'g No. C-2-92-452 slip. Op. (S.D. Ohio Dec. 3, 1992), as modified, No. C-2-92-452 slip. Op (S.D. Ohio July, 13, 1993), cert. denied, 115 S. Ct. 423 (1994). See also prior proceedings in 1992 U.S. Dist. LEXIS 8625, at *1, stay of preliminary injunction granted, 968 F. 2d 1216 (6th Cir. 1992), application for emergency stay granted, 112 S. Ct. 2512 (1992); No. C-2-91-003, 1991 WL 179760 (S.D. Ohio, 19 Mar, 1991), vacated and remanded, sub nom, Reynolds v TAC 935 F. 2d 270 (6th Cir. 1991).

[3] See generally, Nafziger, J "International Sports Law as a process for resolving disputes" (45) ICLQ 130 and Nelson, V "Butch Reynolds and The American Judicial System v IAAF - A Comment on the Need for Judicial Restraint" 3 Seton Hall J. Sport L (1) 173 (1993).

[4] See generally Bingham, L "Arbitration of Disputes for the Olympic Games; a Procedure that Works." 7 Arb. J. 33 (Dec.

1992), Blackshaw, I "Resolving Sports Disputes by ADR" 142 NLJ 1753 (1992), Polvino, A "Arbitration as a Preventative Medicine for Olympic Ailments: The IOC's Court of Arbitration for Sport and the Future of the Settlement of International Sporting Disputes" 8 Emory Int'l L. Rev. 347 (1994) and Samule, A and Gearhart, R "Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport" 6 (4) J. Int. Arb. 39, 52 (1989). All of the above are quite positive on the CAS, for a more negative view see Iglesby, R "Court Sponsored Mediation: The Case Against Mandatory Participation" 56 MLR 441 (1993).

[5] See Vedder, C "The Development of Arbitration in Sports Law" Supplement to the Official Proceedings of the International Athletic Foundation Symposium on Sport and the Law, Monte Carlo, Jan 31 to Feb 2, 1991 at p33.

[6] CAS statute, Article 1. The Olympic Charter now provides that disputes connected with the Olympic Games should now be referred exclusively to the CAS.

[7] This is usually the case, see rules R45 and R58 of the Code of Sports-Related Arbitration, version 22/11/1994, CAS, December 1995.

[8] It follows that Swiss law will be instrumental in much litigation not only of national but also of the international sports community, for an examination of this issue see Baddeley, M "The Protection of the Personal Rights of Athletes: Concept, Application and Function of Such a Protection in Swiss Civil Law" 6 (1) Sport and the Law J. 19 (1998).

[9] See Fewell, M ed. *Sports Law: A Practical Guide* Sydney: The Law Book Company Ltd., 1995 at p246, n20 where he suggests grounds for appeal, notably where the arbitration panel has not been properly formed, if the arbitration panel goes beyond its stated remit and if there is strong proof of bias on the part of the panels arbitrators.

[10] Furthermore, the UN (New York) convention on the recognition and execution of foreign arbitration awards, 30 UNTS 3 states that if a party refuses to abide by the award then proceedings can be taken to enforce the award in the domestic legal system. European States recognise the status of the CAS under the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (1986) Eur. Y.B. (Council of Europe) 34. On the enforceability of CAS and other arbitral awards and exceptions to the UN Convention see Samule, A and Gearhart, R "Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport" 6 (4) J. Int. Arb. 39, 52 (1989).

[11] It remains the case that the jurisdiction of the CAS is not obligatory even on National Olympic Committees and their constituent members, see Vedder, supra at p38.

[12] Thus, disputes over technical matters such as applying the rules during a game will not be heard by the CAS as it is felt that such technical matters should be decided exclusively and conclusively by the organisation itself. In general, non-technical disputes translate into disputes such as selection and eligibility disputes and matters concerning violations of the Olympic Charter. On the original scope of the CAS see the Australian and New Zealand Sports Law Association's Newsletter and Doyle, B "The Court of Arbitration for Sport" 1 ANZSLA (3) 8 (Sept, 1991).

[13] In the initial five-year period the CAS heard over 109 cases in total, see Reeb, M *CAS: Digest of Cases, 1986-1998* Berne: Staempfli, 1998.

