AMINZ CONFERENCE

THE RISE OF ARBITRATION IN THE WORLD OF SPORT

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Introduction

1. Over the past 25 years there has been a significant rise in the use of independent arbitral tribunals to decide sporting disputes. At the international level this has centred on the creation and continued development of the Court of Arbitration for Sport (**CAS**) which is a private international arbitration institution based in Lausanne, Switzerland. At the national level and under the rules and regulation of sporting organisations themselves, there has also been a corresponding rise in the use of tribunals (usually with appeals to CAS). These tribunals, like CAS, have jurisdiction by agreement and this agreement will often amount to an agreement to arbitrate disputes. In New Zealand, we have seen the creation of a statutory Sports Tribunal with jurisdiction by agreement over various sports related disputes. The position which has been reached as a result of these developments is that most disputes in the world of sport will today be determined by an arbitral tribunal.

2. This paper provides a short summary of the development of the arbitral movement in sport, particularly the rise of CAS as a kind of supreme court for sport. It seeks to outline some of the key distinctive features of the CAS jurisdiction, discusses the extent of what has been achieved to date and considers some of the challenges for the system that lie ahead.

The background in the courts

3. The general legal background to this development of arbitral tribunals in sport was the considerable legal uncertainty which surrounded sporting disputes when they came before the courts. In most common law jurisdictions, there was (and remains) considerable uncertainty as to the availability of a claim by judicial review proceedings where a challenge related to the decision of a sporting organisation, primarily because the decision was likely to be characterised as a private, rather than public, law matter[1].

4. Even if a claim could be brought in contract relying on a member's position under the rules of a particular sporting organisation, national courts might still refuse to deal with the claim on the grounds that there was no clear positive indication that the parties intended to create legal relations in the rules,[2] or, more simply perhaps, because the courts should defer to the decision making of a private organisation and leave sporting

[1] See eg, the discussion of the position in the English Courts in *Taylor and Lewis: Sports Law,* Chapter 4, p 177-223; New Zealand, of course, adopted a more liberal approach to the availability of judicial review in one well known case, *Finnigan v NZRU* [1985] 2 NZLR 189 but this does not detract from the general difficulty and uncertainty in this area

[2] This extreme position applied in Australia, particularly where the rules of non-profit making or amateur organisations were in issue. See, e.g. *Cameron v Hogan* (1934) 51 CLR 358.

organisations to regulate their own affairs.[3] Generally, courts would circumnavigate restrictive precedent in the private law area, if personal rights to work or rights to property were affected, and there was illegality or absence of proper process. However, the uncertainty as to the availability of legal redress, no doubt, contributed to the relative rarity of challenge to the decisions of sporting bodies in the courts in respect of such matters as selection decisions, refusals to grant licences or to permit athletes to compete. The cases which were brought before the courts tended to involve decisions affecting personal or property rights where a fair process had not been followed, or where the decision by a sporting body gave rise to a claim that it was acting in restraint of trade.

5. Overall, the position might be summarised as being one in which it was difficult, in most common law jurisdictions, to decide whether a court would consider that it had jurisdiction over a dispute arising in a sporting context. Courts were reluctant to become involved in ruling on sporting disputes, and, fairly regularly, showed a strong desire to defer to the internal decision making of sporting organisations.

6. Judges might say things like:

> *"Sport would be better served if there was not running litigation at repeated intervals by people seeking to challenge the decisions of the regulating bodies."*[4]

or this:

> *"The kinds of organisations with whose internal decisions the courts have declined to meddle include social clubs…, sporting associations…, trade unions…, professional associations…, political parties…, friendly societies…, parochial councils and other church bodies… and schools. The reasons for the courts' declining to interfere with cases such as these have been various….."*[5]

7. This approach meant that a grievance was unlikely to go beyond a decision by a sporting governing body, or a domestic tribunal established by the sporting organisation. Generally, the cases which did reach courts tended to be those which involved significant economic interests in contractual disputes – the cases in the

[3] For a recent example of this kind of approach in the UK, see, *Flaherty v NGRC* [2005] EWCA Civ 1117 CA (Civ Div), where the court referred to its role in controlling illegality, but emphasised it had no role "to double guess regulating bodies in charge of domestic arrangements".

