



Protecting Athletes' Rights in Anti-Doping Litigation – Self Regulation & Judicial Intervention

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Judicial Precedent in Sports Law – A Viable Option?

DISADVANTAGES

- ✓ Obsolete
- ✓ Stale
- ✓ Rigid
- ✓ Oppression

ADVANTAGES

- ✓ Accumulated experience
- ✓ Previous knowledge
- ✓ Consistency
- ✓ Certainty

Stare Decisis before CAS?

- ▶ CAS does not have a system of judicial precedent (but silently it operates one).
- ▶ CAS 2004/A/628 *“In CAS jurisprudence there is no principle of binding precedent, or stare decisis. However, a CAS Panel will obviously try, if the evidence permits, to come to the same conclusion on matters of law as a previous CAS Panel.”*

HOWEVER

- ✓ In practice CAS Panels constantly refer to previous decisions.
- ✓ In practice CAS Panels constantly refer to the elements of
 - a. consistency
 - b. continuity
 - c. legal certainty

Stare Decisis before CAS?

- ▶ 'Adversarial' system of examination (witnesses and evidence)
- ▶ Previous decisions and *ratio decidendi*
- ▶ Jurisprudence and *Lex Sportiva*

CAS 2002/O/373, *Canadian Olympic Committee & Beekie Scott v International Olympic Committee*: “CAS jurisprudence has notably refined and developed a number of principles of sports law, such as the concepts of strict liability (in doping cases) and fairness, which might be deemed part of an emerging *lex sportiva*”

Harmonisation with a Binding Effect on National Panels



- Jack3d
- Specified substance (MHA)
- No enhancement
- Did not declare it on the Form
- Timing of injection beneficial
- No anti-doping education
- No internet research
- Relied on a store employee

15 months

- ✓ Jack3d
- ✓ Specified substance (MHA)
- ✓ No enhancement
- ✓ Declared it on the form
- ✓ Timing of injection beneficial
- ✓ No anti-doping education
- ✓ No internet research
- ✓ Relied on his agent

24 months



The Future - Proposals

- ▶ ICAS – Declaration of a system of judicial precedent or *Stare Decisis*
- ▶ Binding effect (particularly on national disciplinary panels) and recognition of CAS as the Supreme Court for Sport
- ▶ Harmonisation of decision making at national level



- ✓ Uniformity
- ✓ Consistency
- ✓ Clarity of legal thought → Legal Certainty