THE DISCIPLINARY PROCESS:
PRINCIPLES OF NATURAL JUSTICE

CANOC SPORTS LAW CONFERENCE 2019
ST. VINCENT & THE GRENADINES
All sporting bodies have certain standards by which their members must adhere. Standards relate to:

- Fraud/corruption
- Conflicts of interests (undeclared personal and/or material involvement)
- Cheating i.e. competition manipulation
- Doping
- Betting
- Financial impropriety
- Procedural impropriety i.e. host city candidates, broadcasters, sponsors
- Electoral impropriety
- Breach of confidence
- Discrimination, harassment and abuse
STANDARD OF CONDUCT

- Standards may be found in:
  - Olympic Charter
  - Olympic Movement Code
  - World Anti-Doping Code
  - Code on Prevention of Manipulation of Competitions
  - Constitutions/Statutes: IAAF, PASO, CACSO, CANOC, NOCs, NGB
  - International law, national law/regulations
  - Athletes’ contracts
STANDARD OF CONDUCT

- **Standards are binding on:**
  - Honorary President, honorary members and honour members
  - International Federations (IFs)
  - Associations of International Federations (Ifs)
  - National Olympic Committees (NOCs)
  - Applicant/candidate cities
  - Host cities
  - Organising Committees of Games
  - Other recognised Associations and Organisations
  - Individual competitors and teams
  - Officials, managers and other members of any delegation
  - Referees
  - Members of jury
SANCTIONS RESULTING FROM BREACH

- Depending on facts/circumstances/gravity of breach:
  - reprimand
  - suspension for a specific period
  - expulsion
  - withdrawal from a sport, a discipline, or event
  - withdrawal of provisional and/or full recognition
  - withdrawal of right to organise meetings, Games etc
  - forfeiture of rights, medals, diplomas
  - withdrawal of accreditation
  - ineligibility or exclusion from Games
  - reduction of ranking
DISCIPLINARY PROCESS

- Sport organisation must:
  - Receive in strictest confidence any information related to a violation of relevant instrument
  - Inform Athlete of alleged violation i.e. charges:
    - alleged acts and/or omissions
    - range of possible sanctions
  - Request that Athlete provide information relevant to the alleged violation:
    - all relevant facts and circumstances
    - accounts, telephone bills, bank statements, ISP records, computers, hard drives and other electronic information
  - Conduct independent investigation
    - Gather relevant/verifiable facts from various sources

- Conduct fair, timely and impartial hearing:
  - Allow Athlete to submit a defence
  - Afford Athlete right to legal representation
  - Comply with burden and standard of proof (generally proof of allegation on a balance of probabilities)
  - Respect confidentiality/anonymity
  - Assess relevant facts/law; make reasoned decision
  - Impose proportionate sanctions
    - Consider aggravating and mitigating circumstances of case
  - Notify parties promptly of decision
  - Provide information on right to appeal
  - Allow for fair, impartial and independent appeal process
Disciplinary proceedings may flow from failure to:

- abide by the Olympic Charter;
- train and keep in the best possible physical and mental condition;
- comply with reasonable directions (e.g. travel, security, uniform/clothing, accommodation) and Team Protocols;
- display high standards of personal conduct (appearance and behaviour);
- treat everyone with respect, courtesy and without harassment (i.e. physical, verbal and emotional abuse and/or harassment of others);
- adhere to the requirement not to engage in conduct which brings or could potentially bring yourself, the NOC, its Commercial Partners, sport or the Team into disrepute;
- adhere to the requirement not to make scandalous/vexatious use of social media (posts about alcohol, drug use, sexual conduct, violence, unsportsmanlike, derogatory, demeaning or threatening activities);
- adhere to the requirement not to bet or gamble or accept bribes or otherwise manipulate competition results;
- adhere to the requirement not to commit anti-doping rule violation;
- adhere to the requirements relating to media appearance, advertising, and use of intellectual property rights;
DISCIPLINARY BENCHMARKS: ATHLETES

- **CAS 2008/A/1539 Nicholas D’Arcy v AOC, award of May 27, 2008**
  - (off-field) D deslected after striking another swimmer in the face with his elbow
  - The test is whether the person has lowered his reputation (or the sport’s reputation re: **Zubkov**) in the eyes of ordinary members of the public to a sufficient extent as a result of his behaviour.

- **Zubkov v FINA CAS 2007/A/1291, award of December 21, 2007**
  - swimming coach in physical altercation with daughter
  - If the provision speaks to *bringing the sport into disrepute*, evidence of potential disrepute is not sufficient
    - it must be proved that the sport was actually brought into disrepute.
  - Requires evidence of sport, and not simply the athlete, being brought into disrepute

- **Jongewaard v Australian Olympic Committee (AOC) CAS 2008/A/1605, award of September 19, 2008**
  - (off-field) D deslected after drunk driving caused serious injuries to colleague
Natural justice requires:  
- SGB base its decisions on facts, not errors of facts/law  
- SGB not take into account irrelevant considerations  
- SGB not act unreasonably, capriciously or arbitrarily  
- SGB afford Athlete a proper opportunity to be heard:
  - he must be aware of the charges – timely notice of charge  
  - invited to attend the hearing  
  - allowed to present evidence in defence – examination, cross-examination, re-examination  
    - Call reasonable number of expert witnesses / other witnesses to give evidence  
  - allowed legal representation  

Jones v Welsh Rugby Union (unreported) High Court (Law Com D), February 27, 1997  
- Even if conduct involves plain/obvious indiscretion, e.g. fighting on field, natural justice requires affording Athlete proper opportunity to give evidence before sanctions could be imposed
DISCIPLINARY BENCHMARKS: ATHLETES

- **Natural justice requires:**
  - **SGB not reach its decision under the influence of bias**
    - *justice must not only be done, it must be seen to be done.*
      - Actual/Potential bias prohibited:
        - decision-maker demonstrates a predisposition against a party's case for reasons unconnected with its merits
          - **Objective test** - would a fair-minded person conclude on the facts that there was a real possibility that the decision-maker was biased?

- **Melnyk v Barbados Turf Club BB 2007 HC 22**
  - Bias for anti-doping prosecuting authority lawyers to be present when tribunal's deliberations were taking place
DISCIPLINARY BENCHMARKS: ATHLETES

- Natural justice requires:
  - **SGB not to impose disproportionate sanction**
    - Appropriate weight must be given to aggravating and mitigating circumstances
    - Reprimand appropriate in most cases, save in egregious cases
      - **Nekeisha Blake v Trinidad and Tobago Badminton Association** (TTBAACM, 26.1.2016)
        - insubordination is a disciplinary offence
        - However, disciplinary infraction does not necessarily/automatically justify unfair procedure nor disproportionate lifetime ban
  - **Bradley v Jockey Club [2005] EWCA Civ 1056**
    - decision-maker has a discretionary area of judgment or margin of discretion when imposing sanction
    - But decision must not fall outside the range of reasonable responses to the offending conduct
      - Sanction must do no more than necessary to achieve the legitimate aim it is meant to pursue
THANK YOU!

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