[4] Per Browne-Wilkinson V-C, in *Cowley v Heatley* (1986) Times, 24 July a challenge to a ban from amateur representative selection.

[5] In *Australian Football League v Carlton Football Club Limited* [1998] 2 VR 546, Tadgell JA, at 549-550. This case concerned a decision to suspend a player by a sporting disciplinary tribunal. Australia has, perhaps, the most restrictive precedent in this area going back to the decision of the High Court in *Cameron v Hogan* (*supra*).

various Commonwealth jurisdictions applying the restraint of trade doctrine and, more recently, competition law principles, in the sporting context, are good examples.

8. The position taken by courts in the common law world did not accord with the increasing importance given to the right to compete and participate in sporting activity by those involved in sport, whether amateur or professional. Where those rights were affected by decisions, it was natural for an aggrieved party to wish to seek redress and obtain some kind of independent adjudication on their rights. On such important sporting matters as selection of a national team, while there were disputes, there were very few court decisions. By way of example, no dispute over selection for Olympic teams appears to have reached the courts in New Zealand, before the advent of the Sports Tribunal.

9. It is, perhaps, not surprising, given this background, that sport developed specialist tribunals under its own rules (whether internal tribunals, or independent tribunals) which are dedicated to the hearing of disputes relating to such matters as selection and doping. This now means that, by way of example, an elite athlete who is not selected for a national team in New Zealand will, under the relevant rules, be able to challenge a selection decision before the Sports Tribunal on the grounds provided by the Rules of the Tribunal (with often an appeal to CAS).[6] However, the true impetus for the development of arbitration in the sporting world was not the attitude of the courts to sporting disputes but rather the general desire of sport itself to have its own single global system to determine the disputes which international sport produced in an efficient and effective manner. This desire was behind the initiative of the International Olympic Committee (**IOC**) which brought about the establishment of CAS in 1984.

The rise of arbitration and tribunals

10. The procedural framework for the hearing of disputes which has been established in the sporting world means that it is now most likely that disputes which in arise in sport, in matters such as doping, selection, and disciplinary matters and economic disputes under contracts of sporting employment will be decided by international, national or domestic tribunals under the rules and regulations which bind the sporting participants. Sport, at the international level, led initially by the Olympic movement, has chosen to establish a global regime for the arbitration of disputes. No doubt, those responsible for the choice considered that specialist tribunals were required to give ready access to specialist dispute resolution services in a manner which could not be provided by national courts. The obvious advantage is that, if a tribunal has

[6] See, Rules of the Sports Tribunal of New Zealand, Part C, Appeal Proceedings.

jurisdiction by agreement, the avenue for dispute resolution beyond any internal decision made by a sports organisation, is established and clear in the rules.

The International level - Court of Arbitration for Sport

11. At the international level, the rise of CAS as the international arbitral institution responsible for the handling of sports-related disputes has proceeded apace in the last few years.[7] CAS gave its first award in 1987. Twenty years ago, it had not developed a significant role and had little business. It was only in the mid 1990s that some International Federations began to incorporate CAS arbitration clauses in their rules and to use CAS for doping and disciplinary appeals. Appeals to CAS in the late 1990s established the key principles relating to the interpretation and application of anti-doping regimes upon which the World Anti-Doping Code was based.[8] Since the adoption of the Code by sporting bodies worldwide in 2003, CAS has had a central role (mandated by the provisions of the Code) in doping appeals involving international athletes. The acceptance of CAS by such international federations as the IAAF and FIFA also produced a rapid growth in the work of CAS and it has come to occupy the central position in the resolution of sporting disputes world wide.

