



CAS and Vancouver 2010 by Tricia Smith



A few years ago I was visiting a beautiful country - lovely people, incredible history, lovely weather. This country had a different style of government to that with which I have grown up. I was there for a sport and law conference. I had asked to meet some of their women's teams and had spent the day with one of the coaches. The enthusiasm of the young women was the same enthusiasm I often see at my local club; the training and equipment were much the same. The head coach and I

spoke about the athletes, their school, their training and competitions, the facilities, all the universal aspects of sport.

I then asked about the process they have in place for their athletes who might want to appeal a selection decision or some other sport related issue. The coach said to me: 'Well we just tell them that they didn't make it this time and to go home and try again.' I said 'Yes I get that, but what if they don't agree and want to appeal?' 'Well,' he said, 'we just explain they won't be on the team.' 'Right' I said, thinking maybe we had a language issue. Then I remembered where I was. In the familiar and easy going back and forth of our conversation I had forgotten about my cultural lens. Obviously I was applying my own Canadian cultural heritage to a different country.

My own defining culture was the Canadian culture of the '70's, '80's, '90's. Each decade has built on the previous. Equality between men and women was paramount in the '70's. Accountability between administrators and athletes was paramount in the '80's. Systems were put in place, such that athletes were able to hold administrators accountable for their decisions. In my experience as an athlete in Canada, we generally had recourse, formal or other-

wise, from decisions with which we may not have agreed; and I generally observed a reasonable process for actions to be taken against activities that were contrary to the rules and spirit of sport and fairplay.

The International Olympic Committee (IOC) created the International Court of Arbitration for Sport (CAS) in 1984. Originally proposed by the IOC President Juan Antonio Samaranch to address disputes arising during the Olympic Games, (currently the Ad Hoc Court) the use of the CAS has expanded so that it is now used by all Olympic International Federations for all sports related disputes.

CAS has gained increasing credibility worldwide. Its authority and decisions have been confirmed by Appellant Courts. Not only do all Olympic sports recognize the jurisdiction of CAS and have reference in their statutes referring all disputes to CAS; other organizations such as FIFA, the governing body of international football, utilize CAS in their disputes.

Subsequent to an appeal of a CAS decision to the Swiss Federal Court regarding the question of the independence and impartiality of CAS, the IOC gave up any direct links to CAS in 1994 when the International Council of Arbitration for Sport (ICAS) was created to oversee the CAS. ICAS oversees an Ad Hoc Court division at each Olympic and Commonwealth Games. Not surprisingly,

decisions in cases before the Ad Hoc Court have to be made in a matter of hours. A dispute about participation or disqualification may have to be decided before the start of the Games or before the next day's round of competition.

I am a member of the Board of the ICAS and was appointed by its President to be the ICAS liaison between ICAS and the Vancouver Organizing Committee for the Vancouver Olympic and Paralympic Games. My role was to assist the President

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in representing ICAS during the Games and to manage any issues related to the Ad Hoc Court in preparation for and during the Games. I was also a local resource for ICAS and the Ad Hoc Court where needed.

One of the initiatives I put in place early on was a process to invite local senior counsel to participate as pro bono counsel at the Games. This initiative was started at the 2000 Sydney Games by

my fellow ICAS member John Coates of Australia. The counsels' role would be to represent parties (athletes, international federations, national Olympic committees etc.) before the Ad Hoc Court, and in other matters on an as needed basis. Patrick Poyner of Poyner Baxter volunteered to coordinate this group which included George Macintosh Q.C., Marvin Storrow Q.C., Maria Morellato Q.C., Glenn Urquhart Q.C., Michael Armstrong, Timothy Dickson, Jeffrey Hand and John McIntyre; counsel who were called upon reportedly did an excellent job. Thanks again to all of them.

The ICAS Ad Hoc Court was led by the Honorable Judge Juan R. Torruella. The following is a summary taken, with permission, from Judge Torruella's report on the ICAS operations at the Games.

