

CANOC Sports Law

SEPTEMBER 18-19, 2019

CONSTITUTIONAL FRAMEWORKS

- ▶ The Olympic Charter (OC) is the codification of the Fundamental Principles of Olympism, Rules and Bye-laws adopted by the International Olympic Committee (IOC). It governs the organisation, action and operation of the Olympic Movement and sets forth the conditions for the celebration of the Olympic Games. In essence, the Olympic Charter serves three main purposes:

OLYMPIC CHARTER PURPOSES

- ▶ 1. The Olympic Charter, as a basic instrument of a constitutional nature, sets forth and recalls the Fundamental Principles and essential values of Olympism.
- ▶ 2. The Olympic Charter also serves as statutes for the International Olympic Committee.
- ▶ 3. The Olympic Charter defines the main reciprocal rights and obligations of the three main constituents of the Olympic Movement, namely...

The 3 main constituents of the Olympic Movement

- ▶ 1. the International Olympic Committee,
- ▶ 2. the International Federations and
- ▶ 3. the National Olympic Committees, as well as the Organising Committees for the Olympic Games, all of which are required to comply with the Olympic Charter.

A quick word on the International Federations

“The statutes, practice and activities of the IFs within the Olympic Movement must be in conformity with the Olympic Charter, including the adoption and implementation of the World Anti-Doping Code as well as the Olympic Movement Code on the Prevention of Manipulation of Competitions. Subject to the foregoing, each IF *maintains its independence and autonomy in the governance of its sport.*” [Rule 25, Olympic Charter]

Good Governance Principles



“All members of the Olympic Movement should adopt, as their minimum standard, the Basic Universal Principles of Good Governance of the Olympic Movement, as proposed by the IOC” (Extract of the Olympic and Sport Movement Congress Recommendation 41)

The 7 GOOD GOVERNANCE PRINCIPLES



Vision, mission and strategy



Structures, regulations and democratic process



Highest level of competence, integrity and ethical standards



Accountability, transparency and control



Solidarity and development



Athletes' involvement, participation and care



Harmonious relations with governments while preserving autonomy

DISCUSSION QUESTION



In view of the 7 Good Governance principles identified by the IOC, what have been the biggest challenges that your NOC/CGA and/or its affiliates have faced when it comes to the question of governance?

Principle#7-The Question of Autonomy

- Harmonious relations with Governments while preserving autonomy:
 - The right balance between governments, the Olympic Movement and sporting organisations should be ensured
 - Governments, constituents of the Olympic Movement, other sports organisations and stakeholders have a complementary mission and should work together towards the same goals
 - Cooperation, coordination and consultation are the best way for sporting organisations to preserve their autonomy.

Preserving Autonomy

“Members of the IOC will not accept from governments, organisations, or other parties, any mandate or instructions liable to interfere with the freedom of their action and vote.” [*Rule 16.1.5, Olympic Charter, 2019*]

Preserving Autonomy

“Apart from the measures and sanctions provided in the case of infringement of the Olympic Charter, the IOC Executive Board may take any appropriate decisions for the protection of the Olympic Movement in the country of an NOC, including suspension of or withdrawal of recognition from such NOC if the constitution, law or other regulations in force in the country concerned, or any act by any governmental or other body causes the activity of the NOC or the making or expression of its will to be hampered. The IOC Executive Board shall offer such NOC an opportunity to be heard before any such decision is taken.”

[Rule 27.9, Olympic Charter]

Crossing the Autonomy Boundary lines: Kuwait Olympic Committee

“The Olympic Movement in Kuwait has faced a number of issues to preserve its autonomy, in particular due to recently amended sports legislation in Kuwait. The IOC, in close collaboration with ASOIF, ANOC, the OCA and the International Federations concerned, has done everything possible to resolve the situation amicably and in the interest of the Olympic Movement in Kuwait...”