12. At the national level, some States have also established (or are considering establishing) specialist tribunals for the hearing of sports-related disputes. Sporting organisations at both national and international level, have also established many more tribunals under their rules to hear disputes (usually with appeals to CAS). While the status of these tribunals will depend on the particular rules and regulations which govern them, proceedings before them may well constitute arbitration proceedings.[9]

13. CAS was founded in 1984 as a result of an initiative by the IOC. After dealing with only a few cases in its first few years, CAS has, in the last fifteen or so years, developed into an important arbitral forum for the resolution of sports-related disputes. By agreement, which is usually found in the rules of a sporting body, or in the conditions of participation in an event, parties submit disputes for determination by CAS in accordance with the CAS Code of Procedure. CAS hears and determines

[7] See CAS statistics – 7 requests for arbitration in 1990, 374 in 2012.
[8] See *Paul David: A Guide to the World Anti-Doping Code 2008*, p 25-28 for a review of the key principles which CAS tribunals developed and applied in the doping area.
[9] See, for example *ECB Ltd v Kaniera [2013]* EWHC 1074 (Comm) where the proceedings before the ECB appeal tribunal under the ECB regulations were held to be arbitration proceedings within the UK Arbitration Act 1996, meaning that a witness summons could be issued by the High Court.

sports-related disputes[10], whether at first instance in its Ordinary Division, or on appeal from a sporting tribunal in its Appeal Division. In the anti-doping area, CAS was designated as the mandatory appeal tribunal under the World Anti-Doping Code 2003 for an international athlete.[11] Under this appeal structure the ultimate "day in court" for an international athlete facing allegations that he or she has committed an anti-doping rule violation under the Code will be before CAS, not a domestic tribunal or the national courts. (The diagram **attached** to this paper sets out the structure for the process of hearings under the Code.)

14. After an initial expression of concern by the Swiss Federal Tribunal (in an early appeal from a CAS award) about the independence of CAS, where the IOC was involved as a party in a dispute before CAS, the International Chamber of Arbitration for Sport was created as an independent body with responsibility for ensuring the independence of CAS.[12] After this, the Swiss Federal Court strongly endorsed the role and independence of CAS in an anti-doping appeal.

> *"The plaintiffs submit…that the CAS is not an independent tribunal in a dispute in which IOC is a party. On the basis of Article 190, paragraph 2(a) LDIP, in conjunction with Article 6, paragraph 1 ECHR and Article 30, paragraph 1 of the Constitution, they argue that the two awards in which IOC named as a party should be set aside… Under the terms of Article 13.2.1 of the new WADA Code, the CAS is the appeals body for all doping-related disputes related to international sports events or international-level athletes. This is a tangible sign that States and all parties concerned by the fight against doping have confidence in the CAS. It is hard to imagine that they would have felt able to endorse the judicial powers of the CAS so resoundingly if they had thought that it was controlled by the IOC.*
>
> ***To conclude it is clear that the CAS is sufficiently independent vis-à-vis the IOC as well as other parties that call upon its services, for decisions in cases involving the IOC to be considered true awards, equivalent to the judgments of State Courts****."* [emphasis added][13]

15. While many CAS awards still concern anti-doping appeals, CAS is now handling a much broader range of sports-related disputes under sporting rules and contracts and

[10] There has been very little consideration of what amounts to a sports-related dispute by CAS Panels. No case has been rejected on the basis that there was no jurisdiction because the dispute was not sports-related.
[11] See Article 13.2.2 of the World Anti-Doping Code. See *A Guide to the World Anti-Doping Code* by P David, Cambridge University Press 2008, page 208-218.
[12] The challenge to the independence of CAS in a doping matter where the IOC was the party was rejected in *A and B v IOC and FIS*, 1st Civil Division of the Swiss Federal Tribunal , 27 May 2003, CAS Digest 2001-2003 p 674, David *op cit* Chapter 10 , p 234.
[13] *A and B v IOC and FIS*, 1st Civil Division of the Swiss Federal Tribunal, 27 May 2003, CAS Digest 2001-2003, p674.

there has been a significant increase in referrals to CAS concerning commercial contract claims, in sports such as association football. The work of CAS is growing and diversifying rapidly with more parties including CAS arbitration clauses in a wide range of contracts and rules and a greater volume of sporting disputes.[14]

