

# Prosecuting drug cheats in the Court of Arbitration for Sport: Insight into the international anti-doping framework



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TAS / CAS

TRIBUNAL ARBITRAL DU SPORT  
COURT OF ARBITRATION FOR SPORT

1984 - established and funded by the IOC (under the International Council of Arbitration for Sport since 1994):

- ◆ independent, specialised authority to settle international sporting disputes
- ◆ flexible, quick and inexpensive
- ◆ available to parties voluntarily



# CAS Facts

- ◆ Lausanne, SUI - default is Swiss law (+ offices in Sydney and NYC)
- ◆ non-permanent (major events)
- ◆ 300 cases/ yr
- ◆ 300 arbitrators from 87 countries
- ◆ arbitral awards -same enforceability as judgements of ordinary courts (mediations/non-binding advisory opinions)

# Sport Response to Doping



- ◆ 1950s – UCI (cycling) drug testing
- ◆ 1959 – France - National Physical Education Doping Commission
- ◆ 1960 – Jensen (cyclist) died
- ◆ 1960s – IFs (eg: IAAF) developed anti-doping policies
- ◆ 1967 Tour de France – Simpson died

# Governments in Anti-Doping

- ✦ 1960 - CoE tabled a resolution against the use of drugs in sport
- ✦ 1963 - France anti-doping legislation
- ✦ 1989 - CoE adopted Anti-Doping Convention (now ratified by 50 States, incl AUS 1994)



COUNCIL  
OF EUROPE

CONSEIL  
DE L'EUROPE



# IOC Leadership

- ◆ 1967 - IOC Medical Commission
- ◆ 1968 - IOC Prohibited List + drug testing at Mexico OG
- ◆ 1980s - Govts and sport co-ord
- ◆ (1987 - AUS AOC & ASC A-DPs)
- ◆ 1994 - IOC & IFs standardise A-DPs with the IOC Medical Code



# Establishment of WADA

- ✦ 1998 – police raid at Tour de France prohibited medical substances
- ✦ IFs - differing definitions, policies, and sanctions
- ✦ doping sanctions disputed and sometimes overruled in civil courts
- ✦ WADA established 10 Nov 1999

# Preparations for the Sydney Olympic Games



- ◆ 1997 AUS major review

  - AOC and ASC template: CAS 1<sup>st</sup> instance

- ◆ 1997-2000: drafted 32 NF A-DPs  
prosecuted 30 CAS cases

- ◆ Inconsistency IF/NF and NF/AUS

- ◆ Nov 1999 – WADA established

- ◆ 1 Jan 2000 - IOC OMADC – CAS  
tribunal of “last instance appeals”

# World Conference 2003

## Conference Resolution

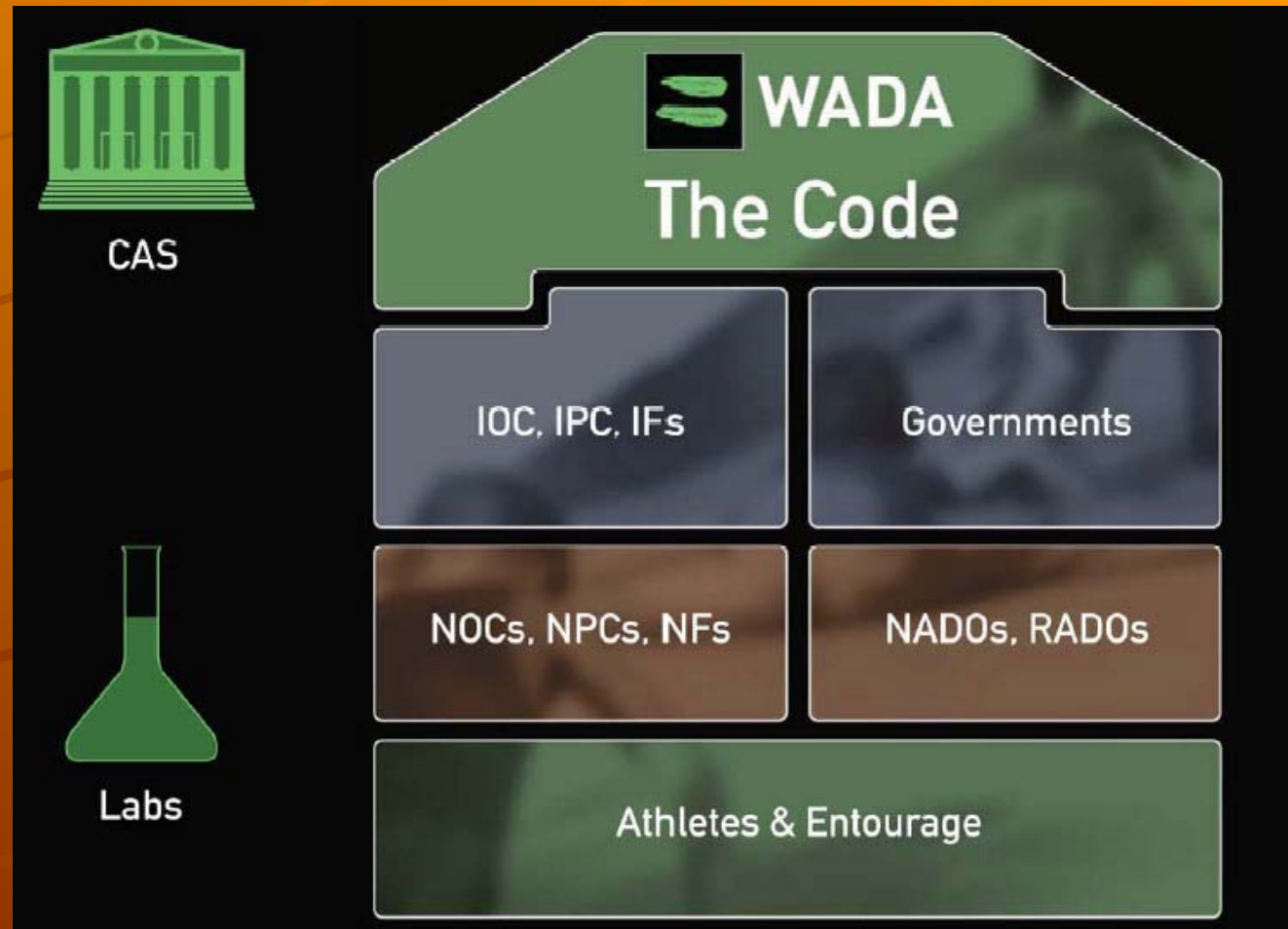
Accepted the World Anti-Doping Code as the basis for the fight against doping in sport



