CAS 2007/A/1201

PARTIAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Panel

President: The Hon Allan **McDonald** QC, Melbourne, Australia

Arbitrators: Mr Malcolm **Holmes** QC, Barrister, Sydney, Australia

Mr John **Boultbee** AM, Sydney Australia

between

NATHAN BAGGALEY

represented by Mr Tony O'Reilly and Mr Sudarshan Kanagaratnam of Kennedys Lawyers, Sydney, Australia and Mr Alexander Street SC, Barrister, Sydney, Australia

- Appellant -

and

AUSTRALIAN CANOEING INC., Sydney, Australia

represented by Mr Ian Fullagar of Lander & Rogers Lawyers, Melbourne, Australia

- First Respondent -

INTERNATIONAL CANOE FEDERATION, Lausanne, Switzerland

represented by Dr Dirk-Reiner Martens & Ms Julia Feldhoff of Beiten Burkhardt Attorneys-at-Law, Munich, Germany and Mr Duncan Miller, Barrister, Sydney Australia

- Second Respondent –

SURF LIFE SAVING AUSTRALIA, Sydney, Australia

represented by Mr Ian Fullagar of Lander & Rogers Lawyers, Melbourne, Australia

- Third Respondent -

and

AUSTRALIAN SPORTS COMMISSION, Canberra, Australia

represented by Mr Ian Fullagar of Lander & Rogers Lawyers, Melbourne, Australia

AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY, Canberra Australia

represented by Mr Richard Redman, Canberra, Australia

- Affected Parties –

1. The Application before us was filed with the Court of Arbitration for Sport (***CAS***) Oceania Registry on 4 January 2007, it being what is commonly seen as and entitled, an Application. It has the effect of being a Statement of Appeal under Rule 48 of the Court of Arbitration for Sport Arbitration Rules, edition 2004 (the ***Code***). There was also filed with the CAS Oceania Registry on 15 January 2007 an Amended Application form.

2. One of the paragraphs of the Order for Directions given in this matter dealt with the jurisdiction of the presently constituted Panel. That order was signed and executed by the Appellant (***Mr Baggaley***), the respondent, Australian Canoeing Inc. (***ACI***), and by the then affected parties, Surf Life Saving Australia (***SLSA***), Australian Sports Commission (***ASC***) and Australian Sports Anti-Doping Authority (***ASADA***). The order was not executed by or on behalf of the then respondent, International Canoe Federation (***ICF***) which submitted in substance that this Panel did not have authority to arbitrate the dispute alleged against the ICF. Consequently, there arose at the very beginning of these proceedings the question as to whether this Panel had jurisdiction to entertain the Application, being in the nature of appeal, and specifically to make orders of the specific nature sought in the Application.

3. For convenience, and only for convenience sake, we will also outline the further matters that have been sought in the first Application. In the Application filed on 4 January 2007 the decision appealed from was a decision of Australian Canoeing Inc of 14 December 2006. That which is added in the Amended Application is to also include the decision appealed from being a decision of 15 January 2007 of SLSA.

4. By the Application, and as contained in the amended application, there is set out the relief that is being sought. That was by way of annexure B to the Application. Without reading it specifically at this time, it appears to us that by paragraphs 3, 4, 9, 10 and 11 of the relief sought was relief specifically directed to and against the ICF. As we have said, the question arises as to whether this Tribunal has jurisdiction to consider the Appeal and to grant the relief as we have referred to and as particularised in those paragraphs.

5. Rule 47 of the Code provides:

> An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

6. We look to see, first, whether the regulations and statutes of the ICF provide the jurisdiction contended for on behalf of Mr Baggaley. We refer to that contained in

Article 13 of the ICF Doping Control Rules. It specifically provides for the decisions which are subject to appeal:

> *13.1 Decisions made under these Anti-Doping Rules may be appealed as set forth below in Article 13.2 through 13.4. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise …*
>
> *13.2 A decision that an anti-doping rule violation was committed, a decision imposing Consequences for an anti-doping rule violation … may be appealed exclusively as provided in this Article 13.2 …*

7. It is then provided by Article 13.2.1:

> In cases arising from competition in an *International Event* or in cases involving *International-Level Athletes*, the decision may be appealed exclusively to the Court of Arbitration for Sport ("CAS") in accordance with the provisions applicable before such court.

8. It is common ground that Mr Baggaley is an international-level athlete. We have reached the conclusion that Articles 13.1. and 13.2.1 do not provide a statute or regulations as required by Rule 47 of the Code so as to enable this body to hear and determine the appeal and to grant relief to the nature that has been referred to. The decisions appealed from were the decisions of ACI and SLSA and it is under their rules that there is no contention that there is not jurisdiction to hear an appeal as relevant to those bodies.

9. The question then arises as to whether, under Rule 47 of the Code, there has been concluded a specific arbitration agreement as between Mr Baggaley and the ICF which gives this body the jurisdiction to hear and determine the appeal and, in particular, to grant the relief that we have referred to. Mr Street, who appears on behalf of Mr Baggaley, submits that, by reason of the ICF being a signatory to the Word Anti-Doping Code (***WADA Code***), there exists in the code an agreement which gives this body jurisdiction.

10. It is common ground that the ICF is a signatory to the WADA code. We do not accept Mr Street's submissions. We are of the opinion that the WADA code, and it being agreed to and adopted by the ICF, does not provide the jurisdiction and does not provide a specific arbitration agreement as is necessary under rule 47.

11. Under the WADA code, and in particular reference is had to Article 23.2.1. It deals with the implementation of the WADA code. It provides:

> The *Signatories* shall implement applicable *Code* provisions through policies, statutes, rules or regulations according to their authority and within their relevant fields of responsibility.

12. The obligation of Mr Baggaley, as an international athlete, is set out in Article 21 of the WADA code and, in particular, we refer to Article 21.1.1 which refers to the Responsibilities of Athletes that includes:

> To be knowledgeable of and comply with all applicable anti-doping policies and rules adopted pursuant to the *Code*…

13. We are of the view that neither Article 21.1 nor Article 23 does that which is submitted for on behalf of Mr Baggaley by Mr Street. Rather, it is apparent that the ICF has, it would appear, adopted the obligation imposed on it by being a signatory to the Code and has adopted the rule, in particular Article 13. It is our opinion that that rule does not give this Tribunal authority or jurisdiction to hear and determine the appeal with the ICF as a respondent and to grant the relief of the nature we have referred to.

14. Therefore, we have concluded that there is no jurisdiction in the Panel to make orders of the nature sought by Mr Baggaley against the ICF, it being a respondent to the appeal before us.

