

‘SEE YOU IN COURT!’ RECENT DEVELOPMENTS IN MARKETING, SELECTION AND DISCIPLINARY DISPUTES

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The Growing Role of Law in Sport

Legal issues are taking on increased prominence in the community. One Australian newspaper report recently maintained that in ‘North America, and particularly the United States, the right of the frontiersman to bear arms as he advanced his civilisation has been replaced in the urban frontier by the right to litigate.’ There are suggestions that a similar trend toward using litigation to settle disputes is developing in this country and that it is flowing over into sport.

The impact of this flow-over effect has been accentuated because, until recent times, law has had an insignificant active role in the regulation of sporting activities. While law as part of the fabric of society has contributed to shaping sport, its role has been largely confined to the background. In previous centuries there was the occasional foray to deal with dangerous sports such as prize-fighting or playing at cudgels. In Anglo-Australian legal circles, the first half of this century witnessed only a trickle of sporting disputes coming before the courts. These cases covered a wide range of issues. Not surprisingly, they suggested that a significant criterion for involvement of the law was the presence of some constraint or adverse impact on a professional athlete’s ability to earn a living from sport.

The beginnings of significant change emerged in the mid 1960s and the 1970s. A number of landmark cases concerning liability for injuries, restraint of trade and contractual disputes, and disciplinary proceedings heralded the arrival of a new era. Whether this will

become to be perceived as an era different in kind or merely different in degree is debatable. Legal intervention can be viewed as part of the commercial and professional aspects of sport. As these aspects grow (albeit with considerable speed), it is to be expected that legal intervention will increase correspondingly. Hence, the new era is arguably one of difference only in degree. On the other hand, commercialism has brought fundamental changes to sport. Law has been a significant factor in that process. For instance, the structure of professional team sports would be quite different but for the restraint of trade doctrine which has been used to assail many of the restrictive transfer and zoning rules in widespread use prior to the 1980s. Indeed, the removal of many anti-competitive practices contributed to the need for sport to pursue marketing and other commercial strategies in order to raise the revenues to pay the increased player remuneration which a more competitive environment fostered.

Notwithstanding this growing commercialism, as far as legal issues were concerned, the focus of attention of sport administrators in the 1980s was on liability for physical injury, with interest in the related defensive measures of insurance and incorporation.

However, developments during the past year or two suggest that the legal dimension to commercialism has begun to penetrate more widely and deeply into Australian sport. There have been a number of serious disputes over marketing, selection and disciplinary issues. That selection decisions might now be challenged in the courts is indicative of the potential commercial disadvantage to an athlete occasioned by falling out of favour with the selectors. Additionally, some new laws regulating aspects of sports marketing have come into force.

This paper aims to draw attention to these recent developments and explain in brief and simplified terms what is in truth a miscellaneous collection of varied and complex legal issues

representative of the new business of sport. Some lessons for the future are suggested.

Marketing

High performance sport in almost all of its manifestations depends upon advertising and sponsorship revenues to a very significant degree. The commercial nature of this aspect of sport means that legal issues have become prominent.

Law underpins marketing arrangements in sport in two ways. The first is through a body of laws which can be grouped and studied together under the title of industrial or intellectual property. These laws relate to:

- * registration of trade marks and designs;
- * copyright;
- * registration of company and business names;
- * the civil wrong of passing-off; and
- * civil rights under the *Trade Practices Act* and corresponding State fair trading legislation to restrain, and/or be compensated for, misleading and deceptive conduct as well as certain specific forms of such conduct.

These laws are supported in the sports context by the right of an owner or occupier of property to control admittance to the property.

The second way in which law underpins sport marketing arrangements is through the various contracts which are now customarily entered into. Sponsorship, advertising, broadcasting, team membership, scholarship and employment agreements all make provision for matters crucial to marketing. Undertakings to co-operate with sponsors' promotions, authorizations to record and broadcast competitions, official supplier designations and

permissions to use photographs and logos are the 'grist of the marketing mill'. These and other agreements 'carve up' the rights which are conferred by the first body of laws.