The CAS Court Office

The CAS Court Office was operational in Vancouver commencing 2 February, 2010 and through the 28th of said month. The hearing room, I consisted of a large room in which was configured a square shaped table. It was provided with microphones and two enclosed booths for the translators.

The composition of the CAS Court Office consisted, in addition to ICAS Secretary General, Mr. Reeb, of 3 CAS counsel and 3 CAS secretaries.

The Arbitrators and their work

Eight arbitrators were appointed by the ICAS to sit in Vancouver taking into account geographical distribution, their qualification as CAS arbitrators, and their experience in arbitration law as well as sports in general. All were either law professors and/or practicing lawyers. The arbitrators were: Mr. Henri Alvarez (Canada); Mr. Oliver Carrard (Switzerland); Mr. Yves Fortier (Canada); Professor Michael Geistlinger (Austria); Mr. David Grace (Australia); Professor Ulrich Haas (Germany); Mr. Chi Liu (China) and Mr. José Juan Pinto (Spain).

The following is a summary of the proceedings heard by the various panels at the Vancouver Games:

I- Australian Olympic Committee (AOC) (Applicant) and Fédération Internationale de Bobsleigh et de Tobogganing (FIBT) (Respondent) and Ms Astrid Loch-Wilkinson & Ms Cecilia McIntosh, International Olympic Committee (IOC), Vancouver Committee for the Olympic Winter Games (VANOC), Olympic Council of Ireland, and Confederação Brasileira de Desportos no Gelo (CBDG), CAS Arbitration No. OG 10/1 AOC v/FIBT

The panel of arbitrators was constituted with Prof. Michael Geistlinger (Austria), as president, and Prof. Ulrich Haas (Germany) and Mr. Henri Alvarez (Canada).

The AOC filed an application against the decision of the FIBT to not

allocate a continental representation quota place to the AOC in the Women's Bobsleigh event. The AOC requested that their athletes be allowed to participate in the Women's Bobsleigh event.

The matter related to the interpretation of the FIBT's qualification system for participation in the Vancouver Games, approved by the IOC, which provided for the allocation of a total of 170 athletes for participation in the discipline of bobsleigh, 130 positions were assigned to men and 40 to women. Pursuant to this qualification system, the women's bobsleigh event was limited to 20 crews.

The panel concluded that the clear wording of the qualification system implemented by the FIBT reflected the intention of allowing representation of one men's bobsled team and one women's bobsled team from non-represented continents, and could not be interpreted otherwise. Accordingly, the application of the AOC was granted and the FIBT was ordered to allocate a continental representation quota place to the AOC for participation in the two-man Women's Bob Event of the Games. Considering this outcome effectively removed the Irish team from participating, because the women's team quota of 20 would be exceeded by the addition of the Australian team unless the 20th team, which was the Irish team, was removed, the panel recommended that a 21st team be added to the event. 1

II- Confederação Brasileira de Deporto no Gelo (CBDG) (Applicant) and Fédération Internationale de Bobsleigh et de Tobogganing (FIBT) (Respondent) and Ms Fabiana Santos & Daniela Riberto Santos, International Olympic Committee (IOC), Olympic Council of Ireland, and Australian Olympic Committee (Interested Parties), CAS Arbitration No. OG 10/02 CBDG v/FIBT

Because this was an application whose subject-matter was related to the first case heard, the same panel of arbitrators was appointed to also hear this matter.

This application requested that the Brazilian Women's bobsleigh team be admitted to compete in the Games, replacing the Irish Women's team. Alternatively, the CBDG requested the CAS to direct the IOC to offer an additional place in the competition to the Brazilian Women's team. The CBDG claimed that on 26 January, 2010, the FIBT wrongly admitted the Irish team to compete in the Games due to alleged errors committed in the ranking and allocation of points during the 2008-2009 and 2009-2010 qualifying seasons.

