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# THE DISCIPLINARY PROCESS: PRINCIPLES OF NATURAL JUSTICE

CANOC SPORTS LAW CONFERENCE 2019

ST. VINCENT & THE GRENADINES



# STANDARD OF CONDUCT

- 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

# STANDARD OF CONDUCT:ATHLETES

- 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



# DISCIPLINARY BENCHMARKS: ATHLETES

- **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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# QUESTIONS