The intellectual property laws are substantial and complex. Indeed, a minority of lawyers would profess some knowledge of them and a very much smaller number would excel in their practice. An attempt to summarise these laws in this paper would be unrealistic and ultimately not especially helpful. Instead, the following comments will describe some recent marketing-related disputes and developments with the aim of highlighting the scope and some of the implications of these laws.

The Interests Protected

It is often said that a person has no legal property in an idea. A good idea can be turned into an invention or an original drawing which may be protected by a patent or copyright respectively, but an idea alone is unprotected.

Litigation arising out of the Yardley Gold Australian Footballer of the Year competition illustrates this point. First promoted in 1988, the competition was unique in that it embraced all football codes in Australia - Australian rules, rugby league, rugby union and soccer. When the competition came to be held for a second time in 1989, a dispute arose between Yardley and its promotions company, Chapman & Lester over which of them had devised the idea for the competition. Chapman & Lester had sought to register a company with a name containing the competition's title (except for the words 'Yardley Gold') and claimed that it 'owned' or invented the concept and title. In proceedings in the Federal Court of Australia, Yardley was successful in showing that the concept and title were the product of its creative effort - 'not that of the promotions company. This did not involve the court declaring that Yardley was owner of the concept and title. Rather, it enabled Yardley to obtain an injunction

restraining the promotions company from continuing to make its claims of ‘ownership’ or invention because these constituted misleading and deceptive conduct contrary to section 52 of the *Trade Practices Act*. This freed Yardley to promote the competition to the media without the media being threatened with legal proceedings by the promotions company.

There are lessons to be learned from this litigation. They include:

- * Creative ideas need to be quickly turned into forms which the law protects. For example, names of competitions or organisations should be included in logos and registered as trade marks. These names should also be registered as company or business names.
- * When engaging people such as graphic artists, songwriters and advertising agencies, the contract of appointment should identify who is to own the creative output of the relationship.
- * Claims that cannot be substantiated *ought* not to be made.

As with ideas, there can be no ownership of words that are in the public domain. Thus, the words ‘hockey’, ‘surfing’, ‘netball’ and ‘bowls’ are not the exclusive preserve of the bodies which have traditionally regulated the sports represented by those words. Of course, some limited protection can be obtained by registering ‘Victorian Hockey Association’ as a business name, or as a trade mark in combination with a logo.

In the 1970s and 1980s, some of the bodies which traditionally controlled sport had their authority challenged by a new breed of entrepreneur - no doubt attracted by the commercial rewards to be obtained from sport. Leading examples of these entrepreneurs were

IMG in golf and Kerry Packer in cricket. To protect against such challenges in the future, and in some cases to repel them, sport has been forced to embrace the intellectual property laws. While a game or its rules may not be able to be 'owned', many of the accompaniments can be, and it is those which sport organisations are rushing to protect - often at great initial expense and with the need for ongoing vigilance.

Performers' Protection

On 1 October 1989, new Part XIA of the *Copyright Act* came into force. In essence, it prohibits the sound or film recording of live performances in the arts industry without the authority of the performing artist. Making an unauthorised recording constitutes an offence and entitles the artist to a variety of remedies including injunction and damages.

Performance is given a wide meaning and includes a performance of a dramatic or musical work, dance, or circus act, variety act or any similar presentation or show. However, performance of a sporting activity is excluded from the definition of performance, as is any participation by a member of the audience. Thus, the recording and televising of an audience 'wave' is not illegal even though the broadcaster does not obtain the audience's authority.

Nevertheless, this new law is relevant to sport in at least two ways. First, it is increasingly common to have athletes involved in recorded promotions which involve them acting or singing. For instance, the Liverpool Football Club rap dance video, the New South Wales Rugby League Tina Turner video and World Series Cricket television advertisements. The contractual provisions which govern the employment of athletes likely to appear in such promotions must be reviewed to ensure that the authority which the Act requires has been conferred by the athletes.

