
CHALLENGING SPORTING ORGANISATIONS

CANOC SPORTS LAW CONFERENCE 2019

ST. VINCENT & THE GRENADINES



OVERVIEW

- National Courts generally take a *laissez faire* approach when it comes to intervening in the decision-making of sporting bodies
 - These bodies are incorporated (separate legal personality) or unincorporated private entities
- Sporting organisations are not impervious
- Adverse decisions of sporting bodies and their tribunals may be challenged
- Challenge in two contexts:
 - Litigation; or
 - Alternative Dispute Resolution, in particular, arbitration
 - CAS preferred ADR tribunal
 - Article 61 Olympic Charter
 - *Netherlands Antilles Olympic Committee (NAOC) v. IAAF & United States Olympic Committee (USOC)*, CAS 2008/A/1641, award of March 6, 2009
 - Articles 69 IAAF Constitution
 - Article 33 CASCO
 - Article 17 CANOC

TRADITIONAL “JUDICIAL REVIEW” NOT AVAILABLE

- The decisions of public bodies may be challenged by way of an action for judicial review
 - Challenge is to the *process* by which the decision was made
- Sporting bodies, because of their private nature, cannot be challenged by way of judicial review:
 - **R v Disciplinary Committee of the Jockey Club (ex parte Aga Khan) [1993] 1 WLR 909**
 - source of powers not governmental, but contractual, irrespective of public nature of functions
 - **Barbados Cricket Association et al v. Pierce BB 1999 CA 8**
 - **Ramdial v. Trinidad and Tobago Racing Authority TT 1985 HC 64**
 - *“I fail to see how the decision of the disciplinary committee of the Racing Authority could be subjected to judicial review involving the possibility of issue of an order of certiorari to quash its decision having regard to the private low nature of that committee..”*

PRIVATE LAW REVIEW AVAILABLE

- Largely inconsequential that judicial review is not available
- Court has developed its private law jurisdiction, using the same principles/grounds as traditional judicial review
- A private law challenge can be achieved by:
 - *breach of contract; or*
 - *supervisory jurisdiction of the court.*

PRIVATE LAW REVIEW AVAILABLE

- **Breach of Contract:**

- Requires existence of a contract:

- Express contract; or
- Implied contract

- **Modahl v British Athletics Federation Ltd [2001] EWCA Civ 1447**

- Three bases upon which contract may be inferred:

- **The 'participation basis'** – athletes' participation in events organised or sanctioned by the sporting body.
- **The 'submission basis'** – athletes submit themselves to rules/procedures and make use of the appeals procedures
- **The 'club basis'** – contract inferred through a chain of mutually interdependent contracts:
 - *A contract between the athlete and their club*, which will usually contain a term that requires the athlete to submit to the rules and disciplinary procedures of the relevant NGB and/or IF;
 - *A contract between the club and the NGB*, which will require the club and all those associated with it to abide by the NGB's rules and disciplinary procedures and those of the relevant IF;
 - *A contract between the NGB and IF*, which will also contain a term requiring the NGB to enforce the rules and disciplinary procedures operated by the ISF.

PRIVATE LAW REVIEW AVAILABLE

■ **Breach of Contract:**

• **Grounds for challenge:**

- Sporting body based its decision on errors of fact
- Sporting body took into account irrelevant considerations
- Sporting body has breached a legitimate expectation
 - **Watt v Australian Cycling Federation (ACF) and Tyler-Sharman CAS 96/153, award of 22 July 1996**
- Sporting body did not afford the person subject to its jurisdiction a proper opportunity to be heard:
 - **Board of Management of Alexandra School v The Barbados Cricket Association BB 2004 HC 5**
 - Opportunity to be heard must be given before sanctions are imposed

■ Sporting body reached its decision under the influence of bias

- **Thema Williams v Trinidad and Tobago Gymnastics Federation CV2016- 02608**

■ Sporting body acted unreasonably, arbitrarily or capriciously

- **Nagle v Feilden [1966] 2 QB 633**
 - capricious for Jockey Club to repeatedly refuse N a trainer's license on the sole ground that she was a woman.

■ Declaration, damages and injunction are available remedies

PRIVATE LAW REVIEW AVAILABLE

■ Supervisory Jurisdiction:

- There is no need to establish the existence of a contractual relationship
- Court can grant *declarations and injunctions (but not damages)*
- Bases for jurisdiction:
 - **(a) the NGB exercised a significant degree of control over a significant part of a sport; and**
 - **(b) its decision had a significant impact on the Athlete**, particularly where it affects his ability to earn a living from the sport.
- Challenges include claims that the NGBs, or its disciplinary bodies, have acted:
 - *outside the scope of their powers as defined in their own rules or regulations;*
 - *contrary to national law;*
 - *contrary to the rules of natural justice;*
 - *contrary to the rule against bias;*
 - *unreasonably, irrationally, arbitrarily, capriciously or disproportionately or*
 - *on the basis of irrelevant considerations or*
 - *....where it has failed to take account of relevant considerations*
 - Such jurisdiction is supervisory only, not appellate in function; the function of the court is not to take the primary decision on the merits of the case, but to ensure that the primary decision-maker had operated within lawful limits.

THANK YOU!

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QUESTIONS

