

Exploring the Court of Arbitration for Sport*

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Mr. Gilson highlights the features of the Court of Arbitration for Sport and provides a selective list of annotated resources addressing various topics related to this sports disputes resolution institution.

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Introduction

¶1 The Court of Arbitration for Sport (CAS),¹ recognized as an emerging leader in international sports dispute resolution,² was created specifically to address

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1. A variety of materials are available in English and French from Court of Arbitration for Sport, <http://www.tas-cas.org> (last visited Apr. 8, 2006), including CAS arbitral awards, statistical information and press releases pertaining to the CAS, the Code for sports-Related Arbitration, and a listing of CAS arbitrators and mediators.

2. See JAMES A.R. NAFZIGER, INTERNATIONAL SPORTS LAW 63 (2d ed. 2004) (noting the CAS is becoming the paramount dispute resolution institution for international sports matters); see also Nathaniel Vinton, *Court Has Big Caseload and New Home in Castle*, N.Y. TIMES, June 19, 2005, § 8, at 6 (discussing the growth and increasing caseload of the CAS).

sports-related matters.³ Since its formation, the CAS has addressed a wide range of sports-related issues,⁴ including matters pertaining to the positive drug tests of athletes, the challenges to technical decisions of officials made during competition, and the eligibility of athletes to compete in the Olympic Games. Of significance, CAS awards have been recognized as developing a *lex sportiva*, that is, a set of guiding principles and rules in international sports law.⁵ This development, and the increasing role of the CAS in international sports disputes, may be attributable to multiple factors. In particular, the CAS has been designated as the exclusive arbitral body for Olympic disputes,⁶ the World Anti-Doping Agency has designated the CAS as the exclusive arbitral body for doping matters occurring during international events or involving international-level athletes,⁷ and international sports federations are designating the CAS as the exclusive arbitral body for their disputes.⁸

¶2 The CAS, which maintains its head office in Lausanne, Switzerland,⁹ was created by the International Olympic Committee and has been operational

3. Matthieu Reeb, *The Court of Arbitration for Sport: History and Operation*, in COURT OF ARBITRATION FOR SPORT, DIGEST OF CAS AWARDS III, 2001–2003, at xxvii–xxviii (Matthieu Reeb ed., 2004) [hereinafter DIGEST OF CAS AWARDS III]. In addition, Matthieu Reeb, *The Court of Arbitration for Sport*, <http://www.tas-cas.org/en/code/frmco.htm> (last visited Apr. 8, 2006), also discusses the history of the CAS.
4. The CAS, which handles both amateur and professional sports disputes, has broad jurisdiction in selecting the types of sports-related matters it addresses. See COURT OF ARBITRATION FOR SPORT, STATUTES OF THE BODIES WORKING FOR THE SETTLEMENT OF SPORTS-RELATED DISPUTES R27 (June 30, 1984) [hereinafter CAS CODE], in DIGEST OF CAS AWARDS III, *supra* note 3, at 725.
5. See NAFZIGER, *supra* note 2, at 48–61 (describing the *lex sportiva* principle and discussing, inter alia, the role of the CAS in developing the principle); but see Paul H. Haagen, *Have the Wheels Already Been Invented: The Court of Arbitration of Sport*, in MEDIATING SPORTS DISPUTES, NATIONAL AND INTERNATIONAL PERSPECTIVES 117–24 (Ian S. Blackshaw ed., 2002) (expressing mixed sentiments on the role of the CAS in resolving international sports disputes); Allan Erbsen, *The Substance and Illusion of Lex Sportiva*, in THE COURT OF ARBITRATION FOR SPORT 1984–2004, at 441–54 (Ian S. Blackshaw et al. eds., 2006) (contending that rather than creating a *lex sportiva*, CAS has created four types of distinct law depending on the circumstances; in particular, the CAS may serve as an enforcer of norms, a source of norms that frame the outer limits of discretion in regulating, a provider of common law interpretation of conflicting or ambiguous texts, or a creator of common law in the event of texts with gaps).
6. INT'L OLYMPIC COMM., OLYMPIC CHARTER rule 61, at 108 (2004), available at http://multimedia.olympic.org/pdf/en_report_122.pdf.
7. WORLD ANTI-DOPING AGENCY, WORLD ANTI-DOPING CODE art. 13.2.1, at 38 (2003), available at http://www.wada-ama.org/rtecontent/document/code_v3.pdf.
8. See, e.g., INT'L JUDO FED'N STATUTES art. 27 (2003), available at http://www.ijf.org/rule/rule_role_mission.php#27. Prior to filing a dispute with the CAS, a claimant is required to exhaust all administrative remedies available within the statutes or regulations of the applicable association, federation, or sports-related body. CAS CODE, *supra* note 4, at R47, in DIGEST OF CAS AWARDS III, *supra* note 3, at 734.