15. For those reasons, we conclude that the jurisdictional point taken by and on behalf of the ICF is sound and we uphold the submission.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The CAS as constituted by this Panel does not have jurisdiction to hear and determine the Appeal with the ICF as the respondent to the appeal; and
2. There exists no jurisdiction in the Panel on this Appeal to make the orders sought by Mr Baggaley against the ICF.
3. The question of costs is reserved.

Sydney, 20 January 2007

THE COURT OF ARBITRATION FOR SPORT

The Hon Allan **McDonald** QC
President of the Panel

Malcolm **Holmes** QC
AM
Arbitrator

John **Boultbee**
Arbitrator

CAS 2007/A/1201

FINAL ARBITRAL AWARD

(Save as to Costs)

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Panel

President: the Hon Allan **McDonald** QC, Melbourne, Australia

Arbitrators: Mr Malcolm **Holmes** QC, Barrister, Sydney, Australia

Mr John **Boultbee** AM, Sydney Australia

between

NATHAN BAGGALEY

represented by Mr Tony O'Reilly and Mr Sudarsham Kanagaratnam of Kennedys Lawyers, Sydney, Australia and Mr Alexander Street SC, Barrister, Sydney, Australia

- Appellant -

and

AUSTRALIAN CANOEING INC., Sydney, Australia

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INTERNATIONAL CANOE FEDERATION, Lausanne, Switzerland

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and

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represented by Mr Ian Fullagar of Lander & Rogers Lawyers, Melbourne, Australia

AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY, Canberra Australia

represented by Mr Richard Redman, Canberra, Australia

- Affected Parties –

4. On 4 January 2007 the Appellant, Mr Nathan Baggaley (***Mr Baggaley***), lodged an Application with the Court of Arbitration of Sport (***CAS***) in the Appeals Division of its Oceania Registry. The application was in form and content a "Statement of Appeal" under Rule 48 of the Code of Sports – Related Arbitration (the ***Code***) .

5. By his application Mr Baggaley named as Respondents; Australian Canoeing Inc. (***ACI***) and the International Canoe Federation (***ICF***). He stated there were other parties, potentially affected by his Application. He named those parties as Surf Life Saving Australia Ltd (***SLSA***), Australian Sports Commission (***ASC***) and the Australian Sports Anti-Doping Authority (***ASADA***). By that application Mr Baggaley identified the "Decision" appealed from as that of the Australian Canoeing Inc. made 14 December 2006.

6. Mr Baggaley made application for Provisional Measures under R. 37 of the Code. The Panel on 12 January 2007 met and heard submissions relevant to that matter. The application for orders in the nature of Provisional Measures was dismissed by the Panel. On that day further orders and directions were given and matters attended to by the Panel as set out in the Order of Procedure in these proceedings. It is not necessary to deal with those matters at this time.

7. By his application lodged on 4 January 2007 Mr Baggaley set out and relied on a number of facts and matters and in written submissions filed on his behalf. He also relied on such facts supplementing them in some aspects. Those facts and matters were not the subject of contest before the Panel at the hearing of the appeal as conducted by the Panel on 20 January 2007.

8. Those factual matters are –

   (a) Mr Baggaley at all times was a member of SLSA and ACI and was a scholarship holder with the Australian Institute of Sport (***AIS***).

   (b) As such Mr Baggaley was subject to and bound by SLSA's Anti-Doping Policy dated 2004, ACI's Anti-Doping By-Law adopted 17 December 2004 and ASC's 2004 Anti-Doping Policy effected 1 August 2004.

   (c) Mr Baggaley was subject to an out of competition, advance notice, doping control conducted by the Australian Sports Drug Agency (***ASDA***) on behalf of SLSA on 13 September 2005.

   (d) By a notice dated 30 September 2005 the National Measurements Institute reported that Mr Baggaley's urine sample contained metabolites of stanozolol and methandienone which notice set in train a series of events that ultimately resulted in the issue of an Infraction Notice dated 24 November 2005.

(e) The Infraction Notice was issued pursuant to Article 10.5 of the SLSA Anti-Doping Policy, Article 10.5 of the ACI Anti-Doping Policy and Article 10.8 of ASC Anti-Doping Policy.

(f) The Infraction Notice informed Mr Baggaley of his rights to a hearing as to whether he had committed an Anti-Doping Rule Violation and the sanction applicable. It also noted that such hearing would be conducted under Article 11 of the Anti-Doping policies and that each of those bodies proposed that the hearing be conducted by the CAS.

(g) On 20 December 2005 the CAS comprising Mr Grace QC conducted a hearing of the matter. The SLSA, ACI and ASC appeared as Applicants, Mr Baggaley was the Respondent and ASDA appeared as an affected party.

(h) In the course of the contested hearing before the CAS Mr Baggaley conceded he was guilty of an Anti-Doping Rule Violation. He contended however that the sanction provided should be eliminated or reduced submitting that there had been established on the evidence that there was no fault or negligence on his behalf for the violation or alternatively that there was no significant fault for negligence on his behalf for the violation.

(i) By his Award (CAS, A3/2005) dated 30 January 2006, Mr Grace QC found that on the totality of the evidence that the "unique circumstances" in the case fell within the category of "exceptional circumstances" and that Mr Baggaley had "established by a balance of probability that he [bore] no significant fault or negligence". Mr Grace QC determined that in the exercise of the discretion vested in him and arising from such finding and on applying the "principal of proportionality" that the appropriate period of ineligibility should be (15) months which period was to commence on 13 October 2005 and conclude on midnight on 12 January 2007. It is to be noted that by paragraph 8 of that Award it is stated that "the parties have agreed that the decision of CAS will be final and binding on all parties and no parties (sic) shall initiate or maintain proceedings in any Court or Tribunal".

(j) None of the parties to that application appealed the Award of Mr Grace QC.

(k) The ICF did not appeal from the decision of Mr Grace QC as contained in his Award as it was entitled to under Article 16.2.3 of the ACI Anti-Doping By-Laws. Rather it decided to deal with the matter itself under its own Rules.

(l) It was accepted by all parties to this Appeal that Mr Baggaley was an "international level athlete" within the meaning of that expression as contained in the ACI Anti-Doping By-Laws and the SLSA Anti-Doping Policy. The achievements of Mr Baggaley in the sports of kayaking and surf life saving and his success as a competitor in those sports is set out in some detail in paragraph 17 of the Award of Mr Grace QC.