Secondly, sporting activity is not defined. It will be left to the courts to work this out according to various definitions which have from time to time been advanced in the community. No doubt activities such as ballroom dancing as popularised by the ABC's *That's Dancin* will present borderline problems. However, what of the instances of 'theatre' which occur in sport? Merv Hughes' warm-up exercises and Mark Jackson's antics come to mind. Are they part of the performance of sport and therefore not within the scope of the legislation? Or does sport merely provide the context so that a contravention of the athlete's rights occurs each time the television broadcaster makes a recording without authority? The answer is uncertain but it may well be influenced by the degree to which the 'theatre' serves the game or takes on a separate character to entertain the crowd. If the presentation of Australian sport follows the lead of the United States where entertainment routines have become the 'trademarks' of star athletes, this uncertainty could become significant.

An Athlete's Right to Publicity

As a general matter, a person cannot prevent another from taking his or her picture. If the rule were otherwise, consider the dilemma presented for all the professional and amateur photographers at an Olympic Games!

Nevertheless, athletes are becoming increasingly interested in the use made of photographs and films taken of them in action. Unauthorised use of an athlete's name, image or likeness could amount to defamation, misleading or deceptive conduct contrary to the *Trade Practices Act* (and corresponding State fair trading legislation), or infringement of an athlete's right to publicity. These legal rules are important to the commercial interests of an elite athlete in order to protect the integrity of his or her marketability as well as

to ensure that others do not capitalise on the athlete's fame without providing the appropriate reward.

In a recent case before the Federal Court of Australia, champion long jumper, Gary Honey, brought proceedings against Australian Airlines for the unauthorised use in a poster of a photograph taken of him in competition at the Edinburgh Commonwealth Games where he won the gold medal. He was unsuccessful at the trial and in an appeal. Honey's allegations included various breaches of the *Trade Practices Act* stemming from Australian Airlines' name and logo appearing at the bottom of the poster. It was alleged that this indicated a connection between Honey and Australian Airlines which in truth did not exist. The trial judge took the view that no such connection was made out; rather, the presence of the name and logo of the airline indicated the source of the poster. The poster represented an altruistic presentation of sporting excellence with the purpose of encouraging participation in sport. The Full Court of the Federal Court dismissed the appeal and in doing so agreed with the trial judge. It was acknowledged that Australian Airlines might engage in producing and distributing posters with the aim of improving its corporate image, but that, according to the Full Court, was different from representing that Honey was commercially associated with the airline. While the first was lawful, the second was not without Honey's permission. It appears significant to the decision that the photo was an action shot and not posed, and that the size and placement of the logo and the name of the airline were not prominent.

Another allegation centred around the idea that an athlete has a right to publicity such that he or she has the exclusive right to exploit name and reputation to secure endorsement and other personality-related income. In this case the airline was said to have appropriated this right without authority. This allegation rests on the civil wrong of passing-off. Again it was rejected by the trial judge as not being made out. No appeal was pursued against this decision.

The case demonstrates that there is scope for a well-known athlete's photo, name or image to be used by business interests without consent. Just when it will be lawful to do so will not always be clear, but it seems to be a matter of circumstance and degree. However, an advertisement which uses an athlete's name, image or identity to indicate that the athlete is affiliated with the advertiser or approves of its goods or services when such affiliation or approval does not exist, will in most cases constitute an offence under the *Trade Practices Act* (or corresponding State fair trading legislation) and lead to liability to the athlete in an action for damages.