At present, the federations have varying rules governing their appellate processes. The creation of model appellate rules for federations has been suggested to add uniformity to the federations' appellate processes and to further the ability of the CAS to interpret the federations' rules. See Kristin L. Savarese, *Judging the Judges: Dispute Resolution at the Olympic Games*, 30 BROOK. J. INT'L L. 1107, 1129–30 (2005).

9. Court of Arbitration for Sport, Where is the CAS based? <http://www.tas-cas.org/en/present/frmpres.htm> (last visited Apr. 17, 2006). In addition, the CAS maintains decentralized offices in the United States in New York City, and also in Sydney, Australia. *Id.*

since 1984.¹⁰ The CAS working languages are English and French,¹¹ and it is under the financial and administrative authority of the International Council of Arbitration for Sport (ICAS).¹² Originally designed to hear Olympic cases, the CAS has expanded to provide services in other international competitions, including the Commonwealth Games in Kuala Lumpur and the European Football Championships.¹³

¶3 The CAS arbitration services are divided into Ordinary and Appellate divisions.¹⁴ In addition, the CAS ad hoc Division was added in 1996 to resolve disputes at the Olympic Games.¹⁵ For CAS arbitration to occur, the parties must agree to submit their dispute to the CAS.¹⁶ Once the parties agree to arbitration, they are permitted to select the particular arbitrators from a designated list,¹⁷ together with the number of arbitrators on their panel.¹⁸ In addition, the parties are permitted

10. Reeb, *The Court of Arbitration for Sport: History and Operation*, *supra* note 3, at xxviii.
11. CAS CODE, *supra* note 4, at R29, in DIGEST OF CAS AWARDS III, *supra* note 3, at 725. The selection of other languages by the parties is also permitted. *Id.*
12. CAS CODE, *supra* note 4, at S2, in DIGEST OF CAS AWARDS III, *supra* note 3, at 719; NAFZIGER, *supra* note 2, at 43. In 1994, a CAS reformation resulted from the Swiss Federal Tribunal decision in *G. v. FEI*, CAS 92/63, in COURT OF ARBITRATION FOR SPORT, DIGEST OF CAS AWARDS, 1986–1998, at 115 (Mathieu Reeb ed., 1998) (involving the doping of a horse and the subsequent disqualification of its rider). The rider filed an appeal with the CAS and thereafter a public law appeal with the Swiss Federal Tribunal, challenging the independence of the CAS from the International Olympic Committee. In its judgment, the court questioned the independence of the CAS from the International Olympic Committee, which in turn led to the CAS reformation. This reformation included the formation of the ICAS. Reeb, *The Court of Arbitration for Sport: History and Operation*, *supra* note 3, at xxix–xxx. For subsequent confirmation of CAS independence from the International Olympic Committee, see ATF 129 III 425, 463 *Larissa Lazutina & Olga c. CIO & FIS*, Swiss Federal Tribunal (2003), available at <http://www.tas-cas.org/en/pdf/TFanglais.pdf>.
13. Reeb, *The Court of Arbitration for Sport: History and Operation*, *supra* note 3, at xxxiv.
14. CAS CODE, *supra* note 4, at S3, in DIGEST OF CAS AWARDS III, *supra* note 3, at 719.
15. Reeb, *The Court of Arbitration for Sport: History and Operation*, *supra* note 3, at xxxiv. The CAS also offers a mediation service and advisory opinions. The CAS mediation is a nonbinding informal procedure available for Ordinary Division matters, but not for doping and disciplinary matters. CAS MEDIATION RULES art. 1, in DIGEST OF CAS AWARDS III, *supra* note 3, at 746, available at <http://www.tas-cas.org/en/mediat/frmmmediat.htm>. If mediation is unsuccessful, the parties may turn to arbitration, so long as an arbitration agreement exists between the parties submitting to CAS jurisdiction. *Id.* For coverage of the CAS mediation service, see IAN STEWARD BLACKSHAW, *MEDIATING SPORTS DISPUTES: NATIONAL AND INTERNATIONAL PERSPECTIVES* 61–63 (2002); Ousmane Kane, *The CAS Mediation Rules*, INT'L SPORTS L.J., 2003, no. 1, at 33. In addition to mediation, the CAS provides nonbinding advisory opinions for a number of organizations, including the International Olympic Committee, the World Anti-Doping Agency, and international federations. CAS CODE, *supra* note 4, at R60, in DIGEST OF CAS AWARDS III, *supra* note 3, at 738. Once a request for an advisory opinion is filed, the CAS president has authority to determine whether the CAS will provide an advisory opinion, who will serve as arbitrators in the matter, and whether the questions submitted should be rephrased prior to review. CAS CODE, *supra* note 4, at R61, in DIGEST OF CAS AWARDS III, *supra* note 3, at 738.
16. CAS CODE, *supra* note 4, at R27, in DIGEST OF CAS AWARDS III, *supra* note 3, at 725; Court of Arbitration for Sport, Under What Conditions Will the CAS Intervene? <http://www.tas-cas.org/en/present/frmpres.htm> (last visited Apr. 8, 2006).
17. For a list of CAS arbitrators, see Court of Arbitration for Sport, Members, <http://www.tas-cas.org/en/membres/frmmemb.htm> (last visited Apr. 8, 2006). Of the 287 CAS arbitrators, the United States is the most represented country with thirty-five, followed by Switzerland and Australia with twenty-three and twenty-one, respectively. List of CAS Arbitrators per Nationality (Sept. 2005), <http://www.tas-cas.org/fr/pdf/Listenationalité.pdf>.
18. For panel selection in the Ordinary Division, see CAS CODE, *supra* note 4, at R40.2, in DIGEST OF CAS AWARDS III, *supra* note 3, at 729. For panel selection in the Appeals Division, see CAS CODE, *supra* note 4, at R50, in DIGEST OF CAS AWARDS III, *supra* note 3, at 735.

