



Arbitration at Olympic Speed by Richard W. Pound, Arbitrator

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The Olympic Village will open on 8 February 2010 as athletes, coaches and team officials begin to gather in Vancouver and in the satellite villages in and around Whistler. This begins the Olympic period, which will end at the Closing Ceremony of the Games on 28 February.

Part of the services rendered to the Olympic participants comes from the Court of Arbitration for Sport (CAS), the arbitral body established in 1984 by the International Olympic Committee (IOC), now governed by the International Council of Arbitration for Sport (ICAS), a multi-layered organization consisting of representatives from the IOC, international sports federations (IFs), national Olympic committees (NOCs), Olympic athletes and international experts familiar with arbitration.

Considerable experience has been developed in the specialized field of arbitration in sports related arbitration over the years and an international list of arbitrators established to hear the cases brought before CAS. By agreement among the Olympic parties, disputes are brought before CAS, including those arising from decisions taken by the IOC, IFs and NOCs, and CAS decisions (subject to very limited recourse to the Swiss Federal Tribunal on jurisdictional or procedural issues) are final and binding on the parties. The process before CAS generally reflects what parties would expect in normal arbitration and there are few procedural peculiarities worthy of comment.

On occasions such as the Olympic Games, however, the pace of normal arbitration is not sufficient. Decisions on disputed matters during the Games must be made on an urgent basis, particularly if competitions in progress may be affected by the outcome of a dispute.

This exigency has led to the creation of a special subset of arbitration of disputes within CAS, namely the *ad hoc* Division of CAS. CAS selects a small number of arbitrators with special expertise and brings them to the host city of the Games for the entire Olympic period, where they are available to decide on any disputes resulting from or which may affect the Games. There will be 8 arbitrators available, from 2 - 28 February 2010: Yves Fortier* (CAN), Henri Alvarez (CAN), Olivier Carrard (SUI), Liu Chi (CHN), Michael Geistlinger (AUT), Ulrich Haas (GER), David Grace (AUS) and José Juan Pinto (ESP). The coordinator of the CAS activities in Vancouver is Canadian Tricia Smith*, a member of ICAS and vice-president of the Canadian Olympic Committee.

The *ad hoc* Division operates under the motto "Fair, Fast and Free." Fairness is guaranteed by ensuring that rights to due process are respected and that the decision will be made by arbitrators completely independent from the parties. Fast results from the rendering of a decision within 24 hours of filing the appeal. The proceedings are entirely free for the parties: there is no filing fee, costs are not filing fee, costs are not awarded and all procedural costs are borne by ICAS. Parties are, however, responsible for their own costs.

Once a complete application is filed at the CAS office, the arbitration proceeds. Normally panels of three arbitrators will hear the appeal, but there may be cases of particular urgency in which a sole arbitrator, by exception, will be appointed.



Hearings are scheduled on very short notice and the parties, plus any (legally) interested third parties are summoned to the hearing, where they have the opportunity to present their positions and produce any witnesses or documents on which they wish to rely. In complex cases, the panel can order further steps to be taken before rendering a decision, such as specific expert evidence or a further hearing.

Any person accredited for the Games in Vancouver and any sport organization subject to the Olympic Charter which is present in Vancouver may refer a dispute to the *ad hoc* Division by filing a signed written application at the CAS office in Vancouver, located at the Renaissance Hotel on West Hastings Street. Standard applications for the purpose are available at the CAS office or can be downloaded from the CAS web site (www.tas-cas.org).

Applications must include a brief statement of the facts, the legal arguments raised and the relief sought. The decision being challenged, as well as any other relevant documents are to be attached to the application. All internal remedies of any organization must first have been exhausted before the dispute may be brought before the *ad hoc* Division. For example, if the applicable rules of an IF require that a decision must first be appealed to a Jury of Appeal, an aggrieved party may not short-circuit that step by appealing directly to the *ad hoc* Division.

Parties may be assisted by a lawyer or other representative of their choice. There will be volunteer lawyers available and the CAS office will have a list available to the parties.

The arbitration rules are those established for the Olympic Games and copies are available at the CAS office in Vancouver or on the CAS web site identified above. In cases of extreme urgency, the *ad hoc* Division may immediately issue and order for preliminary relief, such as an order staying the decision being challenged, until the panel rules on the application. Proceedings are conducted in English or French and parties may ask for the assistance of an interpreter at the hearing. Additional information on the process and requirements is available from the CAS office.

Decisions are final and binding as soon as they are communicated to the parties. The decisions, subject to certain exceptions, are not confidential and are released to the media in full text, together with a summary of the case.

CAS officials ensure that all delegations at the Games are aware of the availability of the *ad hoc* Division. The Secretary General of CAS attends the meeting of the *chefs de mission* immediately prior to the Games and distributes informational materials regarding the availability of the fast-track arbitration process.

The Olympic experience, especially for athletes, is strengthened by the knowledge that there is an independent arbitral process available for all parties, and which can respond in real-time to resolve disputes arising in the course of the most important and pressure-ridden of all sports competitions. ■