(m) By letter dated 15 March 2006 from the Secretary-General of the ICF addressed to ACI it was stated –

> *"This is to inform you on* (sic) *the decision of the ICF Executive Committee taken during their meeting on March 3 2006, in Delhi, with regard to the doping control sample No. A247118 from athlete Nathan Mr Baggaley.*
>
> *The Executive Committee accepted the explanation of the Medical and Antidoping Committee and sanctioned the athlete for a period of two years staring from the date of the infraction: 13 September 2005 for all international competitions.*
>
> *Please communication this decision to the athlete directly."*

(n) On 16 March 2006 Mr Baggaley received an email from ACI which attached the letter of the ICF dated 15 March 2006.

(o) By an Application dated 11 October 2006 Mr Baggaley lodged an Appeal in the CAS Oceania Registry against the decision of the ICF of 15 March 2006 whereby the ICF decided to suspend him for a two year period from all international competition in the sport of canoeing commencing on 13 September 2005, which was the decision appealed against. On 26 October 2006, the CAS informed the parties that the procedure would be conducted by the CAS office in Lausanne, Switzerland. The panel appointed to hear that Appeal was Mr David Williams QC as President, Mr Alan Sullivan QC and Mr Kaj Hober (the ***Appeal Panel***).

(p) As appears from the partial final Award of the Appeal Panel dated 29 December 2006 (CAS, 2006/A/1168, Baggaley v/ International Canoe Federation), the appellant to the Appeal, Mr Baggaley, named the ICF as the sole Respondent but also named SLSA, ACI and ASC as affected parties.

(q) At the outset of that Appeal proceeding the ICF challenged the Appeal on the basis that it was time barred by the Code. In respect of that matter the Appeal Panel determined that it was appropriate to decide the issue whether the Appeal was time barred, as a preliminary issue.

(r) As appears from the Partial Final Award of that Appeal Panel, on 31 March 2006 the solicitors acting on behalf of Mr Baggaley wrote a letter to the CAS Oceania Registry indicating that the decision of the ICF had been conveyed to Mr Baggaley on 16 March 2006 pointing out that the letter of the ICF of 15 March 2006 did not disclose the reasoning on which the ICF relied nor the material upon which it relied in making its decision stating that such lack of information made it impossible for a formal statement of appeal to be filed. It further appears from such Partial Final Award of the Appeal Panel that on 31 March 2006 the solicitors for Mr Baggaley requested, inter alia, the provision of materials which the ICF relied on for its decision on 15 March 2006 together with other information relating to that decision. Again, as appears from the Partial Final Award of the Appeal Panel the Secretary-General of the ICF responded to Mr Baggaley's solicitors by email dated 5 April 2006 informing them that he needed to contact various people in order to answer the matters raised in the solicitor's letter. Finally in a letter from the solicitors of the ICF to the solicitors for Mr Baggaley dated 16 May 2006 it was stated as relevantly –

> *"We are acting for ICF in the matter of Mr Nathan Baggaley with respect to your 31 March 2006 letter to ICF we are pleased to inform you that the 15 March 2006 ICF Decision is based on the (uncontested) finding of a prohibited substance in your client's bodily specimen and on Rule 10.2 of the ICF Doping Control Rules which provides for a two year sanction. The ICF is of the view that on the occasion of the proceedings in Australia Mr Baggaley was unable to establish the basis for eliminating or reducing this sanction.*
>
> *We understand that you have filed an appeal against this decision with CAS and we look forward to hearing from them on this appeal".*

(s) By its Partial Final Award the Appeal Panel concluded that the time for filing a Statement of Appeal by Mr Baggaley began to run as and from 16 March 2006 on which day he received the decision of the ICF, that the time in which the Statement of Appeal was to be filed when regard was had to Rule 48 and Rule 49 of the CAS Rules was 21 days from that date and that as his Application being his "Statement of Appeal" was not filed until 11 October 2006 the Appeal was deemed "inadmissible".

9. Further on the hearing of this Appeal before the present Panel, the following additional facts were established –

(a) On 30 November 2006 the solicitors for Mr Baggaley sent a facsimile transmission to the solicitors for ACI which stated –

> *"We note that the period of ineligibility imposed on Mr Baggaley by the Court of Arbitration for Sport will expire at midnight on 12 January 2007. We therefore seek your confirmation that Canoeing Australia will recognise Mr Baggaley's eligibility to participate or compete in any event or activity authorised or organised by Australia Canoeing and to use the Australia Canoeing facilities, from midnight 12 January 2007.*
>
> *We request that you provide us with this confirmation within 7 days in the light of the telephone hearing in this matter on 15 or 16 December 2006".*

(b) The "telephone hearing" therein referred to was the oral hearing by telephone on 15 December 2006 in the Appeal by Mr Baggaley against the decision of the ICF on 15 March 2006 which had been conveyed to him by ACI on 16 March 2006 which Appeal then was deemed 'inadmissible' by the Appeal Panel as the Statement of Appeal was filed out of time.

(c) By facsimile dated 14 December 2006 the solicitors for ACI advised that the ACI would recognise the ICF sanction unless Mr Baggaley was successful in getting it overturned by his appeal to CAS which was then pending before the Appeal Panel.

10. Accordingly the "decision" appealed from of the ACI by the Application filed by Mr Baggaley on 4 January 2007 which is the subject of this Award is said to be that of the ACI either referred to or contained in the facsimile transmission of 14 December 2006 from the solicitors for ACI to the solicitors for Mr Baggaley.

11. The relief sought by Mr Baggaley in the present appeal the subject of the application filed on 4 January 2007 is set out in Annexure B to that application. A number of the paragraphs identifying the specific relief sought was directed to and against the Second Respondent to that appeal, the ICF. It is only necessary at this point to identify two of the five paragraphs in this category. They are –

"6. Declare that in imposing upon the athlete an ineligibility of two years the purported decision of the ICF is void and of no effect.

7. Set aside a period of ineligibility imposed upon the athlete by the ICF".

12. As identified earlier, the "purported decision of the ICF" referred to was not the decision appealed against by Mr Baggaley in his Application filed on 4 January 2007. Rather that "purported decision of the ICF" was the decision which was handed down on 15 March 2006 and conveyed to Mr Baggaley on 16 March 2006 and which was the subject of the previous Appeal which had been heard and disposed of by the aforesaid Partial Final Award dated 29 December 2006 in which it was found that, "the appeal was filed out of time and must be deemed inadmissible by reason of R. 48 and R.49 of the CAS Rules".