to select the law applicable to the merits,¹⁹ whereas the Code of Sports-related Arbitration governs CAS procedure.²⁰

¶4 The purpose of the remaining portions of this article is to provide a selective list of annotated resources that discuss the arbitration services and other aspects of the CAS. These resources include materials providing background on the structure and functions of the CAS, as well as those addressing issues pertaining to the CAS, particularly athletes' rights, doping, and the technical decisions of officials made during competition. In addition, resources describing the work of the ad hoc Division are provided, including those discussing the work of the ad hoc divisions at the Athens, Sydney, Salt Lake City, and Atlanta Olympics.

Resources Relating to Work of Ordinary and Appellate Divisions

¶5 The Ordinary Division addresses matters that the parties have initially agreed to submit to the CAS, as opposed to matters filed on appeal following the initial decision of an association, federation, or sports-related body.²¹ Contractual and tort matters are addressed by the Ordinary Division,²² in which proceedings are known to last from six to twelve months.²³ The costs in the Ordinary Division are estimated prior to the proceedings, and each party is required to advance, in equal shares, these estimated costs.²⁴ At the conclusion of the proceedings, the panel determines the ultimate cost for the proceedings²⁵ and in what proportion the parties should bear responsibility for these costs.²⁶

¶6 The Appellate Division was designed to handle appeals from the decisions of sports federations, associations, or sports-related bodies.²⁷ Examples of matters submitted to the CAS Appellate Division include doping sanctions and the technical decisions of judges made during competition. For appeals, the CAS bears responsibility for its costs, along with the arbitrators' fees and costs.²⁸ Awards made during Appellate Division arbitration are binding on the parties, and an award must be rendered within four months after the statement of appeal is filed.²⁹

19. For selection of law in the Ordinary Division, see CAS CODE, *supra* note 4, at R45, in DIGEST OF CAS AWARDS III, *supra* note 3, at 733. For selection of law in the Appellate Division, see CAS CODE, *supra* note 4, at R58, in DIGEST OF CAS AWARDS III, *supra* note 3, at 737.

20. CAS CODE, *supra* note 4, at R27, in DIGEST OF CAS AWARDS III, *supra* note 3, at 725.

21. Michael Straubel, *Enhancing the Performance of the Doping Court: How the Court of Arbitration for Sport Can Do Its Job Better*, 36 LOY. U. CHIC. L.J. 1203, 1213 (2005).

22. Court of Arbitration for Sport, What Are the CAS Procedures? <http://www.tas-cas.org/en/present/frmpres.htm> (last visited Apr. 8, 2006).

