

Principles Underlying the Adjudication of Selection Disputes Preceding the Salt Lake City Winter Olympic Games: Notes for Adjudicators

HILARY A. FINDLAY AND RACHEL CORBETT

Introduction

Selection disputes inevitably arise prior to any major games such as an Olympics. Prior to the 1996 Summer Olympics in Atlanta, some 25 disputes were heard in Canada.¹ In anticipation of the Salt Lake City Winter Olympics, an ad-hoc arbitration system was put in place in Canada to deal with these disputes. To assist the roster of adjudicators appointed to hear these matters, the Centre for Sport and Law² compiled and reviewed some 30 sport selection disputes from Canadian courts and tribunals. In this article, we summarize the legal basis for decision-making in sport and present some key themes that emerged from the review of these cases.

Sport Adjudications – the Legal Basis

The vast majority of Canadian sport organizations and clubs are ‘private tribunals’. They are not statutorily-based and as such, they are autonomous and self-governing associations. They have the power to make rules and regulations that affect people – specifically, their members and participants in their sporting activities.³

Historically, the courts have been reluctant to interfere in the affairs of private tribunals. The relationship among members of a private tribunal, or association,⁴ was viewed as personal, particularly where membership in the association was voluntary. Within such associations, membership rights had to somehow be bound to property rights (no matter how removed such property rights might be from the actual issue in dispute), in order for the courts to intervene (*Hopkinson v. Marquis of Exeter* (1867) LR 5 Eq 63;

Hilary A. Findlay, Ph.D., LLB, is the Chair of the Department of Sport Management at Brock University, Ontario, an Associate Professor at the university and Director, Centre for Sport and Law. Rachel Corbett, RPP, MEDES is a professional planner and risk management consultant and Managing Director, Centre for Sport and Law.

Clough v. Ratcliffe (1847) DeG & Sm 164, 63 ER 1016; *Maclean v. Workers' Union* [1929] 1 Ch D 602).

Lord Denning's decision in *Lee v. Showmen's Guild of Great Britain* [1952] 1 All ER 1175, [1952] 2 QB 329 (C.A.), hereafter referred to as '*Lee*', precipitated a radical change in this 'hands-off' approach. The Court of Appeal in the *Lee* case unanimously held that it had the jurisdiction to review any decision of an organization (in this case, a trade union) that involved a question of law, including any question of interpretation of the association's constitution.

In Canada, *Lee* is viewed as a starting point when considering the legal context for decision-making within sport organizations.⁵ Athletes, and others, seeking legal remedies for the adverse effects of decisions of their sport governing bodies have, almost without exception, relied upon the principles set out in *Lee*.

In his article 'Denning's Revenge: Judicial Formalism and the Application of Procedural Fairness to Internal Union Hearings', Michael Lynk identified four significant themes in Denning's judgment.⁶ These themes are summarized below.

First, Denning confirmed an emerging trend away from judicial intervention based solely on property rights towards one based on contract law. Essentially, Denning viewed an association's constitution to be a contract among the association's members. This contract, expressed through the association's governing documents,⁷ enabled the association and its members to establish the rights, privileges and obligations of membership in order to better regulate the affairs of the association and its members.

Secondly, Denning significantly enlarged the basis for judicial intervention beyond simply judicial review to a point as 'intrusive as full appellate review'.⁸ The test for judicial intervention, Denning wrote, was one of 'true construction' – that is, had the association given the correct interpretation to its own rules according to what the courts viewed as the *right* interpretation? (*Lee* at 343–344).

Thirdly, Denning distinguished between different types of associations for the purposes of setting a threshold for judicial intervention in the regulation of the association's internal affairs. Denning distinguished between associations that could have a significant effect on an individual's livelihood (such as trade unions and professional associations) and those that did not have any particular economic impact on an individual (such as social clubs). Denning recognized that these two types of associations were subject to different degrees of judicial intervention.

Denning's fourth theme affirmed and emphasized the application of the rules of natural justice to the internal decision-making responsibilities of private tribunals and made the courts the final judge as to whether or not

such rules were properly applied. In *Lee*, Denning wrote: 'Although the jurisdiction of a domestic tribunal is founded on contract, express or implied, nevertheless the parties are not free to make any contract they like. There are important limitations imposed by public policy. The tribunal must for instance, observe the principles of natural justice' (*Lee* per Lord Denning M.R. at 342).

