

## CHAPTER 4

### INTERNATIONAL INQUIRIES: FINDINGS AND CONCLUSIONS

#### *Mr Watson and the IOC Caffeine Rule*

4.1 The agreements signed by Mr Watson in November 1987 and May 1988, indicate clearly that he was aware of the implications of breaching the existing drug rules and that he accepted the terms of the AOF drug testing policy as a condition of his participation in the Seoul Olympics. From the outset Mr Watson has claimed that he was (at the time of the Seoul Games) convinced that the amount of coffee and Coca-Cola he drank on 19 September 1988 could not take him above the limit set by the IOC Medical Commission.

4.2 As he revealed in his correspondence with (and evidence to) the Committee, Mr Watson's principal objection to the IOC ban is based on his claim that the penalty was imposed *because he had ingested Caffeine in concentrated form*. This objection was set out at length by Mr Watson in his letter to the Committee of 22 April 1991:

... the International Olympic Committee and the Union Internationale de Moderne Pentathlon [sic] et Biathlon (UIPMB) have never accepted my claim that my caffeine level came from nothing other than the coffee and coca-cola that I have admitted consuming from the outset of accusations at Seoul. It is, and always has been the opinion of the IOC, the UIPMB and the Australian Olympic Committee that to reach the level of 14.24 mg/l recorded in Seoul I must have taken caffeine in a concentrated form by way of pills, suppository or injection.

In other words, the IOC, UIPMB and AOC are claiming that it is impossible to fail the IOC caffeine test injecting [sic] a moderate amount of caffeine by way of coffee and

coca-cola. Failing to believe my story of consuming nothing other than 10-12 cups of brewed coffee and 1-2 cans of coca-cola the IOC, the UIPMB and the AOC separately penalised me for failing the test under the mistaken assumption that I had deliberately taken caffeine in a concentrated form which I was not prepared to disclose. (*Evidence*, p. 10)

Mr Watson added:

... the IOC, the UIPMB and AOC are guilty of ineptitude in fully appreciating the complexities of the caffeine test, in providing incorrect advice to athletes and officials on the true possibilities of how the caffeine level can be exceeded and of deliberately obstructing justice in allowing me a proper opportunity to present conclusive scientific evidence that the assumptions reached by the IOC on how I exceeded the caffeine level in Seoul are erroneous. (*Evidence*, p. 10)

4.3 Mr Watson's interpretation of the reasons behind the IOC ruling were raised with the AOC by the Senate Committee. While Mr Coates has often made clear that the IOC took its decision on the grounds that Mr Watson must have used concentrated Caffeine, when invited to provide the basis for that claim Mr Coates stated:

I do not have, nor have I ever had or seen "any documentary evidence to the effect that the IOC Medical Commission based its decision concerning Mr Watson on the belief that concentrated caffeine had been employed."

...

Ken Fitch has advised that the attitude of the IOC Medical Commission was that Alex Watson's urinary caffeine level could not have been reach [sic] inadvertently... The IOC Medical Commission apparently did not accept that Alex Watson had breached the prescribed [sic] urinary caffeine level from consumption of coffee and Coca-Cola alone. It was further of the view that if he had only consumed coffee and Coca-Cola then, given the amount of coffee (or more accurately the

volume of caffeine) consumed, then Alex Watson must have been acting deliberately or recklessly.

The portion of the note to the "List of Doping Classes and Methods" issued by the IOC appears to creat [sic] a strict liability for any doping offence, i.e., an athlete in whose urine is detected a substance of the banned classes is guilty no matter how that substance was consumed. These written words appear to be at odds with the manner in which the IOC Medical Commission conducts its enquires and the penalties that are imposed as a result thereof. In Alex Watson's case, the IOC Medical Commission explored and investigated how he may have achieved his recorded urinary caffeine level from substances other than coffee or coca-cola. In fact, the hearing was postponed whilst Dr Sando collected the energiser tablets from Alex's room. (*Mr J. Coates, Letter to the Committee, 27 February 1992*)

4.4 Dr K. Fitch, a member of the IOC Medical Commission, was present during the IOC hearings into Mr Watson's case, but abstained from taking part in the discussion and voting (*Dr. K. Fitch, Letter to Dr E. Maslen, 14 November 1988*) It is reasonable to believe from the following interview, given by Dr Fitch to Katrina Lee on the Channel Ten *Page One* program on 17 November 1988, however, that the attitude and views of the IOC Medical Commission were known to him:

**Lee:** Yes, he's guilty of exceeding the, the level of 12 micrograms. What I'm saying is, isn't there some doubt as to whether he did that knowingly or unknowingly, and doubt as far as the scientific basis for reaching that particular level?

**Fitch:** I can only say that with all the experience of the doping that the Commission of the IOC, and it's pretty considerable - it, you know, it goes round a lot of countries in the world, that nobody there has any doubts that something stronger than coffee was in the coffee that caused the levels to get to 14.5. I don't think any one single person believes that 14.5 came from drinking the weak coffee that was available and the coca-cola, which was small cans which would have contained 40 milligrams, no more, of caffeine.

**Lee:** Do you know how much caffeine there was in the coffee that was had?

**Fitch:** No, I don't.

**Lee:** Has anyone attempted to find out?

**Fitch:** Er, I don't believe so. I don't see why, I mean nobody really believes that this came from, from coffee.

**Lee:** So there's not enough doubt, as far as you're concerned, to look at that particular test again and say there might be a reason to reach that level without any additional caffeine?