23. Court of Arbitration for Sport, How Long Does CAS Arbitration Last? <http://www.tas-cas.org/en/present/frmpres.htm> (last visited Apr. 8, 2006).

24. CAS CODE, *supra* note 4, at R64.2, in DIGEST OF CAS AWARDS III, *supra* note 3, at 739.

25. CAS CODE, *supra* note 4, at R64.4, in DIGEST OF CAS AWARDS III, *supra* note 3, at 739.

26. CAS CODE, *supra* note 4, at R64.5, in DIGEST OF CAS AWARDS III, *supra* note 3, at 739.

27. CAS CODE, *supra* note 4, at R47, in DIGEST OF CAS AWARDS III, *supra* note 3, at 734.

28. CAS CODE, *supra* note 4, at R65.1, in DIGEST OF CAS AWARDS III, *supra* note 3, at 739. For additional discussion of appellate fees, see CAS CODE, *supra* note 4, at R65.2–3, in DIGEST OF CAS AWARDS III, *supra* note 3, at 740.

29. CAS CODE, *supra* note 4, at R59, in DIGEST OF CAS AWARDS III, *supra* note 3, at 737.

Background

Castle, Tim. "The International Court of Arbitration for Sport." *New Zealand Law Journal* (1994): 400–03.

Castle describes the functions and structure of the CAS and provides examples of matters heard by the CAS in the Ordinary and Appellate divisions. Included within the Appellate Division discussion is the Gundel matter, a dispute involving the doping of a horse and the suspension of its rider.³⁰ Included in the Ordinary Division discussion is coverage of a contractual dispute addressing whether a federation validly terminated a broadcast company's right to exclusively broadcast world championship sporting matches. Castle also covers the CAS advisory opinion function. He further discusses the CAS role in New Zealand, including the requirement that athletes participating in the 1994 Metropolitan Life ITU Triathlon World Championships submit all disputes exclusively to the CAS.

Nafziger, James A.R. "Dispute Resolution in the Arena of International Sports Competition." *American Journal of Comparative Law* 50 Supp. (Autumn 2002): 161–79.

Nafziger explores the complex structure of international sports and relies on the Jessica Foschi³¹ and Pardeep Singh Nagra³² matters to highlight the difficulties arising in this international sports framework. Foschi involved doping allegations arising during a swimming competition, whereas the Nagra matter involved a Sikh's right to wear his beard while participating in a boxing competition. After exploring these matters, Nafziger suggests there may be some order to this complex sports structure, supporting his contention by examining the roles of various institutions in this framework. The particular roles of litigation and arbitration in resolving international sports disputes are addressed.

Raber, Nancy K. "Dispute Resolution in Olympic Sport: The Court of Arbitration for Sport." *Seton Hall Journal of Sport Law* 8 (1998): 75–96.

Raber evaluates the work of the CAS and whether it is an appropriate dispute resolution method for sports matters. She begins with a historical discussion of the Olympics and descriptions of the organizations that govern in Olympic sport. Thereafter, she explores the structure and operating principles of the CAS, including the selection of arbitrators and arbitration panels. Raber considers whether the work of the CAS has promoted accuracy, efficiency, fairness, and uniformity in its decision making. She also suggests methods for gaining additional CAS support from athletes, including permitting athletes to form unions with the authority to negotiate agreements with governing sports bodies.

Arbitration of Sports Related Disputes. ASA Special Series No. 11. Zurich: Swiss Arbitration Association, 1998.

This book includes various papers, in either English or French, presented during the Conference on Sports and Arbitration. The conference was held at the

30. See *supra* note 12.

31. In the Matter of Arbitration Between Jessica K. Foschi & United States Swimming, Inc., American Arbitration Association, No. 77-190-0036-96 (1996).

32. Nagra v. Canadian Amateur Boxing Ass'n, No. 99-CV-180990 (Ont. Super. Ct. Jan. 12, 2000); Nagra v. Canadian Amateur Boxing Ass'n, No. 99-CV-180990 (Ont. Super. Ct. Dec. 1, 1999).

Olympic Museum on January 16, 1998, and jointly organized by the CAS and the Swiss Arbitration Association. The book includes "Arbitration Agreements by Reference to Regulations of Sports Organizations," by Stephen Netzle, which discusses the inclusion of arbitration clauses in sports-related contracts and within the regulations of sports organizations. It also covers the inclusion of these clauses by reference in separate documents, such as application forms or licenses. In addition to the papers, the book contains the Code of Sports-related Arbitration, the CAS Rules for the Olympic Games in Nagano, and a CAS guide to arbitration.