CAS Ad Hoc jurisdiction

16. In the Olympics (where the jurisdiction was first exercised at the 1996 Atlanta Games) and other major sporting events such as the Commonwealth Games and the FIFA World Cup, CAS sits in its *Ad Hoc* Division to determine disputes which may arise during the course of the event, in accordance with strict time limits. In this context, CAS has developed particular legal principles for application in the sporting context such as the "field of play" rule which seeks to delineate the scope of its ability to review sporting decisions. This is, perhaps, one of the areas in which it can truly be said that CAS has developed sports specific legal principle of general application in the world of sport.[15]

Agreement-based jurisdiction

17. The requirement of agreement to the jurisdiction of CAS must be kept in mind. While submission to the jurisdiction of CAS by agreement is unavoidable, in a practical sense, for athletes who wish to compete in international sporting events such as the Olympic Games, or in anti-doping matters, where the World Anti-Doping Code, with its mandatory reference to CAS for appeals by international athletes, applies, the question whether there has been an agreement to the jurisdiction of CAS arbitration can arise as an initial jurisdictional issue. If an athlete is not bound by an agreement to arbitrate before CAS, whether by the rules of the sport, the event or a particular contract, CAS will have no jurisdiction and the relevant national legal system will provide the forum for the dispute.[16] The contractual nature of the arrangements before CAS means that it is quite possible that an athlete to be subject to both national law, and to the jurisdiction of CAS, at the same time, for the same conduct with, potentially, different results. Where CAS does have jurisdiction by agreement, attempts to bring proceedings in national courts will be met with an application for a stay on the basis that the parties have agreed to submit the dispute to arbitration.[17]

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[14] For the standard arbitration clause, see the CAS website, www.tas.cas.org

[15] There are a number of CAS decisions in this area which uphold the autonomy of decisions on the field of play. See, eg. CAS 2004/A/704 *Yang v Hamm*. The approach is one of restraint not complete lack of jurisdiction. A true field of play decision will only be revisited by CAS, if there is corruption or bad faith.

[16] For a case which shows the importance of finding a binding agreement see *CAS/A/1190 WADA v PCB and Akhtar and Asif* where CAS ruled that it had no agreement to hear the appeal brought by the World Anti-Doping Authority against a decision by the Pakistan Cricket Board Appeals Committee.

[17] See e.g. *Raguz v Sullivan* [2000] NSWCA 290.

Appeals from CAS awards

18. The effect of a reference to CAS is to agree on an arbitration which, under the CAS Rules, has its seat at Lausanne, Switzerland. While the hearing can be held in another place,[18] this will not change the seat of the arbitration. While the principles of several legal systems may be relevant to aspects of the arbitration, the legal system which will have jurisdiction in relation to a CAS award would generally be the law of Switzerland, as this is the law of the seat of the arbitration. If the arbitration is international in nature, then the grounds for appeal in Swiss law are contained in the Swiss Code on Private International Law. These grounds reflect the grounds in the UNCITRAL Model Law on arbitration and an appeal will be to the Swiss Federal Tribunal. The grounds for any appeal are narrow;

    - A sole arbitrator was not properly appointed or the arbitral tribunal was not properly constituted;
    - The arbitral tribunal wrongly held that it did or did not have jurisdiction;
    - The arbitral tribunal went beyond the claims submitted to it or failed to rule on one of the claims
    - The principle of equal treatment of the parties or their right to be heard was violated; or
    - The award is incompatible with Swiss public policy (*ordre public*)

19. To date, there have been very few successful appeals from a CAS awards. It is very difficult to establish that an award contravenes Swiss public policy. The only successful appeal in the anti-doping area involved the Swiss Federal Tribunal finding that CAS had not properly considered submissions in relation to the appropriate period of ineligibility, thereby violating the right to be heard of the athlete. Outside the anti-doping area, there have only been 2 appeals from CAS awards in which a contravention of Swiss public policy has been made out before the Swiss Supreme Court.[19]