**Fitch:** With the information that has been given to me, to the Medical Commission of the IOC - by the competitor concerned, relating to his intake throughout the day of caffeine containing and non-caffeine containing fluids, then I believe one's got to say that the Medical Commission of the IOC is quite satisfied that some additional caffeine was taken to produce this level. I don't believe. They are not in any way concerned that this came from the statements that he gave.

4.5 According to Mr Watson, Mr Coates said to him following the decision of the IOC Medical Commission:

Believe me, they were looking for a way out for you last night. (*Evidence*, p. 18)

Mr Coates has himself stated:

"He (Alex) says he consumed 10-12 cups of coffee and 1-2 cans of coca-cola but that statement does not equate with the caffeine level reached. It is the opinion of the IOC that you cannot reach the level recorded by Alex Watson on his stated coffee consumption. Alex offered no suitable explanation for reaching this caffeine level so the IOC decided that he could not participate any longer in these Olympic Games. (*Network Ten in Seoul Interview, Transcript; Schedule 5.1 to AOC Submission No 48B*)

In a later television interview on Channel Nine Mr Coates said:

We had further discussion and the IOC could not conclude that the level of caffeine recorded was what would be possible by just consuming cups of coffee and coke and I was told that it was consistent that it would be only possible to achieve that level of caffeine if you took it by way of tablet or suppository and at 1.30 am, as I said, they gave me the decision that forthwith he could not participate in these Olympic Games.

The statements made in Seoul by Mr Coates immediately following Mr Watson's expulsion and subsequently by Dr Fitch leave little doubt about the grounds on which they believe the IOC made its determinations.

4.6 This evidence is supported by the fact that the IOC Medical Commission hearing questioned Mr Watson carefully about his consumption of coffee, general liquid intake and what he had eaten during the day. The hearing was suspended while an energizer bar was retrieved from his room and returned to the Commission for examination.

4.7 Perhaps the most unequivocal evidence that the IOC Medical Commission arrived at its decision in respect to the suspension of Mr Watson from the Seoul games in the belief that he had ingested caffeine in a quantity and manner other than that which he claimed, is found in correspondence between Mr Grut, the Honorary Secretary of the UIPMB and Professor M. Donike, Chairman of the Doping and Biochemistry Subcommittee of the IOC Medical Commission. Dr Donike states:

Meanwhile I have received the simulation study concerning the coffein-absorption [sic] you mentioned. This study includes grave faults.

1. Watson was not from the beginning of the experiment on, under permanent control, so that he had the chance to take coffein-tablets [sic] or more strong coffee in between.

2. The liquid-absorption is not identical with the quantity, Watson drunk in Seoul. This is proved by the less density of urine (sp. 1.010) found in Seoul and the statement of the athlete at the medical commission of the IOC.

Due to these circumstances I don't see any reason neither for the medical commission of the IOC nor for the UIPMB to review the decision of Seoul.

4.8 Not until 27 February 1992 did Mr Coates question that the IOC had given their ruling against Mr Watson on the basis that he must have taken Caffeine in a form other than the consumption of coffee. Of particular interest is the evidence given by Mr Coates to the Committee which apparently led him in part to that view. He stated:

Also, we then had the opportunity for Alex to tell the IOC Medical Commission what he had consumed during the day in the hope that there had been something inadvertent, that he had picked up at the Mazuno bar or whatever; the energiser tablets. I had been advised by the IOC laboratory, and I had seen the Medical Commission hearing. At the time I would have to say in my own mind that there was no question of inadvertency. (*Evidence*, pp. 169-170)

The following exchange then took place between the Chairman and Mr Coates:

**Chairman** - If that was the case and we eventually get to a very clear understanding that drinking coffee during the day could put you over the limit, does this make us any wiser about how Alex Watson felt and behaved?

**Mr Coates** - It certainly will. The IOC, who imposed the penalty on the basis that it could not be reached inadvertently, will owe a very great apology to him. So if ASDA can come up with some conclusions based on scientific research then, firstly, the Australian Olympic Committee will submit those to the IOC as will ASDA

because ASDA adopts the IOC's guidelines. ASDA, in the legislation, has still adopted the caffeine limit that the IOC has prescribed and had prescribed in Seoul. (*Evidence*, p. 170)

Of further interest is the following exchange:

**Chairman** - Further to that, while we may accept a limit, what has been the interesting thing in this case all along is how you get to that limit, and it seems to me the jury is still out on that?

...

**Mr Coates** - As far as the IOC is concerned, they have seen all the submissions that the AOC received from Alex. He sent it to the UIPMB; they referred it to the IOC and the jury is clearly not still out. It is not a matter that they are continuing to review. They have looked at all that material and have not changed. We are going to have to find new evidence and conduct new studies if we want to take it further, in my view. (*Evidence*, pp. 170-171)

4.9 Clearly Mr Coates's understanding of the basis for the IOC finding on Mr Watson derives largely from his attendance at the IOC Medical Commission hearing. Mr Coates would have been in a reasonable position to judge the views and attitudes of the IOC Medical Commission. He has stated that "... I had seen the Medical Commission hearing". (*Evidence*, p. 170) Mr Coates' evidence is supported by the fact that the IOC Medical Commission hearing questioned Mr Watson carefully about his consumption of coffee, general liquid intake and what he had eaten during the day.