Nafziger, James A.R. *International Sports Law*. 2nd ed. New York: Transnational Publishers Inc., 2004.

Nafziger includes coverage of the structure and cases decided by the CAS along with a discussion of the development of *lex sportiva* in international sports law. He addresses specific principles followed by the CAS; for instance, the general policy of not interfering with game rules or calls of officials made during competition. Nafziger also covers the CAS advisory opinion to the Australian Olympic Committee on the use of full-body swimsuits during the 2000 Sydney Summer Games. He further discusses doping, including categories of banned substances and drug testing procedures. A historical discussion of doping is also included together with coverage of anti-doping measures used in sports. In addition, Nafziger addresses the formation of a *lex sportiva* in doping matters based upon CAS awards. The development of specific uniform doping rules are also covered, including the creation of the World Anti-Doping Code and the responsibilities of the World Anti-Doping Agency.

Awards³³

Court of Arbitration for Sport, *Digest of CAS Awards: 1986–1998*, edited by Mattieu Reeb. Berne: Editions Staempfli, 1998.

In this compilation, Reeb edits and compiles the main CAS awards from 1986 to the 1997 Winter Games in Nagano. The edited awards include an introduction, factual summary, and the grounds for the CAS decision. The arbitral awards are divided into a variety of topics, including Ordinary Division matters, doping awards rendered on appeal, nondoping matters addressed on appeal, and ad hoc Division awards. CAS Advisory Opinions, CAS Orders, and Swiss Federal Tribunal Judgements are also provided. The arbitration rules for disputes arising during the Olympic Games in Nagano are also included, along with statistical charts illustrating the volume of matters handled by the CAS.

Reeb, Matthieu, ed. *Digest of CAS Awards II, 1998–2000*. Hague; London: Kluwer Law International, 2002.

Reeb compiles the main CAS awards from 1998, 1999, and 2000. This compilation follows the same general format of the prior edition and includes supplementary material found in the previous edition, such as CAS Orders and statistical information. In addition, he includes the doping cases addressed by the CAS as a first instance court in Australia, the CAS ad hoc Division awards

33. In addition to this series, CAS awards of more recent vintage can be found at Court of Arbitration for Sport, Case Law, <http://www.tas-cas.org/en/juris/frmjur.htm> (last visited Apr. 8, 2006).

from the Sydney Olympic Games,³⁴ and the arbitration rules for the Sydney Olympic Games.

Reeb, Matthieu, ed. *Digest of CAS Awards III, 2001–2003*. Hague; London: Kluwer Law International, 2004.

Reeb compiles the CAS awards for 2001, 2002, and 2003, again following the format of the previous editions, and includes supplementary materials found in the prior volumes, such as CAS Orders and statistical information. Reeb also includes the decisions from the Salt Lake City Olympic Games,³⁵ along with the Commonwealth Games in Manchester 2002. In addition, this volume includes the CAS Mediation Rules, Arbitration Rules for the Olympic Games, and the 2004 edition of the CAS Code.

Specific Topics *Athletes' Rights*

Bitting, Melissa R. "Mandatory, Binding Arbitration for Olympic Athletes: Is the Process Better or Worse for 'Job Security'?" *Florida State University Law Review* 25 (1998): 655–78.

In this student comment, Bitting examines the policy of requiring Olympic athletes to commit to mandatory binding arbitration and waive their right of review by a court. Bitting compares the duties and functions of a factory worker to those of an Olympic caliber swimmer to illustrate their similarities, and ultimately contends that mandatory arbitration clauses for athletes should be closely scrutinized, as they would be if they were included in an employment contract. Thereafter, Bitting evaluates the enforceability of mandatory arbitration clauses and the grounds for revoking contracts containing such clauses. She then applies these grounds to mandatory arbitration clauses for athletes. Bitting also discusses the Olympic arbitration system and provides suggestions for promoting fairness during the Olympic arbitration process. In addition, she notes that athletes should have the right of review of arbitration decisions.

Kaufman, Stephen A. "Issues in International Sports Arbitration." *Boston University International Law Journal* 13 (1995): 527–50.