Some Risks of Endorsement Contracts

Section 52 of the *Trade Practices Act* prohibits a corporation (this often includes an individual) in trade or commerce from engaging in conduct which is misleading or deceptive or is likely to mislead or deceive. The wording of the section is itself deceptively simple. However, it reaches into almost every corner of society and is supported and extended by corresponding fair trading legislation in the States. Any sports organisation or individual athlete endorsing goods or services is likely to be subject to these statutory provisions in one way or another. Liability for contravention will usually take the form of damages. However, certain forms of misleading or deceptive conduct identified in section 53 of the *Trade Practices Act* (and corresponding State fair trading legislation) constitute criminal offences for which substantial fines may be imposed.

The legislation imposes strict liability. This means that the sports organisation or athlete engaging in the conduct does not have to know that it is misleading or deceptive. If athlete A says in a television commercial that Z brand of tennis racquet possesses identified, desirable characteristics, the athlete will be personally liable to every person who buys that brand of racquet and thereby

suffers loss should the statement be false. This will occur even though athlete A personally believes the racquet to be the best.

Statements of opinion are not necessarily safe. To say that 'I believe X brand to be the best' when the maker of the statement holds no such belief amounts to a contravention. To 'recommend' something when you do not like it is unlawful. Similarly, to say 'I use Y brand shoes.' when the maker uses them only for promotional purposes will almost always be deceptive. A representation as to a future matter is misleading or deceptive unless the maker has reasonable grounds for believing it to be true. Thus, it is wrong to say that by the year 1992 Q brand of swimming goggles will be Australia's leading brand unless there are reasonable grounds for that prediction.

Courts look at the overall advertisement and its context to decide whether conduct is misleading or deceptive. Therefore, it is *most important* that every endorsement contract make provision for a lawyer representing the athlete or sports organisation to vet and if necessary, veto the wording of any advertisement before it is put into circulation. For instance, an innocent 'I recommend P brand' may be placed in such a context that the recommendation appears to be based on scientific or technical data. The athlete may have little knowledge of the data, but, if it is incorrect, the athlete *might* commit a contravention of the legislation.

Also, provision needs to be made in endorsement contracts for the sports organisation or athlete to be indemnified by the advertiser against liability arising from participation in the campaign.

Control of Tobacco Advertising and Sponsorship

The background to these controls has been controversial. For present purposes it is proposed to describe the laws which have given rise to recent disputes.

Two bodies of law are relevant: Federal and State. The Federal *Broadcasting Act* by sub-section 100(5A) prohibits television

and radio stations from broadcasting advertisements for cigarettes and other tobacco products. The problem which such a provision presents in isolation is that an offence would occur each time a broadcast was made containing a tobacco advertisement which was incidental to the subject matter of the broadcast. For example, an advertisement on a billboard forming part of a street scene for a movie. This prompted the enactment of the exception to subsection 100(5A) which is found in sub-section 100(10). Matter of an advertising character is not within the prohibition if it is ‘...an accidental or incidental accompaniment of the broadcasting of other matter in circumstances in which the licensee [of the television station] does not receive payment or other valuable consideration for broadcasting the advertising matter.’ When called upon to define a cigarette advertisement the courts have decided that it is unnecessary that the alleged advertisement contain the word ‘cigarette’ or a picture of a cigarette. ‘A word, a picture, or a fragment of music may be capable of conveying a message, through association of ideas, to an informed audience... It does not follow, of course, that every presentation of the musical jingle or use of the corporate name will constitute an advertisement for the product...’ Whether a reference to the name or corporate livery of a cigarette manufacturer is an advertisement for cigarettes, or an accidental or incidental accompaniment to a broadcast, is an objective issue of fact to be determined in the circumstances of each case. Winfield spectaculars’ at New South Wales rugby league finals have resulted in litigation. United Telecasters Sydney Ltd was prosecuted and fined for having breached sub-section 100(5A) during a telecast of the 1984 Winfield Cup. An initial appeal was successful, but early in 1990 the High Court of Australia restored the conviction.