[14] See particularly Fewell, M ed. *Sports Law: A Practical Guide* Sydney: The Law Book Company Ltd., 1995 at p244-5. On p246 Fewell also gives a concise summary of the procedures for initiating arbitration to the CAS.

[15] Fewell, ibid, gives an example of such a clause *"Any dispute arising from or related to this contract will be resolved in accordance with the Code of sports-related arbitration of the Court of Arbitration for Sport in Lausanne, Switzerland. No proceedings may be taken in any court other than in the Court of Arbitration for Sport, and its decision shall be final and binding on the parties."*

[16] Since the Atlanta summer Olympics of 1996, it has also been a rule of entry that every athlete must expressly agree that all disputes should be submitted exclusively to a specially appointed 'ad-hoc' committee of the CAS, appointed specially as a 'rapid-response' panel for the duration of the games. The constituent elements of this ad-hoc arm of the CAS as used at Atlanta and the Nagano Winter Olympics of 1998 are discussed infra.

[17] See Fewell, M ed. *Sports Law: A Practical Guide* Sydney: The Law Book Company Ltd., 1995 at p245.

[18] See ibid, where he provides an example of such a clause *"A decision made by the disciplinary tribunal of [sports organisation name] can only be appealed in the Court of Arbitration for Sport (CAS). All appeal avenues within [sports organisation name] must be exhausted before any final and exclusive appeal can be made to the CAS. An appeal to the CAS must be made within [number] days of the party being informed of the decision of the tribunal."*

[19] The grounds for appeal are quite limited as usually based on Swiss public law, see Baddeley, M "The Protection of the Personal Rights of Athletes: Concept, Application and Function of Such a Protection in Swiss Civil Law" 6 (1) Sport and the Law J. 19 (1998).

[20] In the period 1984 - Nov. 1994, 130 cases were referred to the CAS. From Nov. 1994 to June 1997, 40 cases were referred to the CAS, of these, 6 were 'Ordinary' procedures, 29 were 'Appeal' procedures and 5 were what are called 'advisory opinions'. Advisory opinions were introduced by the Code of Sports-related Arbitration introduced into the CAS's remit on November 22, 1994. These advisory opinions are not binding in any way, however, they are a useful method for individual sports organisations to obtain guidance and clarification on legal issues that confront the organisation. A detailed review of the case law can be found in Reeb, M *CAS: Digest of Cases, 1986-1998* Berne: Staempfli, 1998.

[21] I Civil Court, Swiss Fed. Trib. (15 Mar. 1993) The decision is summarised in *Olympic Review*, July-Aug. 1993 at p305.

[22] In this case a doping test at an international competition revealed the presence of a banned substance in the urine of a horse. The International Equestrian Federation (FEI) disqualified both the horse and its rider, suspending the rider for three months from international competition. The rider appealed the decision to the CAS which the FEI had selected to resolve eligibility and disciplinary disputes of this kind. The CAS upheld the disqualification but reduced the suspension and imposed a fine against the rider. When the rider appealed this decision to the Swiss Federal Tribunal, it ruled that the CAS award was binding. As Nafziger, J "International Sports Law as a process for resolving disputes" (45) ICLQ 130, 142 states the Swiss Equestrian case, as it was dubbed, *"....was a model of dispute resolution."*

[23] Rochat, J "The Court of Arbitration for Sport" Supplement to the Official Proceedings of the International Athletic Foundation Symposium on Sport and the Law, Monte Carlo, Jan 31 to Feb 2, 1991 at p45.

[24] See Vedder, C "The Development of Arbitration in Sports Law" Supplement to the Official Proceedings of the International Athletic Foundation Symposium on Sport and the Law, Monte Carlo, Jan 31 to Feb 2, 1991 at p39. Furthermore, in 1993 a challenge to a decision of the CAS was successfully mounted in the Spanish courts on the grounds of the alleged lack of independence from the IOC itself, see Griffith-Jones, D *Law and the Business of Sport* London: Butterworths, 1997 at p70.

[25] The goals and operation of the ICAS were presented to and approved by the 102nd IOC Session in February 1994 in Lillehammer, Norway. The creation of the ICAS was established on June 22, 1994 in Paris with the signing of an agreement between the IOC, Summer Olympic International Federations (ASOIF), Winter Federations (AWIF) and the Association of National Olympic Committees (ANOC).