All four themes resonate for legal decision-making in sport. Adjudicators in sport disputes have incorporated these four principles into their decision-making – it is universally accepted in the Canadian sport context that sport organizations are private tribunals (Denning's first theme), that their bylaws and policies form a contract with their members (Denning's first theme), and that rules of natural justice, or procedural fairness, apply (Denning's fourth theme).⁹

While the principles underlying Denning's themes have been incorporated into Canadian decision-making in sport, none of the themes has received the degree of scrutiny and analysis that are necessary for their consistent interpretation across a wide range of sport environments or circumstances.

The second theme in *Lee*, that the standard of judicial review applicable to decisions of sport organizations is generally that of *correctness*, has typically not been argued in sport cases coming before adjudicators or the courts in Canada. An exception to this is a doping case in which the adjudicator, applying the test in the Supreme Court of Canada case of *Canada (Attorney General) v. Mossop* [1993] 1 SCR 54, 100 DLR (4th) 658 (S.C.C.), did find the standard of review to be that of correctness (*Russell* and *Canadian Centre for Ethics in Sport*, 19 August 1998, arbitration award pursuant to the *Canadian Policy on Penalties for Doping in Sport*). However, in most cases it would appear that this standard is applied, even though it is not argued (for example, *Roberge v. Judo Canada* and *Morgan*, 26 June 1996, arbitration award pursuant to Judo Canada National Team Handbook Article 5).

While Canadian law under *Mossop* suggests that the standard of correctness is generally appropriate for sport decisions, it is worth noting that the governing documents forming the contract between the sport association and its members are often not prepared by persons expert in drafting. As well, these governing documents (particularly a constitution and bylaws) are long-term and enduring in nature, thus perhaps ought not to be interpreted as one would interpret a contract that may be changed easily by the parties. Lynk¹⁰ has identified a number of Canadian statutory tribunals that have, in fact, adopted a standard of review of 'substantial compliance' with natural justice which he suggests is more realistic. Continuing to use a standard of review of correctness may lead to an

outcome vastly different than that originally intended by the governing documents, and at times, even an absurd outcome.

The third theme in *Lee*, that the threshold for judicial intervention depended on the nature of the private tribunal, has also not been considered fully in the sport context. Denning wrote his 1952 judgment in the context of a trade union. However, he recognized a range of tribunals, from those affecting a person's livelihood to those that catered to a person's need for social interaction, recreation and entertainment. Sport itself exists along this same continuum – from the local golf club an individual might choose to join for recreational and social purposes (*Barrie v. Royal Colwood Golf Club*, 9 August 2001, unreported decision B.C.S.C. (Victoria), Docket No. 01-2857) to the national sport governing body whose members include elite athletes who receive financial support from the Federal government and significant income from sponsorship and endorsements.

Does a national sport association which is responsible for elite athletes fall fully or partially within Denning's category of trade unions or professional organizations that have the ability to control a person's livelihood? A national sport organization can perhaps be likened to a 'monopoly'. Such an organization is recognized by an international sport federation as having exclusive responsibility for governing a particular sport within a particular country. This responsibility is reinforced by the state which recognizes and funds one governing organization per sport. In order to compete within that sport at the national or international level, an athlete must be a member of that national governing body and must participate in the sport pursuant to its rules, thus for all intents and purposes removing the 'voluntary' nature of membership.

Furthermore, at the elite level, such athletes also earn significant revenue from the sport, through financial assistance from the government and from private sponsors, and through endorsements and appearance fees. In a growing number of cases the high performance amateur athlete within that sport organization is only notionally amateur – a more appropriate term to describe their status is that of 'commercial athlete'. This athlete earns a livelihood in sport, and to do so must participate and compete within the monopolistic rules of a sport governing body.

This analysis has not been incorporated into Canadian decision-making, yet it has significant implications for determining the extent of judicial intervention in the decisions of private sport organizations, and the corresponding expectations for procedural fairness.