### ***An IOC Appeal?***

4.10 Mr Watson claimed that he had been deprived of a fair hearing because no appeal mechanism existed for challenging the findings of the IOC. Further, we understand that it is only with the approval of the IOC Executive Board that such

a matter may be referred to the Court of Arbitration for Sport. Mr Watson sought the agreement of the Board to refer the matter to the Court of Arbitration for Sport. The Board declined this request without explanation.

4.11 The question of an appeals mechanism is addressed by Professor Beckett, a member of the IOC Medical Commission and Founding Director of the Drug Control and Teaching Centre, King's College, London University, who stated that:

... in the case of Caffeine concentration in urine exceeding 12 mcg/ml, the stated rule is breached and thus the ruling must be correct since it is in accordance with the stated rules. However the IOC Medical Commission examines each case before considering the case to be a 'Doping Positive'. I agree that the procedure is not spelt out clearly in the rules. I confirm that I am not aware of an official appeals mechanism. (*Letter to Senator Crichton-Browne, 10 April 1992*)

Dr Fitch of the IOC Medical Commission stated that:

I am unaware of any appeal procedure following a decision by the IOC Executive Board after a recommendation of the IOC Medical Commission in relation to a positive doping test at the Olympic Games. (*Letter to Senator Crichton-Browne, 22 April 1992*)

4.12 The IOC preamble to its *List of Doping Classes and Methods* reads:

... the presence of the drug in the urine constitutes an offence, irrespective of the route of administration. (*IOC, List of Doping Classes and Methods, Schedule 4.2 to AOC Submission No 48B*)



And Rule 29 of the Olympic Charter headed 'Medical Code' provides:

Clause D

Any Olympic competitor refusing to submit to a medical control or examination or who is found guilty of doping shall be excluded from competition or from the present or future Olympic Games. (*Olympic Charter, Schedule 4.2 to AOC Submission No 48B*)

The relevant provisions contained under the Olympic Charter 'Procedures' provide:

6.3.7 Should the result of the A sample be confirmed, the Chairman of the IOC Medical Commission shall then call a meeting of the IOC Medical Commission, to which a representative of the delegation concerned, a representative from the International Federation concerned and the Chairman of the Dope Control Committee will be invited. The competitor will also be invited to attend. Following this meeting, the IOC Medical Commission will establish a recommendation for the IOC Executive Board.

6.3.8 The Chairman of the IOC Medical Commission shall then pass this recommendation to the President of the IOC for submission to the IOC Executive Board, which [shall] be responsible for taking the necessary action.

6.3.9 Following the sanction decided upon by the IOC Executive Board, the head of the delegation to which the competitor belongs and the IF concerned will be informed, before the sanction is made public by the IOC. (*IOC, List of Doping Classes and Methods, Schedule 4.2 to AOC Submission No 48B*)

4.13 Mr Watson having a urine caffeine concentration of 14.45 mcgs/ml was deemed to have tested positive. Accordingly, the IOC Medical Commission recommended to the IOC Executive Board that:

*The analysis of the urine of competitor Alexander James WATSON, Australia (Modern Pentathlon) revealed the presence of caffeine in excess of the limit established by the IOC.*

*The IOC Medical Commission recommends the following sanction:*

*- disqualification of this competitor from the Games of the XXIVth Olympiad in Seoul in 1988*

*This decision remains independent of any sanction which the International Federation concerned may adopt in accordance with its own regulations. (Schedule 3.1 to AOC Submission No 48B)*

On 22 September 1988 the Executive Board resolved that:

1. The IOC Medical Commission's recommendation concerning suspension of Alexander Watson from further participation in the Games of the XXIVth Olympiad approved. ... (Schedule 3.1 to AOC Submission No 48B)

4.14 A reading of Rule 29 of the Olympic Charter in conjunction with Annex 6 of the IOC International Olympic Charter Against Doping in Sport suggests that the IOC discretion appears to be limited to disqualification of the competitor from the present or future Olympic Games. However, the IOC has on a number of occasions exercised a much wider discretion. At the Seoul Olympics several athletes tested positive for banned substances and were not penalised. Perhaps the most well-publicised example was the case of the British athlete Mr Linford Christie who won a bronze medal in the 100 metre dash and who was subsequently awarded the silver medal for the event, upon the disqualification of Mr Ben Johnson. Mr Christie was found to have taken the banned substance pseudoephedrine, a stimulant on the same banned list as caffeine, but for which no limit was set at that time. Mr Christie claimed the substance was contained in ginseng tablets he had taken to counteract a throat infection. Notwithstanding that the rules make no provision for inadvertent use, the IOC ruled that Mr Christie would not be subject to a disqualification.