## Copenhagen Declaration

Recognises and supports WADA, accepts the World Anti-Doping Code and endorses a process which will lead to the UNESCO Convention

# World Anti-Doping Code 2003



# UNESCO Convention 2007

## International Convention against Doping in Sport

- Recognizes Governments' critical role in anti-doping
- UNESCO's most successful international treaty (quickest to be drafted and ratified)
- CAS not referred to directly, but State parties agree to adopt appropriate measures which are consistent with the principles of the Code

# WADC (2003 / 2009)

## Anti-Doping Rule Violations



ADRV	Max Penalty	Athlete/ Support	Test/ Investigate
1. Presence	2 years	A	T
2. Use	2 years	A	T/I
3. Refuse sample	2 years	A	T/I
4. Whereabouts failure	2 years	A	T/I
5. Tampering	Lifetime ban	A/AS	T/I
6. Possession	Lifetime ban	A/AS	I
7. Trafficking	Lifetime ban	A/AS	I
8. Administration of prohibited substance	Lifetime ban	A/AS	I

# Right to be heard by CAS under the WAD Code



- ◆ International-level athletes (recognised by the responsible IF) entitled to appeal to CAS (Art 13)
- ◆ National-level athletes (and below) use domestic tribunals (unless specified eg: AUS – first and appeal)



# Oceania CAS Registry

1996 - Established primarily to service the selection and anti-doping cases for Sydney 2000 Olympic Games



# Burdens and Standards of Proof

- ✦ ADO has the burden of proof
- ✦ standard of proof “comfortable satisfaction”

*greater than a mere balance of probability but less than proof beyond a reasonable doubt*

- ✦ Comfortable satisfaction may be established by “any reliable means” (eg: admissions; longitudinal profiling)



# Strict liability (eg: presence)

Eg: 1999 - Van Rooyen (AUS weightlifter) - 2yr ban

“Presence” for clenbuterol

Claimed mixed with recreational drugs (not exceptional circs)



# Sean Eadie (AUS cyclist)

- ✦ 1999 - Customs intercepted package containing human growth hormone
- ✦ Eadie - claimed sent unsolicited
- ✦ ADO burden of proof
- ✦ 2004 - won on appeal  
Allowed to race in Athens OG  
(4th in Team Sprint)



# WADC: Attempted Use

“purposely engage in conduct that constitutes a substantial step in a course of conduct planned to culminate in the use of a prohibited drug”



# Marinov - "Possession" unable to be established by ASADA

- ◆ 2003 - steroids seized by VicPol
- ◆ Athlete claimed to have been unaware that there were steroids on the top shelf of the wardrobe of his rented room
- ◆ 2007 - life ban overturned on appeal (1995 - 2yr ban)



# Has CAS Lived Up to the IOC's Intentions?

- ✓ independent
- ✓ specialised to settle international sporting disputes
- ? voluntary (enshrined in Code)
- ? flexible (French/ Eng; based in SUI)
- ? quick eg: Contador case
- ? inexpensive eg: Landis case
- ? *lex sportiva*



# Challenges for CAS

- athletes resorting to increasingly bizarre defences - complexity
- timeliness around major events
- highly publicised
- accessibility
- precedents