The nature of the association as described above interacts directly with Denning's fourth theme, which is that the requirements of natural justice will also vary depending on factors including, among others, the nature of the private tribunal, the nature of the dispute, the extent to which the effect of the

decision has serious consequences, and the finality of that decision (*Martineau v. Mataqui Institution* [1980] 1 SCR 602, 13 CR (3d) 1, 15 CR (3d) 315, 50 CCC (2d) 353, 106 DLR (3d) 385, 30 NR 119, at pp. 630–31 [SCR.]). Quite clearly, and at the very least, a private tribunal must ‘act fairly’. As noted by Robert Forbes,¹¹ ‘the more interesting problem lies in determining just in what way the rules of natural justice will be imposed upon the contract that regulates the decision-making power of the domestic tribunal’. This notion has received little, if any analytical attention in the sport literature.¹²

In conclusion, while the principles from the *Lee* decision are an integral part of the Canadian jurisprudence arising from sport disputes, the application of these principles and their resultant effect have not been well-articulated in the sport context. Not all sport disputes merit the same considerations as to the requirements of procedural fairness. The concept of procedural fairness is flexible and sport organizations and sport disputes range along a diverse continuum. Depending on the type of association (social/recreational club or monopolistic sport governing body), the level of athlete performance (recreational or elite) and the nature of the dispute (whether or not it impinges on the athlete’s ability to earn a livelihood), adjudicators will have to find the appropriate measures or safeguards that are required to satisfy the duty of fairness in the particular case they are deciding.

Recent Canadian Developments

On 10 April 2002 a statute was introduced in the Canadian legislature that will create a Sport Dispute Resolution Centre.¹³ This Centre will provide alternate dispute resolution (ADR) services to the national sport community as well as resources to assist national associations to better manage their own disputes internally. Within the legislation, ‘disputes’ are limited to disagreements related to doping, disagreements among sport associations and disagreements between a sport association and persons affiliated with it, including members such as athletes.

As a precursor to the ADR system proposed in the legislation, and in anticipation of disputes preceding the Salt Lake City Winter Olympic Games, an interim mechanism incorporating arbitration and mediation was launched in Canada in December 2001 (the *ADR Sport RED*).¹⁴ This interim program was voluntary and was not intended to replace the internal dispute management mechanisms of sport governing bodies. Rather, it was intended to provide a venue of last resort for lingering disputes or alternatively, a mechanism that the parties could agree to use in place of the association’s internal review and appeal procedures.¹⁵

The rules presently devised for the interim *ADR Sport RED* system¹⁶ created significant challenges for adjudicators as these rules did not

adequately mesh with the various internal dispute resolution policies and procedures of national sport governing bodies, and whether the system was being used as a venue for final arbitration, or as a substitute for an association's internal hearing process.

More specifically, the rules currently in force in the *ADR Sport RED* program provide for a hearing de novo,¹⁷ and place no restrictions on the authority of the adjudicator.¹⁸ There are no restrictions on the scope of review – that is, a matter may be referred to an adjudicator on its substance and merits, as opposed to limiting disputes to those where there are allegations of errors in procedure or jurisdiction. The broad scope of these rules potentially conflicted with the more narrow procedures articulated under specific national sport organizations' internal policies. Thus, where the scope of authority of the adjudicator was limited within the association's policies, no such restrictions were placed on the adjudicator in the final arbitration. This created a situation where adjudicators could make decisions that went well beyond what the association intended through its policies. In the handful of cases that were heard, the parties had to resolve these conflicts between their own rules and the *ADR Sport RED* rules on a case-by-case basis as preliminary matters (*Gagnon et. al. and Cross-Country Canada – Ski de fond Canada* 13 December 2001, arbitration award pursuant to Draft CAS (Court of Arbitration for Sport) Code).

Where the interim system was used to replace the internal policies of the association, a different problem arose. Sport organizations adopt many different approaches for holding appeal hearings and managing disputes. Thus, one association may require that an appeal satisfy procedural grounds before it will be heard, while another association may place no restrictions on appeals that may be brought forward.¹⁹ Likewise, in certain cases the authority of the appeal decision-maker will be limited so as not to exceed the authority of the original decision-maker,²⁰ whereas in others decision-makers may probe the merits of the decision and replace the previous decision with their own.²¹ These differences meant that sport associations that chose to use the *ADR Sport RED* system in place of their own systems, thus buying into the rules of the *ADR Sport RED* system, found themselves radically shifting away from their own policy directions. Once again, they gave adjudicators the ultimate authority to rewrite certain policies of the sport association.