20. The result, of the rise of CAS is that where the parties have agreed to refer their disputes to CAS, national courts have been removed from the field, and any challenge to a CAS award will be by reference to Swiss law, and not, as previously was the case, with decisions by a domestic sporting tribunal, by the application of the legal

[18] CAS has Registries in New York and Sydney.
[19] See Supreme Court Decision 4A_558/2011, *Francelino da Silva Matuzalem v FIFA,* March 27 2012 and Supreme Court Decision 4A_490/2009, April 13 2010, *Club Atletico de Madrid SAD v Sport Lisoba E Benifca*

rules of public or private law under the national legal system of one or other of the parties or as agreed by them. The limited grounds for an appeal means that in most sporting disputes CAS will have the last word – truly a quiet revolution in the resolution of disputes in sport!

National level

Internal tribunal systems

21. This international movement to a specialised tribunal system for the determination of sports-related disputes has been mirrored at the national level and within sporting organisations themselves. Domestic tribunals have developed considerably in some sports. These tribunals have become increasingly sophisticated in their regulations and roles, and deal with ever more significant matters for individuals or teams. As noted above, the domestic tribunal system established by a sporting organisation may, on the proper interpretation of the relevant rules or regulations, amount to a submission of a dispute to arbitration. Often, such internal tribunal systems provide for an appeal to CAS in the applicable rules.

External tribunals at national level

22. There is also an increasing trend towards the establishment of independent national level sports tribunals to hear sports-related disputes and appeals from the decisions of domestic tribunals of sporting organisations. This development removes much of the burden of conducting domestic tribunals from national sporting organisations and creates an external independent process binding by the rules of the sporting organisation. Establishing such a tribunal offers the opportunity to provide for the consistent application of the developing legal principles across all sports in such specialist areas as anti-doping where the maintenance of a harmonised international regime is of paramount importance. It also provides for certainty of access to an independent tribunal with an agreed jurisdiction for identified sporting disputes at reasonable cost.

Sports Tribunal in New Zealand

23. In New Zealand, the Sports Tribunal has been in existence since 2002 and is one of the earliest examples of a specialist tribunal at national level. While the Tribunal is a creature of statute (and implements anti-doping rules which are made under statute),[20] its jurisdiction, like that of CAS, is agreement based.[21] The Tribunal has

[20] The Sports Tribunal existence is continued under the Sports Anti-Doping Act 2006.
[21] While the Tribunal's provide for the hearing of anti-doping rule violations under the Sports Anti-Doping Rules ("**SADR**"), the SADR are only effective by agreement, as is the reference of anti-doping rule violation proceedings to the Tribunal.

jurisdiction under its rules in relation to national selection appeals, anti-doping matters, appeals from national sporting organisations and other sports-related disputes where the parties have agreed to refer such disputes to the Tribunal. Each head of jurisdiction requires an agreement by the parties to the jurisdiction of the Tribunal. To date the Tribunal's work has largely been focussed on anti-doping matters and selection disputes, although there have been cases relating to appeals in disciplinary and other matters, and other sports- related disputes.[22] In other countries, sporting tribunals have either been established, or are being considered. Germany and the United Kingdom have recently established similar tribunals.

24. In New Zealand, the availability of a tribunal with low level fees and procedural requirements of a straightforward nature has meant that cases have been brought forward which would not have been brought before the courts in the past. In the anti-doping area, the Sports Tribunal provides an effective forum for dealing with anti-doping rule violation allegations under the WADA Code, which would previously have been dealt with by internal sporting tribunals and in the courts.[23] In selection disputes, the Tribunal provides access to an independent tribunal for many athletes who might not have pursued a grievance in the past. The presence of the Tribunal has ensured that, in New Zealand, the SADR (which implement the World Anti-Doping Code) have been applied in a fashion which is in harmony with the approach to the Code worldwide. Overall, the Sports Tribunal has developed a body of law applicable to the disputes over which it has jurisdiction which follows and is consistent with the law developed internationally in CAS.