In this student note, Kaufman includes a hypothetical of a sprinter who, in order to participate in the Olympic Games, must sign an agreement with his national governing body to submit all disputes to mandatory binding arbitration. After

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34. The decisions rendered by the ad hoc Division from the Olympic Games in Sydney, together with additional resources relating to the Sydney Games, including its arbitration rules, can be found in MATTHIEU REEB, *CAS AWARDS—SYDNEY 2000: THE DECISIONS DELIVERED BY THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT DURING THE 2000 OLYMPIC GAMES IN SYDNEY* (2000).
 35. The decisions of the ad hoc Division from the Olympic Games in Salt Lake City, along with those from the Athens Olympic Games and additional materials from these Games, including the arbitration rules for the Salt Lake City Olympic Games and those in effect from 2004, can be found in MATTHIEU REEB, *CAS AWARDS—SALT LAKE CITY 2002 & ATHENS 2004: THE DECISIONS DELIVERED BY THE AD HOC DIVISIONS OF THE COURT OF ARBITRATION FOR SPORT DURING THE 2002 OLYMPIC WINTER GAMES IN SALT LAKE CITY AND DURING THE 2004 GAMES IN ATHENS* (2004). Decisions by the ad hoc Division in Salt Lake City are also provided in *COURT OF ARBITRATION FOR SPORT, DECISIONS [DELIVERED BY THE] AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT [DURING THE 2002 WINTER OLYMPIC GAMES IN SALT LAKE CITY]* (2002).

signing, the sprinter receives notice that he is ineligible to participate in the Games due to citizenship issues. Kaufman explores the various channels available to the sprinter for resolving the dispute, particularly focusing on the CAS. Kaufman weaves the sprinter hypothetical into his discussion of the CAS and covers the enforceability of awards rendered, together with the role of mandatory arbitration clauses in license agreements within sports.

Doping

FitzGerald, Mary K. "The Court of Arbitration for Sport: Dealing with Doping and Due Process During the Olympics." *Sports Lawyers Journal* 7 (2000): 213–42.

FitzGerald includes an examination of the Harry "Butch" L. Reynolds case, a sprinter who was banned from competing in the 1992 Barcelona Games based upon drug test results. FitzGerald chronicles the legal developments of this matter, which included both litigation and arbitration. In addition, she discusses the development of the World Anti-Doping Agency and the various challenges that arise in combating doping.

Rigozzi, Antonio, Gabrielle Kauffman-Kohler, and Giorgio Maliinverni. "Doping and Fundamental Rights of Athletes: Comments in the Wake of the Adoption of the World Anti-Doping Code." *International Sports Law Review* 3 (August 2003): 39–67.

The authors examine whether the World Anti-Doping Code, which became effective January 1, 2004,³⁶ is compatible with athletes' fundamental rights, including the right to personal liberty and privacy, equal treatment, a fair trial, and the right to work. The authors also consider the application of strict liability principles in doping matters and its impact on athletes' fundamental rights. The consequences resulting from a positive drug test are also examined, particularly disqualification from an event and subsequent sanctions. The application of fundamental rights to these penalties is also discussed.

Straubel, Michael. "Enhancing the Performance of the Doping Court: How the Court of Arbitration for Sport Can Do Its Job Better." *Loyola University Chicago Law Journal* 36 (2005): 1203–72.

36. World Anti-Doping Agency, What is the Code? <http://www.wada-ama.org/en/dynamic.ch2?pageCategory.id=267> (last visited Apr. 20, 2006). For a discussion of doping prior to the adoption of the World Anti-Doping Code, see Richard H. McLaren, *Doping Sanctions: What Penalty?* 2 INT'L SPORTS L. REV. 23 (2002); Frank Oschütz, *Harmonization of the Anti-Doping Code Through Arbitration: The Case Law of the Court of Arbitration of Sport*, 12 MARQ. SPORTS L. REV. 675 (2002). For a compilation of pre-World Anti-Doping Code rules, see ROBERT C.R. SIEKMANN ET AL., DOPING RULES OF INTERNATIONAL SPORTS ORGANISATIONS (1999) (compiling the doping regulations of international sports federations, the International Olympic Committee, and the CAS prior to passage of the World Anti-Doping Code, and including an index of banned substances along with the Olympic Movement Anti-Doping Code). For additional discussion of the World Anti-Doping Code, see Janwillem Soek, *The WADA World Anti-Doping Code: The Road to Harmonisation*, INT'L SPORTS L.J., 2003, no. 2, at 2 (analyzing the World Anti-Doping Code and its sanctions, including its strict liability policy for doping offenses); Michael S. Straubel, *Doping Due Process: A Critique of the Doping Control Process in International Sport*, 106 DICKINSON L. REV. 523 (2002) (examining the efficiency and fairness of the doping systems in place prior to and after the Sydney Olympic Games).