4.15 Irrespective of the circumstances of each case, Mr Christie was dealt with under the same rules as Mr Watson. To suggest that the IOC does not give itself a considerable degree of discretion is a nonsense. Had the IOC chosen it could have imposed a different penalty on Mr Watson. As Dr Carrard stated in his correspondence with Mr Watson's lawyers:

... please be advised that under Rule 16 of the Olympic Charter, the Executive Board of the IOC shall be the interpreter of the rules. (Dr F. Carrard, Letter to Blake Dawson Waldron, Solicitors, 6 February 1989, Schedule 3.1 to AOC Submission No 48B)

4.16 The practices and procedures of the IOC contrast sharply with the IOC International Olympic Charter Against Doping in Sport Annex 6. The IOC International Olympic Charter Against Doping in Sport entitled *Rights and Responsibilities of Sports Organisations, Athletes and their Entourage*, (undated but apparently adopted after the Seoul games) sets out the disciplinary procedures and under the section "Hearing" reads:

6. *Hearing*

- 6.1 A hearing is held to provide an opportunity to the concerned parties to be heard before determining the nature of the doping infraction and the relevant penalty.
- 6.2 The main elements and criteria for a hearing whether at a national or international level, are:
  - 6.2.1 The persons bringing the case and those who may impose penalties should be separate and distinct;
  - 6.2.2 The accused person should be informed of the case against him or her in writing; the charge, and all other relevant documentary evidence and material which form the basis of the charge should be communicated to the accused person beforehand;

- 6.2.3 The accused person should be informed of the initiation of proceedings and given a reasonable time to prepare the defence;
- 6.2.4 The accused person should have the right to present evidence, [to] comment on the accusation, to defend him/herself, and to be represented by a person with the same rights. Regulations may require the accused person to submit a written statement on the alleged infraction;
- 6.2.5 The proceedings should be thorough and impartial;
- 6.2.6 The accused person should be informed of the decision reached, together with the reasons for the decision, in writing.

Section 7 sets out appeal procedures:

- 7. *Procedures for appeals within the sports system*
  - 7.1 An individual found guilty should be informed of the judgement and of his/her right of appeal to a body empowered to hear such appeals, and the method for lodging such an appeal.
  - 7.2 An appeal of the judgement should be conducted before a duly constituted body with that authority. Sports bodies are strongly advised to refer appeals to a neutral body appointed by them for the purpose of hearing appeals. This body should ensure that the hearing and examination are in accordance with the principles of natural justice. The Chairman and members of this body should be independent of any involvement in the processes described in this annex. It is advisable that the chairman be experienced in legal procedures.
  - 7.3 The sports organisation has the right to appeal against what it considers to be an inappropriate judgement.
  - 7.4 The principles of a hearing as outlined at 6.1 to 6.7 above should also apply to the proceedings within the appeal process.

*Note:* Sports using animals should make clear the rules covering doping of them in competition. In some countries the animals are regarded as being part of the athlete.

4.17 Annex 7 of the IOC International Olympic Charter Against Doping in Sport entitled *Guidelines for Sanctions and Penalties* recommends the following minimum penalties for doping infractions:

1. DOPING CLASSES AND METHODS
  - 2 years for the first offence
  - life ban for the second offence
  
2. Ephedrine, phenylpropanolamine, pseudoephedrine, codeine, etc., (when administered orally for medical purposes in association with decongestants and/or anti-histamines):
  - maximum 3 months for the first offence
  - 2 years for the second offence
  - life ban for the third offence

*Note:* Violations of anti-doping rules involving the supplying, administration and trafficking of doping substances should be regarded as extremely serious offences. The penalties levied for these actions should appropriately reflect even more severe sanctions than those described above.

*Note:* The penalties applied to an individual found guilty of a doping infraction in one participant role or sport, should apply fully to all other roles and all other sports and be respected by the authorities of other sports for the length of the penalty period.

Mr Watson was denied the benefit of such an International Olympic Charter Against Doping in Sport and the IOC refused to apply either the spirit or the principles of such a Charter to Mr Watson.

4.18 Annex 6 of the IOC International Olympic Charter Against Doping in Sport states that one of the responsibilities of sports organisations is:

- 1.7 to protect the rights of suspected persons, by ensuring that the regulations:
- are adequate and sufficient;
  - include the right of suspected persons to an examination and hearing and the right of appeal;
  - are framed in such a way to give effect to the fundamental points set out in Section 4, 5, 6 and 7 below;
  - include a published list of penalties which are applicable and appropriate (bans, suspensions, disqualifications, fines, loss of eligibility, etc.);

In Mr Watson's case the IOC appears to have paid scant regard to the rights of athletes subsequently set out and adopted in the IOC International Olympic Charter Against Doping in Sport.

4.19 If it is accepted that the IOC Medical Commission's decision was in part based on a finding that Mr Watson returned a positive drug test by the ingestion of caffeine tablets or suppositories then the apparent failure of the IOC to provide an appropriate appeals mechanism was in large part responsible for the sanction imposed on Mr Watson by the AOF and UIPMB.

4.20 Mr Watson's lawyers complained to the IOC Medical Commission that it had failed to notify Mr Watson in writing of his penalty and that transcripts of the proceedings of the IOC Medical Commission hearings had not been provided to him. The IOC responded by stating that the transcripts of the proceedings of the IOC Medical Commission are not supplied to the athletes and that notification of the expulsion of Mr Watson from the Games was handled through the usual channels,

namely through officials from the AOF. (*Dr F. Carrard, Letter to Blake Dawson Waldron, Solicitors, 6 February 1989, Schedule 3.1 to AOC Submission No 48B*)

4.21 This contrasts with later sections of Annex 6 dealing with disciplinary procedures and hearings:

5.1 An analytically positive result from Sample B shall always lead to appropriate procedures.

6.2.2 The accused person should be informed of the case against him or her in writing; the charge, and all other relevant documentary evidence and material which form the basis of the charge should be communicated to the accused person beforehand.