Obviously, there is concern in some sectors that cigarette manufacturers obtain lawful, but undesirable, exposure of at least corporate and brandnames by means of the ‘accidental or incidental accompaniment’ exception. This has prompted the Australian

Capital Territory, South Australia and Victoria to enact legislation to restrict the public display of promotional material for tobacco products. Legislation is at an advanced stage in Western Australia and is under consideration in Tasmania. & Victorian *Tobacco Act* 1987 has attracted considerable controversy in connection with the motorcycle Grand Prix. The Act does not apply to radio or television broadcasts, but it does prohibit most promotions of tobacco products, trademarks or brandnames of tobacco products and the names or interests of their manufacturers and distributors where the promotion occurs in exchange for a sponsorship or similar benefit. Section 10 of the Act provides for certain exemptions in connection with sports sponsorships. The circumstances in which the exemptions were available became more restricted with the introduction from 1 October 1989 of regulations controlling, among other things, the size of signs and health warnings. The regulations proved unacceptable to the event's promoters and led to moves by New South Wales to stage the event.

Comment

The foregoing demonstrates the variety and complexity of legal issues which surround the marketing of commercial sport. Rarely a day passes without word of a new sponsorship agreement for a leading athlete or team, or of some dispute over issues such as marketing, broadcasting, event, team franchise or league management rights. Perhaps it is in the legal arena that the gap between 'play' and 'commercial sport' looms largest.

Selection

In the November 1989 issue of *Sporting Traditions*, an article appeared suggesting that athletes may have legal rights in regard to the selection process. The author called for reforms by sports bodies

to the administration of their selection procedures in order to afford athletes a better opportunity of having their concerns about selection decisions addressed and to reduce the chance of disputes finishing in court. To illustrate the issue, the article considered in detail the case of Olympic cyclist Tony Davis.

Although this is a topic which has been considered carefully overseas as long ago as 1982, the article was very timely because it preceded by a matter of weeks a dispute which nearly went to court. The controversy surrounding Jane Flemming's selection for the Commonwealth Games needs no recounting. She was within hours of issuing proceedings in the Supreme Court of Victoria when the dispute was defused by the withdrawal of an athlete who had been selected for the heptathlon. The lawyers on both sides were ready.

Without reflecting on the merits of Flemming's case, an initial obstacle to be overcome would have been convincing the court that it had jurisdiction to decide a selection dispute. There is an absence of legal authority in Australia precisely on this point. Some legal principles would deny the existence of this jurisdiction, but there are exceptions - one that is notable is restraint of trade - and in Flemming's case this may have been able to be invoked on account of her endorsement earnings. However, there are contrary arguments. For example, while hindsight affords the luxury of knowing that she went on to achieve great success at the Commonwealth Games, her prospects from the perspective of December 1989 were at best speculative. Other matters which may confer jurisdiction on a court in selection disputes are sex or racial discrimination.

Assuming a court is prepared to take jurisdiction in any particular case (this is an unresolved question - although a court in Australia is yet to do so), it will not wish to become involved in second-guessing selectors. Rather, any challenge will have to rest on an allegation that the rules of the sport body governing the selection process, or the rules of natural justice, have not been followed. For instance, an athlete's selection might be challenged on the basis that

a fixed qualifying standard had not been attained. An instance of breach of the rules of natural justice would occur if a selector was biased against a particular athlete. Allegations of bias are frequent, often unjustified and difficult to prove. An example of bias would be a selector choosing her son in preference to a better qualified competitor.

Some of the possible scenarios involving legal challenges to selection are startling. Would leading Australian Rules player Gary Ablett be entitled to legally challenge his selection as a defender rather than as a forward simply because more fame (and, therefore, more endorsement income) is to be gained from kicking goals than saving them? It is clear that sport administrators will need to consider selection issues with considerable care. With so much at stake for athletes during selection time, it might eventuate that attention paid to studying the fine print of selection rules and policies will rival that paid to preparation for the actual athletic performance! Not only will it be essential for administrators to act in good faith, they will need to strike a delicate balance between detail and generality as well as between fixed criteria and discretion when drawing up selection policies.