13. All parties to the Application filed on 4 January 2007 including the Affected Parties other than the Second Respondent, the ICF, agreed to CAS as constituted by this Appeal Panel having jurisdiction to determine by arbitration the appeal brought by Mr Baggaley by his application of that date.

14. The ICF did not agree to that and submitted that there was no jurisdictional basis for the appeal particularly insofar as it concerned the ICF.

15. At the initial directions hearing in this matter, being the application filed 4 January 2007, held on 12 January 2007, the appeal was fixed for hearing on 20 January 2007 in Sydney, Australia commencing at 8:00am A.E.S.T.

16. Before that hearing was conducted there had been filed with the CAS Oceania Registry an Amended Application of Appeal dated 15 January 2007. By that Amended Application the decisions appealed from were identified as the decision of the ACI of 14 December 2006 and a decision of SLSA of 15 January 2007. The Respondents to that Amended Application for appeal were ACI, ICF and SLSA. The affected parties as listed were ASC and ASADA.

17. The specific relief sought by the Amended Application included additional relief sought against the Third Respondent SLSA which had not been named as a Respondent to the application dated 4 January 2007. Again in that Amended Application specific relief was sought against ICF in the same terms as that sought in Mr Baggaley's application dated 4 January 2007, including that set out above.

18. The decision of SLSA of 15 January 2007 which was one of the decisions appealed from in the Amended Application arose in the following circumstances –

(a) By facsimile transmission dated 30 December 2006 sent to the solicitors for SLSA the solicitors for Mr Baggaley requested that it be confirmed that SLSA would allow Mr Baggaley to compete in SLSA events from midnight 12 January 2007.

(b) By an email sent on 12 January 2007 the solicitors for SLSA advised that SLSA would not allow Mr Baggaley to compete without a stay ordered by the CAS of the ICF sanction.

(c) By a further fax transmission dated 15 January 2007 sent by the solicitors for Mr Baggaley to SLSA Mr Baggaley requested the SLSA to confirm by 3:45pm that day, that is 15 January 2007, that it would allow Mr Baggaley henceforth to compete in SLSA events stating that in the absence of that confirmation Mr Baggaley would regard that as evidence of a decision of SLSA to recognise the decision of the ICF dated 15 March 2006.

(d) SLSA did not respond to the facsimile transmission of Mr Baggaley's solicitors dated 15 January 2007.

19. The hearing in this matter was conducted on 20 January 2007. At that time written submissions were presented to the panel on behalf of Mr Baggaley, ACI, ICF, ASC and SLSA. ASADA was represented before the panel and initially no written submission were filed on its behalf. Further oral submissions were made on behalf of the parties by those who were representing the respective parties before the Panel. Mr Baggaley was represented by Mr Alexander Street SC, ICF was represented by Mr Duncan Miller, and ACI, SLSA and ASC by Mr Ian Fullagar. Mr Richard Redman announced that he represented ASADA but was present only as an observer.

20. The written submissions of the ICF as further expanded and put on its behalf orally by Mr Miller disputed the jurisdiction of the Panel to determine the Appeal insofar as the ICF was a Respondent to it. The ICF questioned whether the ICF should properly be a Respondent to the Appeal and whether the panel had jurisdiction in determining the Appeal to make orders sought by Mr Baggaley which directly affected the ICF and concerned the decisions made by it, particularly in the circumstances where no decision of the ICF had been appealed against on this Appeal. The Panel then heard from all parties and considered and decided the issues raised by the ICF at the outset and before consideration was given to the Appeal against the decisions of the ACI and SLSA in the Application in the Amended Appeal.

21. There was no evidence before the Panel that ICF had executed a specific arbitral agreement with Mr Baggaley which would give the Panel jurisdiction under R.47 of the Code to determine the Appeal against the ICF as a Respondent and to make the specific orders against it of the nature sought in the Appeal with respect to the decision of the ICF.

22. Having heard submissions on this jurisdictional matter at the outset the Panel determined that it had no jurisdiction with reference to the ICF as Respondent to the Appeal and that the Panel had no jurisdiction to make the specific orders against ICF as Respondent to the Appeal and as sought against it by Mr Baggaley.

23. Following this ruling by the Panel, an Application was then made on behalf of Mr Baggaley to have the ICF joined as an "affected party" to the Appeal. The ICF did not consent to it being joined as an affected party to the Appeal. The ACI, SLSA and ASC also sought to have the ICF joined as a third party to the Appeal.

24. The Panel then ruled that it was not satisfied that it had power to order that the ICF be joined as an affected party or otherwise and further ruled that even if it did have such power, it was not satisfied in the circumstances that it should order and direct that the ICF be joined as a third party or affected party to the Appeal.

25. It was ordered and directed by the Panel that the ICF be dismissed from proceedings. It was further ordered and directed by the Panel that the Application to join the ICF as a third party or affected party to the Appeal be dismissed. Similarly it was ordered and directed that the prayers for relief specifically sought by Mr Baggaley against the ICF (paragraph 16(3), (4),(9),(10) and (11)), be struck out.

26. To the extent that by his Amended Application Mr Baggaley named the ICF as a Respondent and sought specified relief against it in the nature of that sought by his Application of 4 January 2007, the orders relevant to the Application made on 4 January 2007 the effect and consequence of the same apply to the Amended Application.

27. By paragraphs 5 and 7 of the relief sought by Mr Baggaley in his Amended Application he sought declarations –

> "5. … that the decision of the ACI to give effect to the ICF sanction is in breach of Article 18 of its own Anti-Doping By-Law.
>
> 7. … the decision of SLSA to give effect to the ICF sanction is in breach of Article 18 of its own Anti-Doping Policy".

28. During the course of oral submissions made to the Panel by Mr Street on behalf of Mr Baggaley the Panel was informed that Mr Baggaley was not pursuing those prayers for relief.

29. There was further admitted into evidence the statement of Mr Baggaley that added to the matters of fact previously referred to and relevant to his Appeal.

30. Those relevant facts were –

(a) On 16 March 2006 Mr Baggaley received an email from ACI which attached the letter from ICF dated 15 March 2006 advising that the Executive Committee of the ICF had accepted the recommendations of the Medical and Anti doping Committee and sanctioned him for a period of two years starting from the date of the infraction: 13 September 2005, for all international competitions.

(b) Mr Baggaley was subsequently told that this ban was imposed by the ICF under the ICF anti-doping rules although the letter from ICF did not state this.

(c) Prior to receiving the letter from the ICF on 16 March 2006 Mr Baggaley was not given any details as to what provision of the ICF anti-doping rules he had allegedly breached or any opportunity to make submissions as to what penalty should be imposed on him under the ICF doping control Rules.