Gearing up for Salt Lake City

As noted above, the *ADR Sport RED* system was launched on an interim basis in order to deal with Canadian team selection disputes before the Winter Olympics in Salt Lake City. Such disputes are common on the eve

INTERVENTIONS

115

of a major games such as an Olympics, and in the past they had been accommodated through sport organization's internal appeal mechanisms, through private arbitration and through the courts.²²

To assist the adjudicators who might be called upon to deal with these disputes, the Centre for Sport and Law compiled and undertook an analysis of some 30 selection disputes in Canada. These included disputes heard in the courts as well as disputes decided by private tribunals, before either independent adjudicators or internal appeal panels. This review was important for two reasons: one, many selection decisions are technically complex, particularly in team sports; and two, the *ADR Sport RED* system afforded the adjudicators very broad discretion. This review was intended to identify some themes of potential interest to adjudicators, and to assist them in properly and consistently exercising their broad discretion in dealing with potentially complex disputes under very short time-lines. The remainder of this article summarizes the themes that were identified from these 30 cases.

The first theme is that a large number of disputes arise from the interpretation of the contract between sport associations and athletes. In many cases, sport administrators do not have expertise in bylaw and policy drafting.²³ Bylaws tend to be based upon generic templates designed to accommodate a wide range of general interest associations, and are often ill-suited to the particular needs of a sport governing body overseeing the competitive activities of high performance athletes. As well, the 'members' of a sport association are often not individual athletes and coaches but rather provincial and territorial organizations or local clubs, thus creating some ambiguity as to whether the athlete participant is even subject to the authority of the organization's policies and procedures in the first place.

Specifically, policies relating to team eligibility, selection and appeals are written by people not skilled in draftsmanship. As a result, adjudicators will often have to interpret selection policies and criteria that are vague, incomplete, contradictory and even silent on critical points. For example, there is confusion between the authority to *develop* criteria and the authority to *apply* criteria,²⁴ tie breaker procedures do not actually work in breaking a tie;²⁵ the vagaries of weather or other unforeseen circumstances are not accommodated;²⁶ procedures for dealing with an appeal do not exist, requiring an ad-hoc procedure be improvised that is ultimately challenged;²⁷ performance criteria based on national and international standards are supposed to mesh together but do not;²⁸ criteria are not weighted relative to each other so those applying the criteria must make arbitrary decisions as to their relative weight;²⁹ changes are made to the selection process and these are not communicated to athletes³⁰ ... The list continues. Adjudicators will find themselves having to make interpretations on these deficiencies that arise from the drafting of selection policies and criteria.

Several cases among the 30 that were reviewed involved adjudicators being asked to rewrite a selection policy in order to give it its intended meaning, or to substitute their own selection decision when the selection formula did not work as intended.³¹ While this issue also has root in the poor drafting of selection policies and criteria, it does not arise from any ambiguity. Rather, the rules are clearly written but they produce a result not intended. As stated by the court in *McCaig* 'If the relief sought by the applicants were to be granted, it would, by necessary implication, require the court to write into the agreement a clause which does not exist. Apart from a claim of rectification, I know of no basis upon which a court can rewrite a contract by inserting a fresh clause in an agreement, no matter how desirable it might be' (*McCaig* per Simonson J. at 6). In the case of *Roberge*, the adjudicator wrote: 'It is not within the jurisdiction of the [appeal panel] to intervene into the affairs of [the sport association] and re-write their selection rules based on what the [appeal panel] thinks is fair, or what it thinks the criteria should be in order to select the best possible athlete' (*Roberge* per Arbitrator Kennedy at 6). It is not the adjudicator's role to fix drafting errors where there is no issue of interpretation – courts must give plain meaning to the words as written, even when they produce an unintended result.

A second theme is that many selection disputes arise from allegations of bias.³² The sport community is small and many leaders within the community perform different roles at different times, and at times these roles may conflict. Athletes and coaches may have professional relationships that span many years, and coaches are often given responsibility to select athletes from among a group including athletes they coach currently or may have coached previously. As well, within sports that cater to small numbers, it is not uncommon to have a certain degree of parental involvement in leadership positions (such as Board member) which may be perceived as having some influence over decisions affecting national team athletes, including selection. It has been accepted that a degree of bias is often inevitable within small associations, and it is not necessary to force all internal hearings to an external forum simply on the basis of a perceived bias under such circumstances.³³

