



# ALTERNATIVE DISPUTE RESOLUTION IN SPORT

CANOC SPORTS LAW-SEPTEMBER 18-19, 2019





# WHAT HAPPENS WHEN DISPUTES ARISE?





LITIGATION? MEDIATION? ARBITRATION?



## LEADING SPORTS ADR BODIES

1. Sports Dispute Resolution Centre of Canada
2. Sport Resolutions UK
3. New Zealand Sports Tribunal
4. Just Sport Ireland
5. The Court of Arbitration for Sport

# CHOOSING ARBITRATORS TO CAS

- Potential arbitrators' names and qualifications are brought to the attention of the International Council for Arbitration in Sport (ICAS)
- These names are brought forward by:
  - I. The International Olympic Committee
  - II. International Federations
  - III. National Olympic Committees
  - IV. Various Athlete Commissions (IOC, IFs and NOCs)

## CHOOSING MEDIATORS

- ICAS appoints persons to the list of CAS mediators
  - Mediators must have:
    - (a) experience in mediation and
    - (b) a good knowledge of sport in general
- [CAS Code, Statute S 14]**

## THE COURT'S APPROACH

- English approach: **“justice can often be done in domestic tribunals better by a good layman than by a bad lawyer”** [Lord Denning MR in *Enderby Town Football Club v. Football Association* (1971)]
- US approach: **“...intervention is appropriate only in the most extraordinary circumstances...”** [*Harding v. United States Figure Skating Association* (1994)]

## EXTRA-JUDICIAL SETTLEMENT IS PREFERRED

- Canadian approach: “...I would be reluctant to substitute my opinion for those who know the sport...” [*Mc Caig v. Canadian Yachting Association & Canadian Olympic Association* (1996)]
- Regional approach: “...what this case does demonstrate is that there is a dire need to quickly formalize alternative dispute resolution mechanisms internally within the Respondent’s organisation which can deal with these matters quickly, effectively and finally. ” [Kokaram J. In *TTCB v. WICB* (2011)]



## CASE STUDY: MEDIATION IN THE USOC FRAMEWORK-WALLACE

- “Within the Olympic Movement, disputes frequently arise over issues such as team selection, the rights of athletes to participate in particular events, coaching, governance of Olympic sports, compliance with and interpretation of various rules, and access to often-limited resources”

## MEDIATION IN THE USOC FRAMEWORK

- Two types of complaints featured:
- 1. Complaints against a National Governing Body or Paralympic Sports Organization (**Article VIII**, USOC Bylaws)
- 2. Athletes' Rights (**Art IX**, USOC Bylaws)

## COMPLAINTS AGAINST A NGB-ART.VIII

- Prior to filing an Art VIII grievance with the USOC, a complainant must first exhaust all remedies within the NGB for correcting alleged discrepancies.
- Once a formal complaint is filed, the USOC appoints a hearing panel to make a determination as to the alleged wrongdoing.
- At the request of a party, the hearing panel may adjourn the proceeding to allow for mediation

## COMPLAINTS AGAINST A NGB-ART.VIII

- There is no right to appeal within the internal structure of the USOC; However, any party aggrieved by the panel's decision may file a demand for ***arbitration before the American Arbitration Association (AAA)***.
- The decision of the AAA is final and binding

## COMPLAINTS-ATHLETES' RIGHTS

- Art IX complaints may be filed against a NGB for allegedly interfering with an athlete's right or opportunity to participate in the Olympic Games, Paralympic Games, Pan American Games, a World Championship competition or other competition that is protected under the Olympic bylaws.
- These rights extend to coaches, trainers, managers, administrators/other officials

## NGB PROCESS

- Many NGBs use only an administrative hearing process to resolve disputes
- Note: U.S Rowing offers internal mediation through the NGB executive director, prior to a hearing.
- Athletes complaining under **Art IX** must file their complaint with the CEO of the USOC.
- The CEO may attempt mediation or any other method of resolution. If his resolution is not satisfactory, the athlete may submit the matter to binding arbitration with the AAA.

# APPLICABLE LEGISLATION

- The *1998 Ted Stevens Olympic and Amateur Sports Act (which amended the 1978 Amateur Sports Act) and the USOC Bylaws name the AAA as the entity that hears and renders final and binding decisions regarding 2 main types of disputes:*
  - I. Recognition of a NGB (Art XIII)
  - II. Selection and Athlete eligibility (Art IX)
- The 1998 Ted Stevens Act stipulates that the USOC must hire an **Athlete Ombudsman to provide free advice to athletes about rights to compete under Olympic rules.**(Ombudsman also has the authority to informally mediate disputes)

## IN FAVOUR OF MEDIATION

- “...only the collaborative choice of mediation offers significant benefits in the Olympic setting”
- “...disputes require swift resolution because most athletes have a limited window of time and opportunity with respect to their training, which is aimed at peak performance for various events, including the four-year Olympic cycle and its qualifying events.”



## IN FAVOUR OF MEDIATION

- i. Mediation expedites resolution and saves money.
- ii. Conflict can mar reputations
- iii. Mediation can repair and foster critical relationships among athletes, coaches and governing bodies

## IN FAVOUR OF MEDIATION

- “...Through presence, tone, and style, an impartial mediator is able to change the nature of interaction from adversarial to collaborative and open to resolution. Participants experience an atmosphere that is respectful of differences, and one in which each party has a voice. Such an atmosphere encourages communication, allows people the space necessary to share concerns, and transforms destructive fighting into collaborative resolution.”

## SPECIFIC PROPOSALS TO THE USOC

- I. That the USOC require each NGB to incorporate formal mediation within its own procedures
- II. That the USOC incorporate formal mediation within its own procedures for resolving **Article IX** complaints and
- III. That the USOC significantly expand its use of mediation in handling **Article VIII** grievances.

## SPECIFIC PROPOSALS TO THE USOC

- “...Mediation within the USOC should be administered and managed through the Athlete Ombudsman’s Office, allowing it to exist outside the normal hierarchy of the USOC thereby enhancing participants’ perception of confidentiality and impartiality.”

## CONCLUSION

- “Peace, harmony and respectful dispute resolution are at the heart of the mission of the Olympic Movement. Mediation promotes dignity and respect for people’s interests, addresses the root cause of conflict, and allows for resolutions that satisfy the interests of all parties. It is efficient, strengthens relationships of trust and respect, minimizes suffering, and controls unnecessary expenditure of resources. Its values are in keeping with the mission of the USOC and the goals of Olympism.”

# CASE STUDY: GYMNASTICS



## PRELIMINARY RULING

- Arbitration or no arbitration?

# CASE STUDY: FOOTBALL





## SUMMARY

- ❑ Breach of Oral Contract
- ❑ Agreement to arbitrate
- ❑ SDRP decision leaked to the media
- ❑ TTFF's desire to have arbitral award set aside
- ❑ High Court rules in favour of 2006 players
- ❑ 8-year litigation before “settlement” by GORTT



# LESSONS TO LEARN FROM BOTH CASES?



# THANK YOU!

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