(d) Before receiving the letter from the ICF on 16 March 2006 Mr Baggaley was not told by ICF or ACI or any other person that the ICF was proposing to sanction him under the ICF doping control Rules.

(e) Mr Baggaley understood that the ICF had a right to Appeal against the decision for the Court of Arbitration for Sport delivered on 20 December 2005 that is by Mr Grace QC, and that it had not filed any Appeal against that decision in the Appeal period.

31. We now turn to consider the submissions put before the panel both in writing and orally.

32. The initial submissions made on behalf of Mr Baggaley were written submissions dated 15 January 2007.

33. The substance of Mr Baggaley's principal submissions were:

(a) that whereas by its facsimile dated 14 December 2006 the solicitors for ACI advised that ACI would recognise the sanctions of the ICF unless it was overturned; and that whereas by SLSA not responding to Mr Baggaley’s solicitors’ facsimile of 15 January 2007 by 2:45pm that day it constructively decided to recognise the decision of the ICF of 15 March 2006, such actions by each of ACI and SLSA were decisions “imposing Consequences” of a “Anti-Doping Rule Violation” within Article 16.2 of respectively the ACI Anti-Doping By-laws and the SLSA Anti-Doping Policy which gave Mr Baggaley the entitlement to Appeal from the same to CAS under Articles 16.2.1 of the respective by-laws and policy:

(b) that the decision of the ICF was purportedly made pursuant to the ICF Doping Control Rules:

(c) that ICF was and is a signatory to the WADA Code, but the decision of the ICF was not consistent with the WADA Code and it was not within the authority of the ICF, it being submitted that the ICF decision was not a decision which was consistent with

the WADA Code because, contrary to Article 8 of that Code the ICF did not provide a hearing process for Mr Baggaley who was asserted to have committed an anti-doping rule violation, that he was not given a hearing, that he was not fairly and timely informed of the asserted anti-doping rule violation, that he was not given the opportunity to respond to the asserted violation and resulting consequences, that he was not given the opportunity to present evidence, that he did not receive a timely written and reasoned decision and that the decision was not made by a fair and impartial hearing body, it being further submitted that contrary to that Article of the code he was not given by the ICF before it imposed on him a period of ineligibility, the opportunity to establish a basis for reducing the sanction which was imposed.

(d) that contrary to Article 15 of the ICF Code it did not recognise the hearing results of the ASC it being contended that as a party to the proceedings before Mr Grace QC his decision was a "final adjudication" of a signatory to the WADA code.

(e) that the decision of the ICF of 15 March 2006 was not within its jurisdiction to make such decisions for it was contrary to Article 8.1 of its own doping control rules as that Article required, in the circumstances, for Mr Baggaley to be before a disciplinary panel of Mr Baggaley's national federation for a hearing to adjudicate whether a violation had occurred, which federation was the ACI.

34. It was submitted that having regard to each of those matters separately and when considered collectively that the decision of the ICF of 15 March 2006 was a nullity and therefore was not a decision for either the ACI or SLSA to decide to recognise.

35. One of the matters raised on this Appeal is whether the decision of the executive of the ICF made on 15 March 2006 was taken by the ICF executive under Article 8.6 of its doping control rules. That Article provides –

> "Decisions by *National Federations*, whether as a result of a hearing or the *Athlete* or other Person's acceptance of Consequences will be reviewed by the ICF Doping Control Panel and the ICF Executive who are responsible for the final decision in each case".

36. It is to be observed that by Article 8.7 of the ICF rules it is provided that –

> "Decisions of the ICF Executive may be appealed to the Court of Arbitration for Sport as provided in Article 13".

37. It was such a course that Mr Baggaley sought to pursue by filing with CAS Oceania Registry on 11 October 2006 a Statement of Appeal under the CAS Code and which Appeal was found to be "inadmissible" by the CAS Appeal Panel in its Partial Final Award of 29 December 2006 as previously referred to.

38. On behalf of Mr Baggaley it was further submitted that if it was determined by this Panel that it does not have jurisdiction to set aside the decision of the ICF of 15 March 2006 nevertheless the Panel has jurisdiction to determine for the purpose of the ACI and SLSA respective rules that the decision of the ICF of 15 March 2006 was a nullity and consequently there was no decision for either the ACI or the SLSA to decide to "recognise".

39. By Article 18 of the ACI Anti-Doping By-Law it is provided that –

> "Subject to the right to appeal provided in Article 16, the Testing, TUEs and hearing results or other final adjudications of any Signatory to the Code which are consistent with the Code and are within the Signatory's authority, shall be recognised and respected by ICF and AC. IFC and AC may recognise the same actions of other bodies which have not accepted the Code if the rules of those bodies are otherwise consistent with the Code and or ASC's position."

40. By the appendix to the ACI Anti-Doping By-Law, "AC" means, "Australian Canoeing Incorporated" (i.e. ACI).

41. The ICF is a "signatory" as it is a signatory to the World Anti-Doping Code.

42. Article 18 of the Anti-Doping Policy of SLSA provides in similar terms to Article 18 of the ACI Anti-Doping By-Law for the SLSA to recognise and respect final "adjudications" of a signatory to the Code.

43. As previously referred to, it was submitted further on behalf of Mr Baggaley that on 14 December 2006 the ACI did not "recognise or respect" the decision of the ICF made on 15 March 2006 nor did the SLSA decide constructively on 15 January 2007 to "recognise and respect" such decision of the ICF, but rather each of the ACI and the SLSA made a "decision imposing consequences of an anti-doping Rule Violation" pursuant to Article 16.2 of their respective by-laws and policy thereby giving Mr Baggaley, an international level athlete, the right to appeal from such decisions.

44. On the eve of the hearing of the Appeal on 20 January 2007 further written submissions were filed on behalf of Mr Baggaley which submitted that the *Australian Sports Anti-Doping Authority Act 2006* (Cth) (the ***ASADA Act 2006***) which commenced on 13 March 2006 applied to these proceedings and that "[t]he jurisdiction of [this panel of] CAS being exercised in this appeal is federal administrative law'. In very brief submissions later filed in writing on behalf of ACI, SLSA and ASC they merely stated that they did not accept that submission. No reasons were advanced on behalf of those bodies as to why they did not

accept the submissions made on behalf of Mr Baggaley in this matter. ASADA later filed written submissions relevant to this matter. To these submissions we shall later return.