A third theme is that the sport system is hierarchical and the issue of which entity has jurisdiction may not be straightforward. It is widely understood that national sport associations 'select' national teams. For single sport international competitions and championships this is true, but in the multi-sport games setting (Olympics, Commonwealth Games, Pan-American Games, World Student Games) this is in fact not true. Legally and technically, national sport organizations 'nominate' athletes to the national team but it is the multi-sport organization (Commonwealth Games Canada, Canadian Olympic Association, Canadian Interuniversity Sport) that actually

'names' the team and has ultimate responsibility for the members of the team. Thus, depending on the timing of the dispute, the authority to identify the team may rest with the national sport organization or with the multi-sport organization, or in the case of the Canada Games, with a provincial government.³⁴ Often, challenges to such decisions have been brought against the wrong entity, or have been brought against both entities, succeeding at one level but failing at another.³⁵ Similarly, an adjudicator appointed to hear a dispute between an athlete and the national sport organization may not have jurisdiction to bind the multi-sport organization.³⁶

A fourth theme is that the factual basis of many selection disputes is highly technical. Criteria to select athletes to individual sports are usually objective and straightforward – they include speed, time, placings, points, rankings – criteria that are all easily measured. Selecting athletes to team sports, or to sports that have both individual and team components,³⁷ often involves subjective criteria and thus requires a certain amount of discretion on the part of the selectors. Both objective criteria and subjective criteria may be appropriate, depending on the circumstances, but they give rise to vastly different disputes. Disputes involving objective criteria tend to revolve around their application and are technical in nature,³⁸ while disputes about subjective criteria and selection to teams tend to revolve around issues of bias and discretion.³⁹

Often, coaches are given broad discretion in selecting a team. As noted by the court in *Kulesza*,⁴⁰ coaches bring to this task their abundant technical knowledge and experience, as well as a thorough understanding of the strengths, weaknesses and attributes of the athletes seeking to be selected. Many selection disputes have revolved around whether or not a coach properly exercised his or her discretion in applying the subjective criteria and making a decision.⁴¹ To say that a discretionary decision is arbitrary simply because a different coach would have arrived at a different decision does not mean that discretion has been exercised improperly. On the other hand, a selection approach based on no criteria whatsoever but only on a 'we know one [a good athlete] when we see one' kind of approach will not meet the test of procedural fairness and will be rejected.⁴²

A final theme observed from among the 30 cases reviewed is that many eligibility and selection disputes involve multiple and affected parties.⁴³ Selection disputes are not win-win scenarios: typically, only a finite number of individuals may be on a team (as determined by the rules of a national or international sport federation, or a national or international multi-sport organization) and the outcome of the dispute is invariably that one athlete will join the team and another athlete will not. If in an appeal, an adjudicator's decision results in placing a previously non-selected athlete (the appellant) on a team, an athlete actually selected to the team will have

to be removed. The athlete removed from the team may then have a right to appeal – thus potentially beginning a vicious cycle of appeals.

Whether or not an individual should be included as an ‘affected party’ in a proceeding depends on the subject matter of the dispute, a person’s interest in the subject and the effect that decision might have on that interest. It is reasonable to expect that a person who would be directly and seriously affected by a decision should participate in the hearing.⁴⁴ A decision to remove an athlete from a team for which he or she has qualified and been selected is clearly such a decision. This has been confirmed in several cases, one in which the court asked that the affected athlete be given notice of the proceeding and be represented at it,⁴⁵ and another in which the court allowed the affected parties (which in this case was the team in its entirety, as any one of them might have been adversely affected) to be represented by counsel and to participate in the proceedings.⁴⁶

Conclusion

In this article we set out the main legal principles underlying decision-making within sport associations. It was noted that the key principles articulated by Lord Denning in the *Lee* decision are widely accepted within the sport jurisprudence: however, we observed that there has been little detailed analysis of how these principles should be applied across the wide range of circumstances facing amateur sport.

Leaving this task for future study, we reviewed 30 sport selection disputes. These were compiled in order to provide guidance to adjudicators dealing specifically with Canadian selection disputes on the eve of the Salt Lake City Winter Olympic Games. Our review enabled us to identify five recurring themes of interest to adjudicators that reflected Denning’s principles and their application. This review was largely descriptive: it is clear that analytical work is necessary to determine how these principles translate in the sport setting, and to test their relevance and usefulness to decision-makers and sport associations.