Straubel acknowledges the importance of the CAS in sports dispute resolution along with the need to understand and evaluate the CAS processes. Straubel contends that the CAS must shed its original commercial dispute settlement structure and adapt to the unique demands of addressing doping disputes. He examines the structure and operation of the CAS together with its North American CAS Office, which operates as part of the American Arbitration Association. He seeks to determine if they are impartial and independent institutions which are fairly and harmoniously applying the principles of sport. He discusses how well-equipped these institutions are for handling doping matters and makes recommendations for improving CAS operations in the doping context.

*Officials' Decisions*³⁷

Nafziger, James A.R. "Avoiding and Resolving Disputes During Sports Competition: Of Cameras and Computers." *Marquette Sports Law Review* 15 (2004): 13–27.

Nafziger examines the new roles of technology in reviewing the decisions of officials made during competition. He explores two instances where technology has been implemented, namely, the computerization of judges' scoring following a scandal during the 2000 Olympic Winter Games, and the use of video replays in both domestic and international competition. In addition, he discusses a photo-finish matter filed with the CAS, involving a women's single sculls event, in which the first two boats were separated by only twelve one-thousandths of a second.

Resources Relating to Work of Ad Hoc Divisions in the Olympics

¶7 The CAS ad hoc Division was specifically created to handle matters arising during the Olympic Games.³⁸ A primary goal of the ad hoc Division is the timely resolution of disputes arising at the Games.³⁹ It establishes an on-site office at the Games⁴⁰ and is required to render a binding decision twenty-four hours after an application is lodged (although the ad hoc Division president has the power to extend this time frame if required).⁴¹ In the event of an extremely urgent matter, the ad hoc Division may enter a stay of a challenged decision.⁴²

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37. For additional discussion of the decisions of officials made during competition, see Jake R. Locklear, Note, *Arbitration in Olympic Disputes: Should Arbitrators Review the Field of Play Decisions of Officials?* 4 TEX. REV. ENT. & SPORTS L. 199 (2003) (reviewing a matter involving an official's judgment call during a wrestling match).
 38. COURT OF ARBITRATION FOR SPORT, ARBITRATION RULES FOR THE OLYMPIC GAMES art. 2 [hereinafter OLYMPIC ARBITRATION RULES], in DIGEST OF CAS AWARDS III, *supra* note 3, at 758. In addition, the ad hoc Division has jurisdiction to hear matters arising ten days prior to the opening ceremony of an Olympic Games. OLYMPIC ARBITRATION RULES, *supra*, at art. 1, in DIGEST OF CAS AWARDS III, *supra* note 3, at 758.
 39. See Mary E. Oliveau, *Paul Hamm Wins Fight to Keep His Gold Medal*, 22 ENT. & SPORTS LAW. 1, 24 (2004).
 40. OLYMPIC ARBITRATION RULES, *supra* note 38, at art. 5, in DIGEST OF CAS AWARDS III, *supra* note 3, at 759.
 41. OLYMPIC ARBITRATION RULES, *supra* note 38, at art. 18, in DIGEST OF CAS AWARDS III, *supra* note 3, at 763.
 42. OLYMPIC ARBITRATION RULES, *supra* note 38, at art. 14., in DIGEST OF CAS AWARDS III, *supra* note 3, at 761.

In General

Kaufmann-Kohler, Gabrielle. *Arbitration at the Olympics, Issues of Fast-Track Dispute Resolution and Sports Law*. Hague; London: Kluwer Law International, 2001.

Kaufmann-Kohler, president of the CAS ad hoc Division at the 1996 Atlanta Olympic Summer Games, provides a history of the ad hoc Division, beginning with its introduction at the Atlanta Games and continuing through its subsequent work at the 1998 Nagano Winter and 2000 Sydney Summer Games. Kaufmann-Kohler discusses various issues encountered by the ad hoc Division and reviews the cases addressed during each of these Games. She also includes her memorandum to the New South Wales Judiciary provided prior to the Sydney Games pertaining to the ad hoc Division. The Arbitration Rules for the Sydney Games are provided in both English and French, together with a selected bibliography.

Athens

McLaren, Richard. "The CAS Ad Hoc Division at the Athens Olympic Games." *Marquette Sports Law Review* 15 (2004): 175–203.