The panel concluded that the source of the dispute between the parties was the FIBT's decision of 26 November 2009 to admit the Irish Women's bobsleigh team to the World Cup to replace the French team in that event. The Ad Hoc Division panel concluded that its scope of review did not extend to the 26 November 2009 decision of the FIBT, and that it would be inappropriate to review the FIBT's 26 January 2010 decision on the basis of the alleged errors of that first decision.

The panel further found that, on the merits, the decision of 26 November 2009 was within the power of the FIBT, and that it was neither unreasonable nor arbitrary for it to replace the withdrawing French team with the next ranked Irish team. The CBDG's request to direct the IOC to offer an additional place in the Women's bobsleigh event was rejected.

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Upcoming Events

- **September 24-26, 2010: - Mississauga:** The SDRCC will be at the Sports Officials Canada Conference with a kiosk.
- **September 28-October 1, 2010 - Halifax:** The SDRCC will be conducting an information session for the Chefs de Mission for the 2011 Canada Games.
- **October 28-31, 2010 - Gatineau:** The SDRCC will be conducting a session on dispute prevention and resolution at the AthletesCan Forum.



TMSS – Commonwealth Games Delhi 2010

by Michael A. Smith



With the 2010 Delhi Games four months away, I am doing my part to help the members of team Canada prepare for what many expect to be an exciting but challenging set of Games.

I undertook a number of changes in 2000 - many of which had significant and positive consequences for me - so much so that I attribute them to the reason I am where I am today. Specifically, I

graduated from law school and returned to my hometown of Ottawa to work. I made the difficult decision to end my competitive wrestling career so that I could focus on my new legal career. The timing was significant in many ways. As the new kid on the sports scene with Athletes CAN, I was quickly identified as an upcoming talent in the world of sports administration. This led to my work at the 2001 Canada Games and subsequent election to their Board.

In 2002, I was selected as the Athletes Advocate as part of Athletes Services while on the Mission Staff at the Commonwealth Games in Manchester, England. From that point on, there was no looking back and I have continued to represent Canadian athletes at the Olympics, Pan Am and Francophonie Games.

I am proud to say that I am heading to Delhi, India in October 2010 for my 4th Commonwealth Games. I will, however, be wearing a different hat at these Games. I will act as the Team Leader for Team Member Support and Services (TMSS).

Commonwealth Games Canada (CGC) has taken a different approach for these Games. The 'friendly games' will have a different feel and focus for Team Canada. The creation of the various units making up the Mission Staff is meant to assist and ensure podium success at these Games.

The CGC organization and our unit are taking an aggressive approach to help the athletes and coaches prepare for the Delhi Games. One can see the link that is being created between the success experienced at the Vancouver Olympics, and what Commonwealth Games Canada is hoping to achieve in Delhi.

So what is the Team Leader and who does that person lead? This is very different role than I am accustomed to. I will head up the TMSS, a team comprising seven individuals including myself. Combined, the members of this all-star team have participated in every multisport Games, either as an athlete, coach or mission staff member. This is a situation that I am very excited about.

The team is responsible for providing services and assistance to the athletes, coaches and team members while in Delhi. They will be required to "do it all" - from greeting the athletes at the airport, getting through the Village, providing opportunities to acknowledge their success and even connecting them with their families, friends and fans. I have the challenge of keeping it connected, excited and successful.

My experience as an athlete and advocate for team Canada is helping me lead the TMSS. The focus on these Games for me and the team is to prepare the athletes and members of Team Canada to the extent where problems become reduced significantly. To that end, I have taken a slightly different approach than has been used a previous Games. TMSS will be connecting with each athlete rep on a regu-

lar basis in the months leading up to the Games. The objective is to build excitement for the Games, provide information about what to expect in Delhi and updates with the progress of the preparation for the Games. Additionally, we are looking to gain valuable information from the participants about their personal or team preparation and for them to identify any issues for themselves or their team, specifically, team dynamic, team selection or issues with the NSO/staff. We are doing the same outreach to the team managers or leaders that will be attending at the Games.