6.2.3 The accused person should be informed of the initiation of proceedings and given a reasonable time to prepare the defence;

...

6.2.6 The accused person should be informed of the decision reached, together with the reasons for the decision, in writing.

4.22 The attitude of the IOC towards Mr Watson and consideration of his appeal is in part explained by Dr K. Fitch, Professor M. Donike, and Mr K. Gosper in the following terms. Dr Fitch, a member of the IOC Medical Commission was interviewed by Katrina Lee on the Channel Ten *Page One* program:

**Lee:** But as a doctor, if there is scientific doubt about a test, should a person be given the right of appeal to answer that doubt?

**Fitch:** I, well he was given - you know, a chance to be heard. He had his hearing - it's my understanding that that's the end of the matter as far as the IOC is concerned. As far as the IOC is concerned it was only relating to the Seoul Olympic Games, and that's all history. And, anything you did or didn't

do wouldn't have any effect on Alex Watson in Seoul.

**Lee:** What if a person, as in this case, has, has insisted that they haven't taken anything knowingly. Should there be an appeal.

**Fitch:** Well I can only say that I've sat now at two of the big games on the Medical Commission of the IOC and with-almost without exception, there was no exception admitted or stated, they did not take the drug that was in their limit.

**Lee:** What do you think he (Watson) should do?

**Fitch:** I don't have any advice for Alex, except to say that he was one of ten people banned in the - Olympic Games and - whatever - he was banned because his levels were too high, and however it got there is going to make no difference to him in the long term. And - you know, really end of story I guess.

**Fitch:** Firstly it doesn't matter whether it does or doesn't reach that level by whatever means. He was above the level, therefore he's banned and you know, and he should take that, that decision for what it is, which is he's banned. Secondly, I would have grave doubts in my mind that this could ever happen the way that he said. In other words, to take the number of hours, the number of cups of the coffee that he drank, etcetera, the amount of fluid that he took, and what he did that day, and I still don't believe the level is going to come to 14.5.

4.23            Professor M. Donike, of the IOC Medical Commission wrote to Colonel Grut, Honorary Secretary of the UIPMB on 30 January 1989:

Meanwhile I have received the simulation study concerning the coffein- [sic] absorption you mentioned. This study includes grave faults.

1.        Watson was not from the beginning of the experiment on, under permanent control, so that he had the chance to take coffein- [sic] tablets or more strong coffee in between.



2. The liquid-absorption is not identical with the quantity, Watson drunk in Seoul. This is proved by the less density of urine (ap. 1.010) found in Seoul and the statement of the athlete at the medical commission of the IOC.

Due to these circumstances I don't see any reason neither for the medical commission of the IOC nor for the UIPMB to revise the decision of Seoul. What shall the other athletes of the modern pentathlon say, who have all joined the competition with lower, acceptable coffeein- [sic] concentration and who have drunk the same coffee in approximately the same quantity? (*Letter from Prof. M. Donike to Col. W. Grut, 30 January 1989, Schedule 5.1 to AOC Submission No 48B*)

4.24 In a letter to Mr Watson of 13 September 1989 Mr K. Gosper, a member of the IOC Executive Board stated:

In my talks with Prince de Merode [Chairman of the IOC Medical Commission] there was a belief on his part that full consideration had been given to your case in the last appeal and that he felt it was necessary to stand by the scientific outcome of the testing at the Seoul Games... He felt there was no case for questioning the results of your Seoul test.

...

So, Alex, there is no change and I feel I've gone as far as possible on an AOF and personal level with the IOC. (*Mr K. Gosper, Letter to Mr A. Watson, 13 September 1989, Schedule 5.1 to AOC Submission No 48B*)

### *The Principles of Olympism*

4.25 The Olympic Charter proclaims as its fundamental principles the educational value of good example and respect for universal ethical principles:

The goal of Olympism is to place everywhere sport at the service of the harmonious development of man, with a view to encouraging *the establishment of a peaceful society concerned with the preservation of human dignity.*

...

The goal of the Olympic Movement is to contribute to building a peaceful and better world by educating youth through sport practised without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair-play (*Principles of Olympism*, p. 7)

That the IOC has failed to match its own proclamation of principles with practice and in respect of such a fundamental principle is of grave concern. Given the importance of the Olympic Charter to the international sporting movement, we are appalled that the IOC failed to provide an appeals mechanism for Mr Watson to preserve and protect his rights. Dr Fitch stating that "As far as the IOC is concerned it was only relating to the Seoul Games, and that's all history. And, anything you did or didn't do wouldn't have any effect on Mr Alex Watson in Seoul" is akin to a Court of Law imposing the death penalty and the system of justice refusing a review because the execution had been carried out.