Discipline

Whereas Australian courts have played no role in selection disputes so far, disputes about the imposition of disciplinary measures frequently lead to litigation.

The circumstances when a court has jurisdiction to review disciplinary action and the legal standards which the law imposes on disciplinary proceedings represent a large field of study. As a generalisation, courts are not especially interested in whether a tribunal reaches the right or wrong decision. Rather, their concern is with whether the tribunal complied with the rules of the sports body

which govern the disciplinary process and whether the rules of natural justice have been followed.

It is not possible to canvass the full scope of these matters in this paper. However, the point to be made is that a legal challenge to a disciplinary measure can place considerable stress on a sport, often at a time when it can least afford it. The only way for this stress to be avoided is through careful planning and on-going development and reassessment of the sport's disciplinary rules and procedures. In this respect, sport administrators must assume the role of legal affairs managers. Indeed, this phenomenon is consistent with the adoption by sport of managerial techniques of big business as well as the transfer of many aspects of the control of sport from honorary officials to professional administrators.

A case which illustrates the potential destabilising effect of a challenge to disciplinary authority, as well as the increasing sophistication of disciplinary proceedings, concerned the head-butting incident in the National Basketball League between Canberra Cannons' coach Steve Breheny and Sydney Kings' co-captain Damian Keogh during 1989's semi-finals. When Breheny was suspended by the League, he commenced legal proceedings in the Victorian Supreme Court. Due to considerations including making quite sure that Breheny was not treated unfairly, speed of decision and avoidance of expense, the League responded by giving Breheny a full rehearing of the case against him before an appeal panel. However, the challenge prompted a review of the League's rules and changes are being considered. Perhaps it is not unfair to suggest that the rapid expansion of basketball had left behind some of its constitutional and administrative rules. There is a lesson in this for all sports. Just as it is important from time to time to undergo a 'medical check-up', there is considerable scope for reviewing a sport's legal health at regular intervals.

The Breheny case illustrated the increasing sophistication of the evidence which can be placed before a sport disciplinary tribunal.

Breheeny produced advanced scientific evidence in the form of expert opinion and computer-generated stick figures with a view to establishing certain matters about the force and direction of the contact. The other case to illustrate this increasing sophistication is the Paul van der Haar incident from the Victorian Football League second semi-final in 1989. Van der Haar received a heavy blow to the head, was removed from the game but was later returned to it. Subsequently, he struck an opponent and was reported. The tribunal suspended him for striking but, following representations from Van der Haar's club, Essendon, the tribunal agreed to consider further evidence of a medical nature that Van der Haar was suffering from concussion when he returned to the field and was not responsible for his actions! That evidence was accepted and the suspension withdrawn. The incident reflects unfavourably on the club, but the Victorian Football League (now the Australian Football League) is to be commended upon its response which was to introduce new rules aimed at ensuring that players such as Van der Haar are not again placed in such a position.

Conclusion

From time to time, sport has given rise to a number of interesting legal issues such as liability for injuries and the doctrine of restraint of trade. However, until recently the professional role for lawyers in sport has been restricted. Today, the range and complexity of legal problems which face many national sports organisations resemble those routinely encountered by medium-sized businesses. This has been prompted by the growing commercialisation of sport and its adoption of many of the practices and organisational structures of modern business. The time when sport was a 'no-go' area for lawyers is past.