There is a greater effort being made for these Games to connect with the participants well in advance of leaving for Delhi. Athletes and managers are being engaged and contacted to determine what they need to ensure their success, but more importantly what they will need to know in order to properly prepare for the Delhi experience.

"There is a greater effort being made for these Games to connect with the participants well in advance of leaving for Delhi."

The team ombudsman, is a member of the TMSS and will be in place by early June 2010. He will play a vital role as all ombudsmen have in previous Games. Since the 1996 Games, Canada has been providing services to team members at Major Games by providing a lawyer for the team to assist with any and all disputes that may arise while at the Games. With the participation of an ombudsman, we have seen fewer incidents at major games over the last number of years. I attribute that to a number of things. First, the education that Canada provides to its athletes, coaches and NSO/NSF. Secondly, the proactive approach that has been taken in identifying issues before athletes depart for Major

Games. And finally, the NSOs and MSOs openness to share information and "lessons learned" with each other has been instrumental in reducing what has historically been embarrassing moments for Team Canada at Major Games. I am not suggesting that we are perfect at this and that the need for an ombudsman no longer exist, it is more of a situation where we can be proud as a nation that we have done and continue to do good work in this area.

It has been a busy, challenging and rewarding experience for me as the team prepares. There are many more conference calls and meetings to attend, but the learning has been more than one would experience in a university course. I anticipate a number of challenges in Delhi but I am of the view that we can take preventive measures to ensure success. Such preventive measures include directing the athletes to sources of solution for any issues identified prior to the Games, providing them with access to guides/resources about Delhi and the team prior to departing.

To that end, I am enthusiastic about the success that team Canada will have at these Delhi Games and encourage athletes and coaches to be vigilant in their approach leading up to and during the Games. So if you are looking to avoid issues or problems, I suggest that as participants, parents and NSOs you ask questions, stay informed and take an active role in the preparation for the Games.

For information prior to Games, participants will have access to Zeus (www.commonwealthgames.ca/games/index_e.aspx?DetailID=842) and can contact us through that system while gaining valuable information about the Games. Because of our proactive approach, they will be receiving emails from me and my team in addition to phone calls. ■



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II- Virgin Islands Olympic Committee (VIOC) (Applicant) and International Olympic Committee (IOC) (Respondent) and Fédération Internationale de Bobsleigh et de Tobogganing (FIBT) (Interested Party), CAS Arbitration No. OG 10/03 Virgin Islands Committee v. IOC

An application was filed by the VIOC which proposed that the Women's skeleton competition should have its number of entries increased to 21 rather than its allotted number of 20. This contention was based on the fact that the Men's skeleton competition's allocation of 30 positions had not been filled. The VIOC proposed that the unused Men's skeleton quota be transferred to the Women's skeleton competition, thus allowing the VIOC's skeleton athlete to compete in the Games.

The panel was composed of Mr. David Grace, QC (Australia), as president, and Mr. Juan Jose Pinto (Spain) and Mr. Liu Chi (China).

The panel concluded that the allocation provisions of the FIBT Qualifications System clearly differentiated between Men's and Women's competitions, and clearly indicated that there can be no transfer of unallocated quota positions from one event to another. It thus dismissed the VIOC's application.

IV- Ms Claudia Pechstein (Applicant) and Deutscher Olympischer Sportbund (DOBSB) and International Committee (IOC) (Respondent) and Deutsche Eisschnelllauf-Gemeinschaft e.V. (DESG) and International Skating Union (ISU), CAS Arbitration No. OG 10/04 Claudia Pechstein v / DOSB & IOC

Ms. Claudia Pechstein filed an application requesting that the DOSB (the German Olympic Committee) "nominate the Applicant for participation in the competitions of the female speed skaters during the Olympic Winter Games in Vancouver," and for the IOC to allow her participation therein. Prior to this, the ISU had filed a complaint with its Disciplinary Committee accusing Applicant of having used a prohibited substance and /or a prohibited method in violation of the ISU's Anti-Doping Rules.