4.26 Dr Fitch also seemed to fail to understand that as long as the IOC drug test and the fairness of the penalty was without question or review, the AOC and UIPMB penalties on Mr Watson remained in place. In the case of the AOC, at that time the penalty was a life ban. The IOC has handled this matter with unmitigating obstinacy and clear disregard for Mr Watson's rights. As Dr Carrard wrote to Mr Watson's lawyers on behalf of the IOC:

... the IOC Executive Board decided, pursuant to the Olympic Charter, to disqualify your client from the Games of the XXIVth Olympiad in Seoul. The Australian Olympic Federation accepted the decision. Consequently,

as far as the IOC is concerned, the matter is closed.  
(*Dr F. Carrard, Letter to Blake Dawson Waldron, Solicitors, 6 February 1989, Schedule 3.1 to AOC Submission No 48B*)

4.27 The IOC should adopt the hearing and appeal provisions set out in Annex 6 of its International Olympic Charter Against Doping in Sport entitled *Rights and Responsibilities of Sports Organisations, Athletes and their Entourage* together with Annex 7 entitled *Guidelines for Sanctions and Penalties*.

4.28 The disinterest and disregard that the IOC demonstrated towards Mr Watson's plea for a review of his case has been amply reflected in the attitude the IOC has demonstrated towards this Committee. The attached correspondence between Senator Crichton-Browne, the Committee Secretary and various members of the IOC Executive bears testimony to that.

4.29 Notwithstanding numerous attempts to obtain answers to a small number of questions relating to the Watson doping case, the IOC has declined to respond to these questions.

4.30 Having perused the correspondence between Mr Watson's lawyers and the IOC contained in the AOC's submission to the Committee which highlighted the difficulty Mr Watson had in obtaining answers to questions from the IOC, correspondence between Senator Crichton-Browne and the IOC was simultaneously sent to Mr Samaranch, Prince Alexandre de Merode and Professor M. Donike (see Appendix 3).

4.31 Notwithstanding numerous requests for a response, none was forthcoming.

4.32 Our experience is that the IOC's publicly expressed concern for drugs in sport is quite different to their conduct.

4.33 There must be considerable concern for the level of commitment demonstrated by the IOC in this matter.

#### *A UIPMB Appeal?*

4.34 Mr Watson appealed to the Union Internationale de Pentathlon Moderne et Biathlon (UIPMB) and addressed the UIPMB General Assembly. The Assembly referred Mr Watson's evidence to the IOC Medical Commission. This evidence was further referred to the Doping Biochemistry of Sport Sub-Commission of the IOC. Nevertheless the IOC Medical Commission determined not to alter its previous position (*Evidence*, p. 94)

4.35 Dr F. Carrard, Juridical Adviser to and Counsel for the IOC wrote to Mr Watson's lawyers on behalf of Prince A. de Merode, IOC Vice-President and Chairman of the IOC Medical Commission to advise that the material submitted to the UIPMB by Mr Watson requesting an opinion by the Commission had been considered and the opinion had been sent to the UIPMB. The UIPMB would not alter its two year suspension without the IOC Medical Commission overturning its previous decision and there the matter rested.

4.36 The position of the IOC Executive Board was summed up in correspondence by Dr Carrard to Mr Watson's lawyers in the following terms:

As you know, following the recommendation of the IOC Medical Commission, the IOC Executive Board decided, pursuant to the Olympic Charter, to disqualify your client from the Games of the XXIVth Olympiad in Seoul. The Australian Olympic Federation accepted the decision. Consequently, as far as the IOC is concerned, the matter is closed. It is up to the other national or international organisations concerned to decide, in accordance with their rules, on possible measures or sanctions which lie within their respective authorities and jurisdictions (*Dr F. Carrard, Letter to Blake Dawson Waldron, Solicitors, 6 February 1989, Schedule 3.1 to AOC Submission No 48B*)

The dilemma for Mr Watson was that until such time as he could persuade the IOC Medical Commission and Executive Board to review and rescind their finding on him, the AOF in accordance with the Olympic Charter was bound to observe and comply with the decisions of the IOC and its Sub-Commissions.

4.37 The UIPMB was also obliged to impose its own sanction upon Mr Watson given the findings of the IOC Medical Commission that he had failed a drug test. At issue was not the penalty imposed by the IOC Executive but rather the positive drug test. To the extent that the AOF rules appeared to impose a mandatory life ban, the AOF were obligated to apply it until such time as they changed their sanctions for such offences. The UIPMB penalty was a two year ban and they were likewise obligated to impose it. That said, it should be understood that had these two bodies given themselves discretion in respect of penalties, which in 1989 the AOF chose to do, they need not have suspended Mr Watson at all had they deemed that appropriate. Subsequently the AOC reduced its penalty for a first offence from a life ban to a two year penalty and reduced Mr Alex Watson's penalty accordingly.

### *The Court of Arbitration for Sport*

#### *The Powers of the Court*

4.38 Following his election as President of the International Olympic Committee in 1980 Juan Antonio Samaranch found himself involved in actions in the Civil Courts that had the capacity to bring the Olympic Movement into potential disrepute. He decided that there had to be a better way, and as a result, at his instigation, the 85th Session of the IOC held in Rome in 1982 upheld the idea of creating a Court of Arbitration, the jurisdiction of which would lie within the scope of activities linked more or less directly with sport.

4.39 Statutes and Regulations were drawn up and in 1983 the Court of Arbitration for Sport was constituted and took up residence in Lausanne.

4.40 Jurisdiction is limited to what are described as 'non technical' as opposed to 'technical' disputes - the latter being referred to as affairs of the Sports Governing Bodies. The non technical disputes appear to fall into two categories:

1. Differences relating to the general principles which govern sport.
2. Litigations concerning matters of commerce which arise from activities relating to sport.