NOTES

1. An earlier version of this paper was delivered to the Australian Sports Commission's National Executive Directors' Workshop held in Canberra on 30 March 1990.
2. *E.g., Walker v. Crystal Palace Football Club* (1919) 1 *King's Bench* 87 (professional footballer held to be a worker entitled to workers' compensation); *McLaughlin v. Darcy* (1918) 18 *State Reports* (NSW) 585 (notwithstanding being underage and of restricted legal capacity, professional boxer bound to honour contract to assist him with obtaining a passport); *Cleghorn v. Oldham* (1927) 43 *Times Law Reports* 466 (golf caddie entitled to compensation when negligently injured by golfer's swing) and *Harris v. Carew-Pole* (1956) 1 *Weekly Law Reports* 833 (successful challenge to disqualification of horse trainer).
3. *E.g., Rootes v. Shelton* (1967) 116 *Commonwealth Law Reports* 383 (boat driver liable for injuries to water-skier he was towing) and *McNamara v. Duncan* (1971) 26 *Australian Law Reports* 584 (Australian Rules footballer liable for blow with elbow to head of opponent).
4. *E.g., Eastham v. Newcastle United Football Club* (1963) 3 *All England Reports* 139 (Association football); *Buckley v. Tutty* (1971) 125 *Commonwealth Law Reports* 353 (rugby league); *Greig v. Insole* (1978) 3 *All England Reports* 449 ('Packer' cricket).
5. *E.g., Pett v. Greyhound Racing Association Ltd* (1969) 1 *Queen's Bench* 46 (whether greyhound trainer faced with suspension of licence entitled to legal representation); *Stollay v. The Greyhound Racing Control Board* (1973) 128 *Commonwealth Law Reports* 509 (administrator improperly attending private deliberations of inquiry); *Heatley v. Tasmanian Racing and Gaming Commission* (1977) 137 *Commonwealth Law Reports* 487 (professional punter entitled to natural justice before being 'warned-off').
6. B. Stewart, 'Sport As Big Business' in G. Lawrence and D. Rowe (eds.), *Power Play* (Sydney: Hale and Iremonger, 1986) 64, 66.
7. *Yardley of London (Australia) Pty. Ltd. v. Chapman and Lester The Sales Promotion Agency Pty. Ltd.* (1990) *Australian Trade Practices Reports* 40-989.
8. Sub-section 248A(1).
9. Sub-section 248A(2).
10. See paragraph (h) of the definition of 'exempt' in sub-section 248A(1) and sub-section 248C(1).
11. (1989) *Australian Trade Practices Reports* 40-961.
12. Unreported, 27 June 1990.
13. *Rothmans of Pall Mall (Aust.) Ltd v. Australian Broadcasting Tribunal* (1985) 58 *Australian Law Reports* 675, 684.
14. In addition to the case referred to in footnote 13, there is *United Telecasters Sydney Ltd v. Director of Public Prosecution* (1988) 89 *Australian Law Reports* 591.
15. (1990) 91 *Australian Law Reports* 1.
16. Sub-section 4(1).
17. Section 9.

18. *E.g. Australian Broadcasting Corporation v. XIVth Commonwealth Games Ltd* (1988) 18 *New South Wales Law Reports* 540 (whether agreement has been reached for the sale of television rights to the 1990 Commonwealth Games in Auckland).
19. *E.g.*, litigation between the Auto Cycle Council of Australia Inc. and the promoter of the World Grand Prix Motor Cycle Championship over the 'Phillip Island Grand Prix' (*Supreme Court of Victoria No. 5100 of 1990*).
20. *E.g.*, litigation between interests associated with sports entrepreneur John Brown and the Australian Baseball Federation Inc. over the formation of Australian Major League Baseball (*Federal Court of Australia, No. VG440 of 1988*).
21. P. Collins, 'Athletes' Selection Rights: The Case of Tony Davis', *Sporting Traditions* 6.1(1989), 16.
22. B. Kidd and M. Eberts, *Athletes' Rights in Canada* (Toronto: Queen's Printer for Ontario, 1982).
23. In an English case concerning eligibility, *Crowley v. Heatley* (1986) *Current Law Year Book* 9, the court was disinclined to assume jurisdiction (South African born swimmer living in England ineligible to compete in the Commonwealth Games) while the courts of Quebec were not so reticent in *Association Olympique Canadienne v. Deschênes* (1988) *Rapports judiciaires de Québec* 2389 (fencer successful in forcing reconsideration of decision not to select him for the Canadian Olympic team for the 1988 Seoul Olympic Games).