[26] See Vedder, C "The Development of Arbitration in Sports Law" Supplement to the Official Proceedings of the International Athletic Foundation Symposium on Sport and the Law, Monte Carlo, Jan 31 to Feb 2, 1991 at p40. Vedder also suggests, ibid, that *"This jurisdiction of two instances should be made mandatory for the athletes by contract, by subjugation, by statute or by entry formulas for competitions."*

[27] To be fair, an increasing number of International Federations have developed their own systems of arbitration and have incorporated the jurisdiction of the CAS into their statutes see in particular the development of the IAAF's Arbitration Panel as discussed by Vedder, C "The Development of Arbitration in Sports Law" Supplement to the Official Proceedings of the International Athletic Foundation Symposium on Sport and the Law, Monte Carlo, Jan 31 to Feb 2, 1991 at p34-6.

[28] A fee of 500 Swiss francs has to be paid before the CAS will respond to any request for arbitration. In addition, the arbitrators must be paid a fee in accordance with a set scale, which is generally 200 Swiss francs per hour. The arbitrators' travel, accommodation and meals must also be paid for. There is also an administration charge which is normally based on the amount of the claim involved in the dispute. It must be noted that at the end of a hearing the arbitration panel can decide which party should pay costs or whether they should be shared in some way, see Fewell, M ed. *Sports Law: A Practical Guide* Sydney: The Law Book Company Ltd., 1995 at p247.

[29] Three of whom sat on the panel, see the Australian and New Zealand Sports Law Association's Newsletter and Doyle, B "The Court of Arbitration for Sport" 1 ANZSLA (3) 8 (Sept, 1991).

[30] The ICAS itself is composed of twenty top-level jurists appointed as follows; 4 members are designated by the International Federations, 4 by the ANOC, 4 by the IOC, 4 by the twelve ICAS members listed above with a view to safeguarding the interests of the athletes and 4 members are appointed by the 16 ICAS members listed above, the personalities chosen being independent of the bodies designating the other ICAS members. The ICAS members are appointed for a renewable term of four years. They cannot appear on the list of CAS arbitrators nor act as counsel to any of the parties to proceedings before the CAS.

[31] While ADR is, in general, seen to have many advantages over traditional litigation (e.g. it is quicker, less informal and less expensive), arguably, its greatest advantage is the fact that the chosen arbitrators can have this intimate knowledge both of the law and the subject matter in question.

[32] These personalities (among them, former national Supreme Court justices, retired members of the International Court of Justice and past Olympians) appear on the list of arbitrators for a renewable period of four years. They must be also be independent of the parties involved and have the availability needed to accomplish their task, see http://www.olympic.org/family/ioc/arbitration.

[33] though some doubts linger, see in particular Griffith-Jones, D *"Law and the Business of Sport"* London: Butterworths, 1997 at p70 where he remarks *"....but suspicion is likely always to remain where an arbitral body is itself established by a governing body, especially where links with the governing body remain in place, whether through procedures for making appointments to the arbitral body, through provisions for its funding or otherwise."*

[34] See Beloff, M "The Court of Arbitration for Sport at the Olympics" 4 Sport and the Law J (3) 5 (1996). It must be noted that the three adjudications of the panel (re an Irish swimmer's eligibility, the expulsion of a Cape Verde athlete from the Olympic village and the admitted use of performance enhancing drugs by Russian athletes) all favoured the athletes in question. The panel was also confronted with a fourth case concerning the disqualification of a French boxer for a low blow but the relevant panel described the dispute as 'purement technique' and, in effect, decided that the case was non-justiciable by the CAS.

[35] At Nagona this ad hoc division of the CAS heard the case of Canadian snowboarder, Ross Rebagliati, who was stripped of his gold medal by the IOC executive, after testing positive for marijuana. To the embarrassment of the IOC, the CAS ad hoc committee held that as 'social' drugs such as marijuana, crack, heroine and ecstasy were not on the IOC's officially banned list of performance enhancing drugs, Subsequently, in April, 1998 the IOC moved to ban such 'social' drugs from the Sydney Olympics.