McLaren discusses the cases filed in Athens, which in large part consisted of the application of international sports federation rules. These rule application matters involved issues such as the selection of an equestrian rider for competition in accordance with the International Federation of Equestrian Sports Rules. McLaren also addresses the CAS appeal pertaining to a bribery scandal and the doping scandals arising before the Games. He further discusses the CAS matters filed after the Athens Games, including the Paul Hamm matter, involving a gymnast's contention that his parallel bars routine was given an incorrect start value and, therefore, he should be awarded the gold medal over Hamm.⁴³

Sydney

Beloff, Michael. "The CAS Ad Hoc Division at the Sydney Olympic Games." *International Sports Law Review* 1 (March 2001): 105–18.

Beloff explores the rules utilized in Sydney, including the jurisdictional provisions, the rules establishing the applicable law during the hearings, the rules relating to interim relief, and the rules defining what evidence the parties can present at the hearings. He also discusses the particular awards rendered in Sydney, which involved issues such as drug testing before and at the Games, the disqualification of a speed walker for infractions committed during competition, and a requirement that athletes conceal a manufacturer's logo on their clothing while participating in the medal ceremonies.

Salt Lake City

McLaren, Richard H., and Patrick Clement. "Court of Arbitration for Sport: The Ad Hoc Division at the Salt Lake City Olympic Games." *International Sports Law Review* 2 (May 2004): 44–58.

43. For additional discussion of the Hamm case, see Oliveau, *supra* note 39.

McLaren and Clement explore matters arising during and after the 2002 Salt Lake City Winter Olympic Games. They also compare the Salt Lake City ad hoc Division decisions with those rendered in Atlanta, Nagano, and Sydney. In particular, they cover the doping cases arising in Salt Lake City and athlete eligibility matters. Matters arising during competition are also discussed, including the disqualification of a speed skater for improperly crossing another skater's path. Disputes arising out of the Salt Lake City Games but heard subsequently are also covered, including a doping case in which a gymnast sought to avoid responsibility for a positive drug test on the basis that her team doctor provided the pills. McLaren and Clement further address the development of *lex sportiva* following the Salt Lake City Games, in such areas as the limits of CAS jurisdiction, CAS authority to determine the validity of suspensions by the International Olympic Committee or international federations, the principle of noninterference with an official's decisions, and the principles applied in doping matters.

Atlanta

Kaufmann-Kohler, Gabrielle. "Arbitration and the Games or the First Experience of the Olympic Division of the Court of Arbitration for Sport." *Mealey's International Arbitration Reporter* 12 (February 1997): 20–29.

Kaufmann-Kohler discusses the first experience of a CAS ad hoc Division, which occurred at the Atlanta Olympic Games. In addition to addressing such topics as the structure and legal framework of the ad hoc Division, she examines the main aspects of the cases arising in Atlanta. These included a dispute as to whether a swimmer had entered the 400 meter freestyle heat too late, thus precluding her from participating in the event; a boxer's disqualification for hitting below the belt; and incidents of positive drug testing.

CAS Compilation

Blackshaw, Ian S., Robert C.R. Siekmann, and Janwillem Soek, eds. *The Court of Arbitration for Sport, 1984–2004*. Hague: TMC Asser Press, 2006.

This book provides a compilation of CAS materials and covers a number of subject areas. The historical development of CAS, the landmark cases it has addressed, and its future development are discussed. In addition, critical contributions, particularly in the area of a developing *lex sportiva* by CAS, are provided. Articles examining the services provided by the CAS Ordinary Division, Appeals Division, and ad hoc Division (at the Sydney and Athens Olympic Games) are included, along with those addressing the CAS advisory opinion function and its mediation services. Additional topics covered include the recognition of CAS independence by the Swiss Federal Tribunal, the CAS proceedings themselves, including the examination of witnesses and experts, and the power of CAS to institute provisional measures. CAS decisions in the doping context and the World Anti-Doping Code are also examined.

From a historical perspective, an article examining the IAFF Arbitration Panel, which preceded the CAS in addressing sports-related disputes, is provided. In addition, the development of sports resolution mechanisms on the national level is examined, particularly in Canada and Japan. The evolution of

an Irish CAS is also discussed. A number of other resources are provided in this book, such as the 2004 edition of the Code of Sports-Related Arbitration, CAS Mediation Rules, standard CAS clauses, CAS application form, and judgment extracts from selected CAS cases. A time line of important dates in CAS history is also provided.