NOTES

1. ‘Doin’ It Right: Lessons from the Olympic Selection Process’, A Symposium for Sport Leaders. Ottawa, November 1996.
2. The Centre for Sport and Law is a consulting company dealing with legal issues in amateur sport. It played a role in many of the disputes reported in this article. For further information, see www.sportlaw.ca.
3. S. Blake, *Administrative Law in Canada* (Toronto: Butterworths 1992) at 1.
4. The words organization, association and club are used interchangeably throughout this article.

INTERVENTIONS

119

5. H. A. Findlay and R. Corbett, 'The Rights of Athletes, Coaches and Participants in Sport' in *Sport, Fitness and the Law: North American Perspectives*, edited by D. Holman, D. Moriarty and J. Forsyth (Toronto: Canadian Scholars Press Inc. 2000), pp.101–19.
6. (1997) 23 *Queen's Law Journal* 115.
7. The term 'governing documents' is used to describe the private association's constitution, bylaws, policies, procedures and rules.
8. Lynk, note 6 at 125.
9. The notion of 'natural justice' is now almost synonymous in Canada with the notion of 'procedural fairness'. The earlier distinction between judicial and quasi-judicial decisions and administrative decisions has given way to a general obligation on the part of all tribunals, including private tribunals, to 'act fairly'. Blake (note 3 at 13) writes 'The distinction is now meaningless: every tribunal making decisions that could adversely affect individual rights or interests must proceed fairly'.
10. Lynk note 6 at 151.
11. Robert E. Forbes, 'Judicial Review of the Private Decision-maker: the Domestic Tribunal', [1977] 15 *UWOL Rev* 123 at 133.
12. This issue has arisen very recently with the hearings being held by the International Skating Union (ISU) into alleged judging irregularities at the Salt Lake City Winter Olympic Games. ISU regulations preclude parties from being accompanied by legal counsel at hearings. A number of parties and observers have queried the legal propriety of such a provision, in light of the requirements of procedural fairness (*Globe and Mail*, 27 April 2002, S.5, 'ISU Hearing Promises to Continue the Farce'). In particular, these parties have suggested that the right to legal counsel is a fundamental right in these circumstances. However, Lord Denning in *Enderby Town Football Club v. The Football Association Ltd.* [1971] 1 All ER 215 (C.A.) notes that the right to legal counsel is not an absolute right, but in certain situations where there is a serious legal issue being argued, and notwithstanding the domestic tribunal's rules, the individual should be afforded a right to counsel.
13. Bill C-54, 'An Act to Promote Physical Activity and Sport', House of Commons of Canada, First Reading 10 April 2002.
14. The full name of this mechanism is *ADR Sport RED – Alternative Dispute Resolution for Sport/Règlement extrajudiciaire des différends pour le sport*. This mechanism is modeled after the international Court of Arbitration for Sport.
15. 'A Draft Canadian CAS (Court of Arbitration for Sport) Code', Section S8.
16. *Ibid.*
17. *Ibid.*, Section RA 20.
18. *Ibid.*, Section RA 22.
19. R. Corbett, H. Potter and H.A. Findlay, *Administrative Appeals: A Handbook for Sport Organizations* (Edmonton: Centre for Sport and Law 1995).
20. The internal Appeal Policy of Canada Basketball states that decisions cannot be appealed, nor can appeals be heard, on the merits of the decision. Decisions may only be appealed on procedural grounds, which include the Respondent making a decision for which it did not have authority or jurisdiction as set out in Canada Basketball's governing documents; failing to follow procedures as laid out in the bylaws or approved policies of Canada Basketball; or making a decision that was influenced by bias (Section 5).
21. Disputes between athletes on national hockey teams and the Canadian Hockey Association (CHA) are decided pursuant to the terms of the Athlete Agreement executed between the athlete and the CHA. Article 9 of this agreement deals with appeals and hearing procedures, and allows a party to bring an appeal if they find a CHA decision 'unacceptable'. The authority of the appeals committee is unrestricted and the parties are allowed to make any submissions and presentations that they wish. Essentially, the appeal hearing is a hearing de novo and the appeals committee may substitute its decision for a decision made by the respondent, including the national coach.
22. For example: *Badminton Canada v. Canadian Olympic Association*, 12 July 2000, arbitration award pursuant to the rules of arbitration of the COA/NSF Team Selection Agreement dated 19 March 1999; *Garrett v. Canadian Weightlifting Federation*, 18 January 1990, unreported Alta QB (Edmonton), Case No. 9003-01227; *McCaig v. Canadian Yachting*