Autonomy: Kuwait Olympic Committee

“Upon the initiative of the IOC, a meeting took place on 12 October 2015 in Lausanne with representatives of the IOC (including ASOIF, ANOC and the OCA), the Government of Kuwait and the Kuwait Olympic Committee. Following this meeting, a deadline of 27 October 2015 was set to resolve the issues at hand or, at least, freeze the application of the conflictive provisions of the sports legislation until a reasonable and mutually acceptable solution could be found...”

Autonomy: Kuwait Olympic Committee

“Unfortunately, the deadline expired today with no action having been taken by the Government of Kuwait...the case has been reported to the IOC EB, which took the following decision on the basis of Rules 27.9 and 59.1.4 (a) of the Olympic Charter:

- ▶ 1. To suspend the KOC in order to protect the Olympic Movement in Kuwait from undue government interference...” [October 27, 2015, www.Olympic.org]
- ✓ The suspension was lifted on July 5, 2019.

Concluding Perspectives

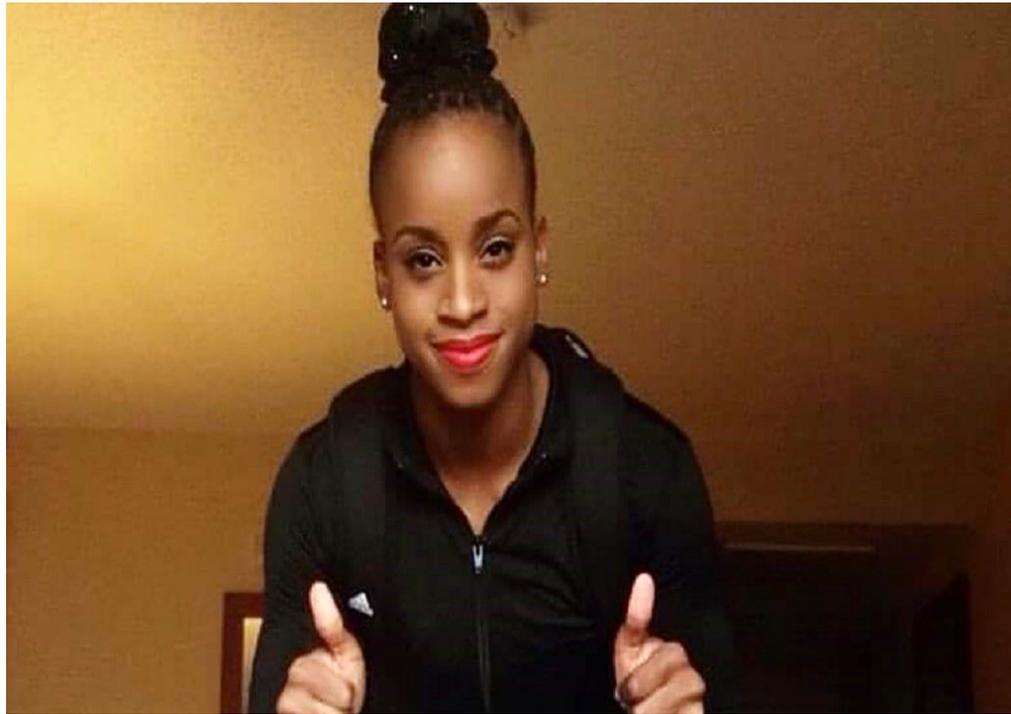
- ▶ Creating a culture of good governance across Caribbean sport is difficult but possible
- ▶ CANOC is well-placed to lead the advocacy for the implementation of good governance principles
- ▶ What happens on the field of play is directly connected to what happens off of it: good governance matters.



Selection Policies

Case Study: *Thema Williams v Trinidad and Tobago Gymnastics Federation (Rio 2016)*

Who goes to Rio in 2016?