Areas of concern and challenge

25. This development of arbitration in the sporting world has been something of a quiet revolution. Some concerns have been raised in certain areas but there has been little general objection to a system which sees the "day in court" for an athlete like Floyd Landis or Oscar Pistorius (in relation to his running blades) take place before CAS, and not before a national court.[24] The underlying reason for this has, perhaps, been the general acceptance, at national and international level of the need to have

[22] For the Tribunal's work, see website www.sportstribunal.org.nz and the Tribunal report for 2008.

[23] Under the earlier NZ legislation, repealed by the Sports Anti-Doping Act 2006, the question whether a doping infraction had been committed was decided by the Board of the Sports Drug Agency. This determination was noted on a register then referred to the sport in question to deal with questions of ineligibility under its rules. The athlete had appeal rights to the District Court from the determination by the Agency. This has now been replaced by a system in which Drug Free Sport New Zealand refers an allegation to the Sports Tribunal for determination under the SADR.

[24] As noted, recourse to national courts will only be available on narrow grounds where the athlete seeks to challenge a CAS award on appeal. Similarly, the grounds to resist the enforcement of an award will be narrow where the New York Convention applies (as it generally will). See, eg. *Mary Decker Slaney v IAAF & USOC*, 244 F 3d 580

specialist tribunals for sports-related disputes, and the growing trust which is placed in arbitration generally, and in CAS specifically. The general trust in arbitration is, of course, exemplified by the widespread acceptance of the international Conventions relating to arbitration.[25]

Access to legal decisions

26. CAS functions more like a court and gives decisions on the interpretation of international agreements like the WADA Code which may well have a general impact beyond the particular dispute before a particular CAS panel. Under such a system access to decisions is important. Concerns have been expressed about access to CAS awards. Although CAS awards on anti-doping appeals under the WADA Code have to be published under the Code, there were concerns about the ability of partners and their advisors to obtain earlier awards. In addition, concerns have been raised about the cost of the CAS process where CAS Rules on costs are applied.[26] To a certain extent, the availability of CAS awards has now been (somewhat belatedly) addressed by the publication of previous CAS awards on the CAS website in a searchable archive, although work is still continuing on the development of this resource. If CAS is to perform its central function as a kind of "Supreme Court" for Sport as effectively as possible, providing legal rulings for the better regulation of sport and on the interpretation of sports' rules, access to previous decisions is essential.[27]

Costs

27. In Australia, where CAS is used by sports in its Ordinary Division as a first instance tribunal, as well as for appeals, concern has been expressed that the requirement of the CAS Rules, which requires payments in advance for arbitration costs, works against athletes with limited resources, and can be a barrier to the use of CAS.[28] The cost of access to CAS and the need to use different domestic tribunals which currently have to deal with such matters as anti-doping allegations, has brought about renewed consideration of the possible establishment of a national sports tribunal in Australia,

[25] For a consideration of the way in which CAS has been accepted internationally by many countries (and the reasons for this) without the same concerns being expressed about loss of sovereignty as with agreement to trials in such *fora* as the International Criminal Court - *The Court of Arbitration for Sport: A Subtle Form of International Delegation*, *Abbas Ravjani Journal of International Media and Entertainment Law* Vol 2 No 2 page 241 – 283.
[26] See, eg. *The Rule of Law and Sporting Justice*, Paul J Hayes, Editorial ANZSLJ (2007) Vol 2 No.1.
[27] There is, of course, a tension between the usual confidentiality of arbitration and the need to publish decisions if they are to have general use. Where the Code applies, the parties will have agreed to publication of the decision, although the hearing process will be confidential. For the CAS Rules, see, CAS Code of Procedure, Rule 43 Ordinary Division – decision confidential unless parties otherwise agree – and, Rule 59, Appeal Division – decision made public, unless parties agree confidential.
[28] CAS Procedural Rules, Rule 64.2.

so that low cost access to a specialist forum for dispute resolution can be provided to all at national level.