4.41 Either natural persons or corporate bodies have the right to submit disputes to the Court provided they are disputes of a private nature.

4.42 Basically access to the Court arises in two ways:

1. By an agreement or contract relating to sport having inserted therein an arbitration clause with undertakings by the parties to the agreement to comply. The Court in fact provides an example of a suitable arbitration clause.
2. When no such agreement or contract exists, by parties to a sporting dispute agreeing to submit their dispute to the Court and again undertaking to comply.

The Court comprises 60 members, any 3 of whom sit on the panel.

#### *The Procedure of the Court*

4.43 The procedure of the Court provides:

1. That submissions are initially made in writing, then orally.
2. That parties may be represented by Counsel, but only with the permission of the Court.
3. The law applied is Swiss, unless the parties have otherwise agreed.

4. The language of the Court is French and English.
5. The costs of the Court are borne by the IOC. This does not of course mean the costs of the parties, but the very considerable costs of arranging the hearing and bringing the arbitrators together from various parts of the world to sit and of arranging the facilities for sitting.
6. The panel initially may try to conciliate.
7. Deliberations are held in camera and awards are read out in public sessions by the Secretary General. (*Mr Brian Doyle, Turnbull Hill Partners, Newcastle, in the Australian New Zealand Sports Law Association, Newsletter, (1), September 1991, p.8*)

4.44 IOC Vice President Mr K. Mbayne writing in the foreword of the *Court of Arbitration for Sport (CAS) Practical Guide* states:

The CAS is composed of a list of sixty well-known jurists who also have a good knowledge of sports-related issues. The duties of President of the CAS are performed by one of these jurists who must also be a member of the IOC.

Thus the IOC has put at the disposal of any individual or corporate body, public or private, involved with sports activities or their development, an arbitration institution whose members have a good knowledge of sport and can find satisfactory and final solutions to any duties.

Sports bodies, individuals practising or teaching sport, businessmen, corporate bodies, public or private, may all refer to the CAS with a view to settling any conflict by arbitration, provided that this dispute has a bearing on private interests.

Naturally, any problems of a technical nature arising during the practice of a particular sport remain the competence of the International Federations and other sports bodies concerned.

The CAS has the task of settling non-technical disputes of a pecuniary or non-pecuniary nature, whose settlement is not provided for by the IOC Olympic Charter, nor by

the international or national regulations in force which govern sport. The CAS also acts as a court of appeal (and of last resort) against the decisions by internal tribunals of sports federations.

In addition to its normal function, the CAS may give an advisory opinion on any judicial matter concerning sport.

It is interesting to note that when a case is being heard, the CAS may try to reconcile the parties if they so agree. This power and the extreme simplicity of the procedure, makes the CAS a valuable instrument for the rapid and inexpensive resolution of disputes resulting from the practice of sport and the economic or financial activities arising from it.

4.45 During the last eight months, the CAS secretariat has registered five new cases on its cause list, all appeals lodged against suspension decisions taken by an IF on the grounds of doping. (*Report on the Activities of the Court of Arbitration for Sport (CAS) June 1991 to February 1992*). Given the IOC itself does not have a proper or formal appeals mechanism, the CAS appears to be an ideal Court of Arbitration to deal with cases such as Mr Watson's, for which purpose it was apparently established.

*Mr Watson's Request: September 1989*

4.46 On 15 September 1989 Mr Watson's lawyers wrote to the IOC requesting that it submit the Watson case to the CAS under Article 5 of the statutes for an advisory opinion under Article 65 of Chapter VI - The Advisory Procedure. Article 5 reads in part:

Any of the following parties may submit a case to the CAS, provided they have an interest in so doing: The International Olympic Committee (IOC)...



Article 69 reads in part:

The CAS is authorised to issue an opinion on legal questions concerning the practice of sport or its development and, in a general way, all activities pertaining to sport.

Article 65 of the Regulations reads in part:

Any request for an advisory opinion from the CAS by the IOC and in a general way, any other person concerned, shall be submitted to the President of the CAS who shall, after consideration with the parties concerned, formulate the questions on which he deems that an advisory opinion may be given by the CAS. Any document likely to offer information to the designated Panel shall be added.

On 25 September 1989, however, Dr F. Carrard, Counsel for the IOC, responded as follows to Mr Watson's appeal request which had been made through his solicitors:

In answer to your letter dated September 15, 1989, for which I thank you. This is to inform you that the IOC will not refer the above matter to the Court of Arbitration for Sport. (*Dr F. Carrard, Letter to Blake Dawson Waldron, Solicitors, 25 September 1989, Schedule 3.2 to AOC Submission No 48B*)

Thus Mr Watson's last attempt to have his case formally reviewed in an international forum was abruptly dismissed in three short lines.