Thereafter, the said Committee concluded and declared Ms. Pechstein ineligible to compete for the next two years, which decision was appealed by the Applicant and the DESG to CAS. On 25 November, 2009 CAS dismissed the appeal and upheld the decision of the Disciplinary Committee of the ISU. The Appellant, on 7 December 2009, appealed the CAS's opinion to Swiss Federal Tribunal. The Swiss Federal Tribunal dismissed the Applicant's appeal.

The panel to hear Applicant's case was composed of Yves Fortier, QC

ICAS Ad Hoc Procedures

The normal course of Ad Hoc Division proceedings can be generally summarized as follows: (1) the Ad Hoc Division's services are initially invoked by the filing of an application for arbitration, which may be filed by any participant in the Games, a National Olympic Committee, an International Sports Federation or an Organizing Committee for the Olympic Games, provided the dispute arises during the Olympic Games or the ten day period immediately preceding the Opening Ceremony of the Games, and also provided that the claimant has exhausted all internal remedies effectively available pursuant to the statutes or regulations of the sports body concerned (Art.1, Arbitration Rules For The Olympic Games) (AROC); (2) upon filing, the application is served on all interested parties together with a notice of the hearing date; (3) the President of the Ad Hoc Division constitutes the arbitral panel of three arbitrators from the arbitrators that have been designated to sit at the Games and appoints the President of the Panel (Art.11, AROC); in cases where there are related cases pending before the Ad Hoc Division, the President of the Ad Hoc Division may consolidate them and assign the related disputes to the same panel of arbitrators; (4) a hearing is held before the panel at which, at the discretion of the panel when it deems it necessary to aid in reaching a decision, the parties are given the opportunity to present evidence and argument to the panel (Art. 15, AROC); (4) except in unusual circumstances by extension of this time period by the President of the Ad Hoc Division, the panel must give a decision within 24 hours of the lodging of the application (Art. 18, AROC); the decision of the panel shall be in writing and briefly state the reasons for its conclusions; it is reviewed as to form only by the President of the Ad Hoc Division before it is issued (Art. 19, AROC). ■

(Canada) as its president, and Oliver Carrard (Switzerland) and José Juan Pinto (Spain).

The panel concluded that it was without jurisdiction to hear the application because in fact it was an appeal from the CAS decision and thus not an appealable decision to the Ad Hoc Division. It thus dismissed the application.

The Vancouver 2010 Games were a tremendous success for Canada and for the world of sport. The Ad Hoc Court of Arbitration is one piece of the multi layered and multi dimensional puzzle that made the Games such a success but certainly one that we should never take for granted. ■

New SDRCC Employee

The SDRCC is proud to announce the hiring of Valérie Gingras as the new Administrative Assistant. Valérie assists in coordinating corporate affairs, assumes reception duties, and handles the day-to-day operations of the office. Her office administration skills have already proven to be a great addition to our team. ■



International Presence

In its efforts to advance Canadian interests, values and ethics in sport abroad, the SDRCC has recently expanded its international visibility on several fronts. Talks are underway with Sport Resolutions, in the United Kingdom, for a possible partnership in hosting an international conference on sport dispute prevention and resolution in the lead up to the London 2012 Olympic and Paralympic Games. The SDRCC was also a guest speaker at the First Legal Arab Sport Forum, held in Egypt in April, to share the Canadian experience in setting up a sport tribunal. On this occasion, the SDRCC strengthened its relationship with the New Zealand Sports Tribunal, also invited to speak. More recently, the SDRCC hosted a Russian delegation interested in learning more about the SDRCC doping tribunal operations, as they prepare to host the 2014 Winter Olympic and Paralympic Games in Sochi. ■



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