45. As appears from the terms of the Order of Procedure which was signed on behalf of ACI and SLSA each of those bodies accepted the jurisdiction of CAS as presently constituted to determine the Appeal from the decision of ACI of 14 December 2006.

46. In addition to those matters contained in the Order of Procedure by the submissions in writing made on behalf of ACI and SLSA, dated 18 January 2007, they each "accepted that their respective decisions to recognise the ICF sanction was a decision imposing 'consequences' and that CAS has jurisdiction to hear this appeal".

47. However specifically on the hearing of the Appeal the Panel raised the question whether that sought to be appealed from was a "decision" giving Mr Baggaley the right to appeal from the same or whether the letter of ACI of 14 December 2006 and the non-response of the SLSA to the letter of Mr Baggaley's solicitors of 15 January 2007 are in substance consequences of the decision of the ICF of 15 March 2006 which they respectively "recognise". Attention in particular was drawn to the letter of ACI's solicitors of 14 December 2006 which read in part –

> "We are instructed that ACI will recognise the ICF sanction".

48. In the course of the hearing it was submitted on behalf of Mr Baggaley that specifically ACI and constructively SLSA imposed "consequences" of an anti-doping violation giving Mr Baggaley the right to appeal against these respective decisions whether or not the decision of the ICF of 15 March 2006 was valid or not.

49. Attention was also drawn to Article 17.3 of the ACI By-Laws which provided –

> "Any decision of an *Anti-Doping Organisation* regarding a violation of this Anti-Doping By-law shall be recognised by all *National Sporting Organisations*, which shall take all necessary action to render such results effective."

50. The terms of Article 17.3 of the SLSA policy were as relevant to the same effect relating to a decision of an "Anti-Doping Organisation".

51. It was submitted by Mr Street SC on behalf of Mr Baggaley that for those provisions to be given effect there was required to be a valid decision it being submitted that the decision of the ICF of 15 March 2006 was not a valid decision for the reasons previously advanced.

52. Mr Fullagar on behalf of ACI orally submitted that that which the ACI did by its letter of 14 December 2006 was to “recognise” the decision of the ICF of 15 March 2006 and that resulted in it continuing to enforce the ICF ineligibility period. He orally submitted that that was not a decision to “impose consequences” of an anti-doping violation, rather, the consequences of the ICF decision continued as a result of the ACI recognising that decision. Consistently with that submission it would follow that the non-response of the SLSA to the letter of 15 January 2007, if any matter was to be implied from that fact, that no more could be implied than that it recognised the ICF decision of 15 March 2006 which, by itself, carried consequences which were not the SLSA imposing consequences itself.

53. To the extent explained above, such oral submissions differed from what appears on the face of the written submissions made on behalf of ACI and the SLSA.

54. Subsequent to the close of the hearing on 20 January 2007 further written submissions were received on behalf of Mr Baggaley dated 25 January 2007 touching on these matters.

55. It was submitted that when regard is had to the content of the letter of the lawyers for ICF to the lawyers for Mr Baggaley dated 16 May 2006 as set out aforesaid it should be concluded that the decision of the ICF made on 15 March 2006 was not made by the ICF under Article 8.6 of the ICF Doping Control Rules but rather it was exercising a power under Article 10.2 of its rules and its decision related to a violation of the ICF Doping Control Rules not the ACI Anti-Doping By-Laws.

56. Pursuant to Article 8.6 of the ICF Doping Control Rules it is provided that a decision of national federations will be “reviewed by the ICF Doping Control Panel and the ICF Executive who are responsible for the final decision", as previously referred to. It is apparent from the letter of 15 March 2006 that the decision referred to was that of the ICF Executive. Pursuant to Article 8.7 it is provided that decisions of the ICF Executive may be appealed to the CAS as provided for by Article 13. Again as referred to previously, Mr Baggaley sought to do this by his Application lodged on 11 October 2006 which was found to be initiated beyond the time provided by the CAS Rules and was therefore inadmissible.

57. It appears from the Award of Mr Grace QC dated 30 January 2006 that it was on 7 November 2005 that the lawyers for Mr Baggaley advised ACI, SLSA and ASC that he wished the matter of the Infraction Notice, that had been served on him, to be referred to a hearing before CAS. It was never suggested, not does it appear on the facts before us, that it was the case that the “hearing process” was not “completed expeditiously”.

58. Although the letter of 16 May 2006 written by the lawyers for the ICF states that the ICF decision of 15 March 2006 was based on the uncontested finding of a prohibited substance

in Mr Baggaley's bodily sample and that on rule 10.2 of the ICF doping control rules which provided for a sanction of two years the letter further stated –

> "The ICF is of the view that on the occasion of the proceedings in Australia Mr Baggaley was unable to establish the basis for eliminating or reducing this sanction."

59. From the letter of 15 March 2006 it is apparent that the decision therein referred to was that of the ICF Executive Committee. When regard is had to the last referred to sentence in the letter of 16 May 2006 it is our view that the ICF Executive reviewed "the proceedings in Australia" which must be referenced to the proceedings being the hearing before CAS as constituted by Mr Grace QC and the case put forward by Mr Baggaley in such proceedings for eliminating or a reduction of the sanction otherwise able to be imposed for a doping control rule violation. In that hearing the ACI was one of the Applicants.

60. By these further written submissions filed on behalf of Mr Baggaley and dated 25 January 2007 it was submitted that where ACI and SLSA have by paragraph 3 of their joint submission dated 18 January 2007 accepted that their respective decisions to "recognise" the ICF sanction were decisions imposing "consequences" and that CAS had jurisdiction to hear this Appeal (as we have referred to above), that it is not open to this Panel to find otherwise. It was further submitted that by reason of this matter there exists no issue between Mr Baggaley and ACI and SLSA as to whether a decision was to be made of this nature and accordingly the Panel has no jurisdiction to make any finding to the contrary.

61. Further in those written submissions it was submitted that the decision, the subject of the Appeal of ACI, was a decision made under Article 18 and not under Article 17.3 of the ACI Anti-Doping By Law and further that the decision that was contended to be made by SLSA on 15 January 2007 was made by it under Article 18 of the SLSA Anti-Doping Policy which Articles as are relevant are in the same terms.

62. It was contended that to the extent that the respective decisions of the ACI and SLSA were decisions under their respective Article 18 and that as the decision of ICF was not consistent with the WADA Code such decisions were without foundation and must be not upheld.

63. Further on behalf of Mr Baggaley it was contended that the Panel was not invested with any discretion on this Appeal but rather the relief sought by Mr Baggaley was relief to which he was entitled and should be upheld.