### ***The British Experience***

4.47 We are advised by Mr R. Palmer, General Secretary of the British Olympic Association (see Appendix 4) in the following terms:

When I, as Chef de Mission, was notified of a positive test by the IOC Medical Commission a number of procedures were put into place. The athlete concerned and the team

doctor were interviewed by the Honorary Treasurer of the BOA, Robert Watson, who also happens to be a Barrister in criminal law. At that point his job was not to prepare a case on behalf of the athlete rather it was to establish the facts in the matter. The athlete underwent a very careful cross examination by Robert Watson in order to achieve this. In the case of three of our athletes in Seoul there was [sic] very considerable doubts concerning the situation and Robert Watson, on behalf of myself as Chef de Mission, presented the facts to the IOC Medical Commission. In the case of the fourth athlete we established that he had, at the very least, acted very foolishly. We obtained from the athlete a written statement which effectively detailed his guilt and/or stupidity and Robert Watson represented this to the IOC Medical Commission.

(I might, incidentally, point out the time scale in the situation. The notification from the IOC was received in the evening. The second sample was tested very early the following morning. The BOA's internal enquiry took place in a 2/3 hour period prior to lunch and the hearing in front of the IOC Medical Commission took place either in the late afternoon or around 8 o'clock in the evening).

We have, as you see from the Seoul Report, taken a further step. Should we have problems in Barcelona we have asked our Honorary Legal Advisor to be present at both the BOA enquiry and at the IOC hearing to ensure that justice prevails insofar as the athlete is concerned. (*Mr R. Palmer, Letter to Senator N. Crichton-Browne, 1 May 1992*)

4.48 Upon returning to Britain the National Olympic Committee initiated an inquiry into the use and misuse of drugs with a view to drawing up plans for the future. Following are the relevant conclusions and recommendations of the BOA Report:

#### The International Olympic Committee

##### Conclusions

1. Throughout the International Olympic Committee acted with great integrity and with the best interests of the

competitors in mind. At the hearings we are satisfied that our competitors were treated fairly and given a proper hearing.

2. Nevertheless the Working Party heard from the competitors involved (in particular those against whom no action was taken by the IOC following the adverse report) expressing concern at the procedures of the IOC Medical Commission in hearing the cases. Dominic Mahony (Modern Pentathlon) perhaps best summed it up by saying:

"Appearing before the IOC Commission in Seoul was an intimidating and unpleasant experience".

The British Olympic Association felt itself fortunate in having proper professional support for its competitors at the hearings. Given different circumstances from those which obtained with the British Team the Working Party questioned whether or not the rights of individual competitors would have been properly safeguarded under the present protocols which apply at IOC Medical Commission hearings.

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#### Recommendations

1. Perhaps the IOC Medical Commission should discuss with its Legal Advisers and with experienced Chefs de Mission the procedures and protocols to apply at hearings into positive drug tests. These should be announced to NOC's prior to the Games.
2. In order to obviate unnecessary stress and publicity to competitors the IOC Medical Commission should consider whether or not to establish an informal hearing procedure to simplify the existing formal system. A senior member of the IOC Medical Commission could informally meet the competitor and his representatives to establish the basic facts and only if, following this meeting, the situation is considered unsatisfactory should a competitor be requested to appear before the full Commission with all the publicity and opprobrium which it entails.

## The British Olympic Association

### Conclusions

...

#### At the Games

1. The Working Party formed the view that the situation at the Games had been handled in a wholly proper and effective manner by the BOA. Indeed it was the view expressed to us by competitors that they were fortunate in having the support and expertise of the BOA made available in their hour of need. Nevertheless there were lessons to be learnt for the future.
2. The basic procedure of thoroughly examining all the circumstances in a professional manner and then presenting the facts fully to the IOC Medical Commission was regarded as the proper, indeed the only, course of action.
3. The Working Party recognised fully the exceedingly stressful circumstances surrounding matters of drug abuse created, in no small measure, by news hungry media. Nevertheless the confidentiality and the privacy of the competitors was a matter of grave concern and places a heavy responsibility on the BOA, the Chef de Mission, the Press Officer and the Management of the individual Sports Teams (often unused to dealing with the IOC and the media).

The Working Party spent a considerable time on the matter of leaks and further discussed informally with members of the media the situation which developed in Seoul. It was unable to come to any satisfactory conclusion as to the source of any leaks which caused the media speculation, particularly those surrounding Christie and Brown. In the case of Phelps and Mahony the news did not reach the Press for three days (this was prior to the Ben Johnson affair) and the leaks could only have come from within the sport itself although not from the British contingent (who were anxious that the information should be kept confidential)...

## Recommendations

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### At the Games

1. The BOA should plan for a "Domesday Scenario" and work out procedures beforehand. In Seoul, fortuitously, the right people were on hand. At future Games they should be present by design.
2. The Working Party recommends that:
  - a) There should be a legal team on hand comprising an advocate who can, by his training and background, establish the facts and ensure that they are properly presented at the right time - and a legal adviser, who can assist by ensuring that the proper documentation is available and that the correct legal procedures are observed.
  - b) The smallest possible number of people be informed about such affairs in order to preserve confidentiality for the competitor concerned.
  - c) Only one spokesman should deal with the media, acting on the instructions of the Chef de Mission. This should be the BOA Press Officer. Neither the individual sports management nor the competitors should attempt to deal with media matters in these affairs. (*British Olympic Association, Report of the Drug Working Party, Appendix 3 to this Report*)

4.49 The British Olympic Association clearly questions whether it is possible for athletes to have their rights properly safeguarded under IOC Medical Commission protocols which apply at the hearings when not provided with proper professional support, support of a nature which was not available to Mr Watson.