- Association*, 24 April 1996, unreported Man QB (Winnipeg), Case No. CI96-01-96624; *Roberge v. Judo Canada and Morgan*, 26 June 1996, arbitration award pursuant to Judo Canada National Team Handbook Article 5; *Kulesza v. Canadian Amateur Synchronized Swimming Association and Canadian Olympic Association*, 27 June 1996, unreported Ont. Ct. Gen. Div. (Ottawa), Case No. 27763-0001; *Green and Ceresia v. Canadian Raquetball Association*, 21 June 1999, internal appeal decision pursuant to Raquetball Canada Appeal Policy; *Stiles and Desci v. Canadian Paralympic Committee*, 28 July 2000, internal appeal decision pursuant to Canadian Paralympic Committee Appeal Policy.
23. R. Corbett and H.A. Findlay *Good Policies Good Governance: A Guide for Sport Organizations* (Ottawa: Centre for Sport and Law 1999).
 24. *Kane v. Canadian Ladies Golf Association* (1992) 102 Nfld and PEIR 218 (P.E.I.T.D.) 11 CPC (3d) 260; *Hall and Samuel v. Bobsleigh Canada*, 19 August 1999, internal appeal decision pursuant to Bobsleigh Canada Appeal Policy.
 25. *Roberge v. Judo Canada and Morgan*, 26 June 1996, arbitration award pursuant to Judo Canada National Team Handbook Article 5.
 26. *McCaig v. Canadian Yachting Association*, 24 April 1996, unreported Man QB (Winnipeg), Case No. CI96-01-96624.
 27. *Fernandes v. Sport North Federation* (1996) NWTR 118 (S.C.).
 28. *Badminton Canada v. Canadian Olympic Association*, 12 July 2000, arbitration award pursuant to the rules of arbitration of the COA/NSF Team Selection Agreement dated 19 March 1999.
 29. *Green and Ceresia v. Canadian Raquetball Association*, 21 June 1999, internal appeal decision pursuant to Raquetball Canada Appeal Policy.
 30. *Patrick v. Alberta Badminton Association*, 10 February 1992, unreported Alta QB (Edmonton), Case No. 9503-02351; *Kelly v. Canadian Amateur Speed Skating Association* (1995) 53 ACWS (3d) 750 (Ont. Ct. Gen. Div.).
 31. *Roberge* note 25; *McCaig* note 26; *Kendrick v. Canadian Olympic Association and Judo Canada*, 11 June 1996, unreported Ont. Ct. Gen. Div. (Ottawa).
 32. *Kulesza* (note 22); *Garrett v. Canadian Weightlifting Federation*, 18 January 1990, unreported Alta QB (Edmonton), Case No. 9003-0122; *Depiero v. Canadian Amateur Diving Association* (1985), 32 ACWS (2d) 330 (Ont. H.C.J.).
 33. Lynk, note 6 at 168.
 34. Canada Games Council (May 1999). *Principles that Govern Technical Packages*.
 35. *Stiles and Desci v. Canadian Paralympic Committee*, 28 July 2000, internal appeal decision pursuant to Canadian Paralympic Committee Appeal Policy; *Garrett* note 32.
 36. *Lamaze and Canadian Centre for Ethics in Sport, Canadian Equestrian Federation, Sport Canada and Canadian Olympic Association*. 19 September 2000, adjudication award pursuant to the *Canadian Policy on Doping in Sport*.
 37. An example is a sport such as badminton, where players may compete in singles, doubles and mixed doubles events. As the team quota is usually finite, team members will be selected based on their skills and performances in both singles and doubles. A sport organization may not have the luxury of selecting the best singles player if that player is not also strong in the doubles events.
 38. *Badminton Canada* note 28.
 39. *Patrick* note 30; *Green and Ceresia* note 29.
 40. Note 22.
 41. *Green and Ceresia*, note 29.
 42. *Hall and Samuel v. Bobsleigh Canada*, 19 August 1991, internal appeal decision pursuant to Appeal Policy of Bobsleigh Canada at 17.
 43. *Lamaze* note 36; *Patrick* note 30; *Kulesza* note 22.
 44. Blake note 3 at 18.
 45. *Patrick* note 30.
 46. *Kulesza* note 22.