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

HOWARD JACOBS – ATTORNEY AT LAW, WWW.ATHLETESLAWYER.COM
GREGORY IOANNIDIS – ATTORNEY AT LAW, WWW.SPORTSLAWEXPERT.ORG
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
  - consistency
  - continuity
  - 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 & Beckie 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

✓ 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

15 months

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