64. As to these further written submissions made on behalf of Mr Baggaley written submissions were received from ACI and SLSA made on behalf of them by their lawyer.

65. On behalf of these bodies it was submitted that in the circumstances of this case it had "appeared" that under Article 8.1 of the ICF Doping Control Rules there had been a violation by Mr Baggaley of the ICF Doping Control Rules which imposed a hearing obligation on Mr Baggaley's National Federation, namely the ACI. This submission seems to relate to the hearing before CAS as constituted by Mr Grace QC in the circumstances previously dealt with. It is however necessary to recall that ACI, SLSA and ASC were Applicants in the matter heard and determined by Mr Grace QC.

66. It is to be noted that specifically these written submissions made on behalf of ACI did not seek to pursue the oral submissions made by Mr Fullagar on the hearing, namely that by its letter of the ACI of 14 December 2006, ACI "recognised" the decision of the ICF of 15 March 2006 and it was that which resulted in it continuing to enforce the ICF ineligibility period and that there was no decision "to impose consequences" of an anti doping violation, but rather the consequences of the ICF decision continued as a result of the ACI recognising the ICF decision. It was no doubt the latter oral submission which was in part responsible for the further submissions in reply being filed on behalf of Mr Baggaley.

67. Neither Article 18 of the ACI Anti Doping By-Law or Article 18 of the SLSA Anti-Doping Policy provide, specifically by their terms, that there is a right of appeal from a final adjudication of the signatory to the Code. Specifically by the reply submissions filed on behalf of Mr Baggaley it was contended that by paragraph 3 of the initial submissions filed on behalf of ACI and SLSA it was conceded that the decision of each of ACI and SLSA to recognise the ICF decision was a decision to impose "consequences". Of particular significance underlying such concession was that the athlete, Mr Baggaley, had the right to appeal against such decision to CAS.

68. It was that jurisdiction which CAS, as constituted by this Panel, is entitled and empowered to entertain and determine the Appeal.

69. It is significant that the response made on behalf of Mr Baggaley in such reply submissions was not dealt with in the final submissions made on behalf of ACI and dated 31 January 2007. No issue was joined on behalf of ACI as to that which was contended for on behalf of Mr Baggaley which was said to constitute a concession, that being, that the decision to "recognise" the decision of the ICF was a "decision" to impose "consequences" of an anti-doping violation giving Mr Baggaley the right to appeal against it as he had done. Again, SLSA by submissions dated 18 January 2007 accepted that its decision to recognise the ICF sanction was a decision to impose "consequences" of an anti-doping violation and gave CAS jurisdiction to hear and determine the present Appeal, and on its behalf no issue was joined with that part of the reply submission made on behalf of Mr Baggaley. This must lead to the conclusion that in respect of each of ACI and SLSA, if the non response to the letter of Mr Baggaley's solicitor of 15 January 2007 constituted a decision on behalf of SLSA, in the circumstances of this case, and in particular, having regard to the acceptance

by them that their respective decisions to recognise the ICF sanction were decisions, "imposing consequences" which gave CAS jurisdiction to hear this Appeal, there is no issue between the parties on this matter to be determined otherwise on this Appeal.

70. Associated with this matter is the question whether the non response by SLSA to the letter of Mr Baggaley's solicitor of 15 January 2007, having regard to the specific contents of the same, constituted a decision of SLSA to recognise the decision of the ICF dated 15 March 2006. At no time was it contended on behalf of SLSA that it should not be concluded from the relevant facts that the proper inference to be drawn from its failure to confirm by the time specified on 15 January 2007, that it would allow Mr Baggaley to thereafter compete in SLSA events, was the inference that SLSA had made a decision to recognise the decision of the ICF of 15 March 2006.

71. When regard is had to the concessions made on behalf of SLSA dated 18 January 2007 in which it was accepted that its "decision" to recognise the ICF sanction was a decision, "imposing consequences", such as to give CAS jurisdiction to hear and determine this Appeal no issue between Mr Baggaley and SLSA exists on this matter. It must be concluded as a matter of fact that by 15 January 2007 if not on 15 January 2007, the SLSA made a decision to recognise the ICF sanction which decision was a decision "imposing consequences" of an anti-doping rule violation.

72. It may be proffered that an extraordinary situation would exist under the ACI Anti-Doping By-Law and the SLSA Anti-Doping Policy where a decision such as that of the ICF made on 15 March 2006 which is not the decision being appealed from in Appeal proceedings such as the present, an athlete such as Mr Baggaley being aware of such a decision and its potential effect upon him could cause letters to be written to sporting bodies of which he was a member, such as in this case the ACI and SLSA, asking if it "recognised" the decision of the body, such as in this case the ICF, and on being advised that it did, launch an appeal against such a decision contending that by so doing it was imposed on him consequences of an anti-doping violation which was in reality the result of the decision such as that made by the ICF on 15 March 2006 but alleging that the decision to impose such consequences was faulty as the decision purported to be recognised was a nullity, it being asserted that it did not comply with the WADA Code of which the body such as the ICF was a signatory.

73. That is not the case in the circumstances of this Appeal. The relevant fact being different from the circumstances referred to is the fact that not only was it open to Mr Baggaley to appeal from the decision of the ICF of 15 March 2006 but he in fact sought to do so. He was only prevented from doing so by reason of the fact that he filed his Application (Statement of Appeal) out of time as provided by Rule 49 of the Code, it being held by the CAS Appeal Panel by its Partial Final Award on 29 December 2006 that the appeal was "inadmissible".

74. On behalf of Mr Baggaley on this Appeal it has been submitted that the decision of the ICF of 15 March 2006 was a nullity as the process of the ICF in reaching such decision was not in compliance with the WADA Code of which it was a signatory, particularly when regard is had to the facts set out in paragraph 27 (a) to (d) hereof.

75. However we are of the view that such question is not the question to be addressed on this Appeal. Rather the matter to be addressed is whether on this Appeal and in all the relevant circumstances, it is competent for Mr Baggaley to contend that the decision of the ICF of 15 March 2006 was a nullity and therefore the decisions of ACI and SLSA of 14 December 2006 and 15 January 2007, respectively, must be set aside.

76. Pursuant to R.57 of the CAS Code it is provided –

> The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer it back to the previous instance …

77. As stated in the article of Professor Richard McLaren "CAS Doping Jurisprudence: What Can We Learn" – (CAS Newsletter – No. 4 - October 2006 p.4) –

> A well entrenched principle has emerged in the jurisprudence: any case brought before an appeal panel is to be heard de novo …, consequently any defence or procedural error that may have occurred at first instance will be cured by an appeal hearing of CAS and the appeal panel is therefore not required to consider such allegations.