The selection process matters

“The 1st Defendant’s [TTGF’s] general responsibility under the **selection process** was to ensure that its Council Members complied with the provisions thereof in accordance with established principles of contractual construction and **to adhere to the selection criteria** imposed therein. Before this Court, the 1st Defendant accepted that in the discharge of its obligations **it had a duty of fidelity, fairness and good faith in its course of dealings with the Claimant under the selection process.**”

THEMA WILLIAMS: The Legal Issues Arising

1. Whether the 1st Defendant breached its contractual obligations with the Claimant under the selection process and athlete's agreement, **to treat with her fairly, in good faith and with a duty of fidelity.**
2. Whether the 1st Defendant was in breach of its duty towards the Claimant by taking a decision to replace her as the selected athlete **without giving her, her coach or her head of delegation an opportunity to be heard or to make representations.**

Thema Williams: The Legal Issues Arising

3. Whether the 2nd to 5th Defendants **individually owed a fiduciary duty to the Claimant** which was breached.

4. Whether the 2nd to 5th Defendants **are individually liable for procuring a breach of the athlete's agreement** and whether they acted with a common design to withdraw the Claimant and replace her with the alternate athlete.

5. Whether the 2nd to 5th Defendants engaged in an **unlawful means conspiracy** to replace the Claimant which should render them personally liable to her for damages.

Thema Williams: Key Findings

“Having found that the Claimant would have earned increased promotional income absent the 1st Defendant’s decision, the Court considered the endorsements she received immediately preceding and subsequent to the 1st Defendant’s actions and took into account the Claimant’s skills, intangible attributes, status as an elite gymnast and the historical impact, if she had gone to the Olympic Stage and found that these factors would have positively impacted upon her potential to earn promotional income in the future.” [Paragraph 175]

Key Findings: Damages

“Given that she is now not an Olympian, the Court formed the view that her promotional earning potential reduced by at least 60%. Having noted that she earned approximately \$6,500.00 between May 2016 and May 2017, the Court formed the view that if she was an Olympian or had performed at the OTE, her endorsement income may have been at least \$20,000.00 annually and she would have earned promotional income at least up to the next Olympic Games in 2020. Consequently, the Court hereby awards to the Claimant the sum of \$50,000.00 as damages on account of the loss of income namely promotional income.” [Para 176-177]

Thema Williams: Key Findings

189. It is evident that the Claimant suffered mental distress, hurt and humiliation when she was replaced and her sense of disappointment would have been immeasurable. The joy of Olympic representation which should have resonated within the hearts of every citizen, was curtailed as many citizens were shocked, upset and disappointed with the Claimant's sudden removal.

Thema Williams: Key Findings

190. The important functions which the Council Members discharged on behalf of the TTGF cannot be minimalized. Their premature, unfair and Wednesbury unreasonable decision to substitute the Claimant at the eve of the OTE materially affected the Claimant's welfare as an athlete and will forever be etched in the national consciousness..."

Thema Williams: Key Findings

“The decision made on April 15, 2016 eviscerated the Claimant’s lifelong commitment towards the achievement of Olympic status. Before effecting the decision to substitute her the 2nd to 5th Defendants disregarded the impact that a substitution decision would have upon the Claimant and her career. They acted in a manner which was characterized by a degree of blameworthiness as their biases affected their judgment and they failed to factor into their deliberations the vulnerability of the Claimant or the potential harm that a substitution decision could have occasioned.” [Para 192]

- The court awarded a further \$150,000 TT (exemplary damages)

Non-selection for bringing the sport/player into disrepute

➤ D'Arcy v. Australia
Olympic
Committee

(CAS 2008/A/1539)

➤ Jongewaard v
Australia Olympic
Committee

(CAS 2008/A/1605)

Concluding Perspectives

“Positions of leadership and responsibility mandate fairness, fearlessness, forthright thinking, fortitude and freedom from bias. While the hands of time cannot be rewound, there must be a renewed commitment by all who are entrusted with decision-making power to conscientiously discharge their obligations in an objective manner which recognises and rewards competence.”

[*Seepersad J., Williams v TTGF, para 190*]

THANK YOU!

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