Consistency

28. CAS draws its arbitrators from both civil and common law jurisdictions and has fairly large list of arbitrators who can be appointed to hear disputes. Arbitrators are not bound by the doctrine of precedent, although CAS Panels will seek to establish and apply a body of legal principle which is consistent in relation to international rules such as the WADA Code. Where difficult questions arise in areas such as the interpretation of rules, different CAS Panels may have different views on how particular provisions should be interpreted and applied. There is no appellate structure as there would be in a court system to provide certainty where there are conflicting decisions. Recently, CAS Panels have taken different approaches to the interpretation of Article 10.4 of the WADA Code. This is an important provision and the different CAS decisions on how it should be applied create difficulties for national level tribunals which have to interpret and apply the Code. It has been suggested that CAS may have to consider developing some form of higher tribunal to address such matters.

Role of courts

29. The specialist sporting tribunals, whether internal or independent, now provide dispute resolution mechanisms for sports-related disputes at national and international level, which were either simply not brought before the courts in the past, or which arose in areas where the courts were reluctant to tread. However, national courts are far from going out of business in the sporting area. Where a dispute is the subject of an agreed referral to a tribunal which amounts to an arbitration agreement, a national court may have a significant role in supervising the arbitral proceedings. A national court may also have to consider applications to stay proceedings[29] brought in breach of an arbitration clause, and challenges to arbitration awards, whether on appeal, or a challenge to enforcement, by reference to the applicable legal principles.

30. Where there is no applicable arbitration agreement, the courts will continue to have jurisdiction over the decisions of domestic sporting tribunals, usually as a matter of private law, by reason of the contractual nexus between the parties (with principles of fairness or natural justice drawn from public law implied into the contract) or by way of judicial review proceedings. Outside this supervisory jurisdiction a wide, ever-increasing, range of cases across all aspects of sporting activity - contractual disputes, claims for wrongful exclusion from sporting opportunity or competition, competition law claims - will continue. Even in specialist sporting areas such as anti-

[29] *Raguz v Sullivan*, *infra*.

doping, although the parties have agreed to the application of the World Anti-Doping Code, the law of a State, in particular its constitutional protections, may allow a party to challenge the anti-doping regime on constitutional grounds before the national courts or before supra-national tribunals or courts such as the European Court.[30]

31. While the growth of specialist tribunals serving the needs of sport, whether arbitral or internal domestic tribunals, is continuing at a time when national courts are probably more aware of the importance of sporting disputes and the need to hear and determine them, the role of CAS is firmly established and the movement to use arbitration has considerable momentum and will certainly continue. While there will always be limits to the scope of challenge to sporting decisions, even where specialist tribunals such as CAS have jurisdiction, the specialist tribunals have the advantage of providing a clearly established path for an aggrieved party and can provide a review of a decision by a sporting organisation by arbitrators who are specialised in the field.

Concluding comments

32. The challenge for the lawyer or arbitrator who is involved in this area is to acquire the necessary detailed knowledge of the rules under which the specialist tribunals operate, and of the legal principles which will be applied. There is a rapidly developing body of law which, while possibly not capable of being described as "sports law", sees the making of sport specific technical rules such as the World Anti-Doping Code, and contains particular legal principles which will be applied to sports disputes by specialist tribunals. The first 25 years of CAS has seen rapid growth in its work. In the years ahead it seems likely that arbitral tribunals at both national and international levels will be called upon to deal with an increasing volume of sporting disputes. While CAS faces challenges as its work expands it seems well placed to evolve and develop to meet those challenges. The challenge for lawyers and arbitrators in the field is to keep pace with rapid developments, to ensure that those involved in sport have access to tribunals and that the legal principles and rules developed are clear and intelligible.

Paul David
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[30] See an example of the challenges to anti-doping rules on the basis that they contravened EC law on economic freedom, Case C-519/04 P, *Meca-Medina and Majcen v Commission of European Communities.* The recent New Zealand case of *Cropp v Judicial Committee* [2008] 3 NZLR 774 is an example of a challenge by way of judicial review proceedings based on Bill of Rights grounds to anti-doping regulations under a domestic statutory regime. The case did not involve a regime based on World Anti-Doping Code.

HEARINGS UNDER THE WORLD ANTI- DOPING CODE