78. In the event of Mr Baggaley having instituted an Appeal to CAS against the decision of the ICF of 15 March 2006 within the time limit provided by R.49 of the CAS Code, he would have been able to challenge the validity of that decision within the wide scope of the jurisdiction to be exercised by the CAS Panel hearing the Appeal. This he did not do with the consequences that the decision of the ICF of 15 March 2006 still remains. In these proceedings, as previously stated, the decision of the ICF of 15 March 2006 is not a decision appealed against by Mr Baggaley.

79. For the reasons stated and set out in the Partial Award in these proceedings, it was decided that on this Appeal CAS had no jurisdiction to entertain the Appeal against the ICF as a Respondent and it had no jurisdiction to make orders of the nature sought by Mr Baggaley against the ICF which included a declaration that, "imposing upon the athlete a period of ineligibility of two years the purported decision by the ICF is void and of no effect".

80. Notwithstanding these matters Mr Baggaley seeks in this Appeal, against the decisions of the ACI of 14 December 2006 and SLSA of 15 January 2007 to argue that the decision of the ICF of 15 March 2006 was void and consequently should not and cannot be recognised

by the ACI and SLSA and thus he seeks to strike down the decisions of the ACI and SLSA now appealed against.

81. We have reached the conclusion that in this Appeal and in the circumstances of the events that have occurred, it is not appropriate for Mr Baggaley, nor is he able, to seek to have this Panel rule and make a determination as to the validity of the decision of the ICF of 15 March 2006. The forum open to Mr Baggaley to pursue his submission that the decision of the ICF of 15 March 2006 was void was in an appeal against such decision before CAS and instituted within the time provided by R.49 of the CAS Code and before an Appeal panel appointed to hear and determine that Appeal. Mr Baggaley did not do that as we have referred to previously. He sought to appeal against the ICF decision at a time well beyond the time provided by R.49 of the CAS Code it being held by the Panel appointed to hear that Appeal that his Appeal was inadmissible. To permit Mr Baggaley in these proceedings to argue that the decisions of the ACI and SLSA should be set aside as each of them being decisions to "impose consequences" of an anti-doping rule violation, on the basis that the respective decisions purported to recognise the decision of the ICF of 15 March 2006 and to have on this Appeal such argument to be upheld must lead to a completely unacceptable result. That result would be that whereas the decision of the ICF of 15 March 2006 remains, it has been determined in proceedings such as the present that the decisions appealed against must be set aside for they impose consequences of an "anti-doping rule violation" in recognition of the ICF decision which is determined to be void.

82. If the argument of Mr Baggaley be correct and able to be pursued to the point on this Appeal, it being determined that the decision of the ICF although not appealed against is void thereby resulting in the decisions of the ACI and SLSA to be set aside then the provisions of the appeal rules as provided by the CAS Code could be frustrated and defeated. If Mr Baggaley on this Appeal, which is not an appeal against the decision of the ICF, could pursue the argument he seeks to pursue with the result sought by him, then an athlete in the position of Mr Baggaley could ignore totally R.47, 48 and 49 of the CAS Code and not institute an appeal under it as entitled as a member of a sporting body or to commence appeal proceedings found to be inadmissible, in this case, but at a later time cause letters to be written to sporting bodies of which he was a member asking whether such bodies recognised under their respective rules the decision which had not been appealed against either at all or in time, and on being informed that they did with the result that those bodies imposed on him consequences of an anti-doping violation, not to his liking, he could appeal against such decisions seeking to have them set aside as the very decision not appealed against or appealed against in the relevant time, was void.

83. Such result or process runs totally against the whole of the appeal procedure laid down by the CAS Code and cannot be permitted to be pursued.

84. Article 8.7 of the ICF Doping Control Rules gave Mr Baggaley the right to appeal against the decision of the ICF Executive of 15 March 2006. He did not do this for reasons we are unable to determine, thereby not resorting to an appeal process which would have enabled a panel appointed to hear such an appeal to exercise its jurisdiction under R.57 of the CAS Code.

85. As previously referred to it was submitted on behalf of Mr Baggaley that the "jurisdiction of the CAS being exercised in this appeal is federal administrative law", which must mean federal administrative law of Australia. It was submitted that "that jurisdiction is a complete regime … and CAS is performing a federal administrative law function in hearing this appeal". It is not immediately apparent what was intended by this submission and its references to "jurisdiction" "a complete regime" and "a federal administrative law function". The submissions in response by ASADA show the obvious difficulty in grappling with the intended thrust of the submissions on behalf of Mr Baggaley. The detailed written submissions filed on behalf of ASADA on this matter rejected this submission made on behalf of Mr Baggaley, submitting, inter alia, that nothing in the ASADA Act 2006 supports the claim made on his behalf.

86. The basis for the submission is said to be the provisions of the ASADA Act 2006 which commenced on 13 March 2006. This is said to have created the complete regime which is relied upon by Mr Baggaley. It appears what is being submitted is that this statute applies as part of the substantive law applicable in the arbitration or is a mandatory local law applicable to this arbitration which is taking place physically in Australia although the seat of the arbitration is in Lausanne, Switzerland. The legislation, it was submitted, "binds CAS in the exercise of its federal administrative jurisdiction in hearing this appeal" and accordingly, insofar as the submission is understood, it is submitted that if the decision of the ICF of 15 March 2006 is given effect to it would be "contrary to the express provisions of the federal administrative law giving effect to the WADA code, contrary to justice, morality and sound policy". The submissions did not refer to or identify the "express" provisions relied upon. The Panel therefore has assumed that the submission that is being put is in substance, that the decisions of the ACI and the SLSA to give effect to the decision of the ICF are nullified because they amount to disobedience of an applicable statute namely the ASADA Act 2006. Having carefully reviewed the provisions of the ASADA Act 2006, we do not accept this submission. We are of the view that the provisions of that Act cannot form a basis for such submissions and we reject them.

87. In such circumstances we have concluded that Mr Baggaley is unable in these proceedings to argue and have this Panel determine that the decisions appealed against on this Appeal should be set aside because they have as their foundation the decision of the ICF of 15 March 2006 as it was void. Accordingly we conclude that in exercise of the Panel's jurisdiction under R.57 of the CAS Code in the circumstances dealt with it is not appropriate or competent for this Panel in these proceedings to conclude that the ICF decision of 15 March 2006 was void for the reasons contended for.

88. Accordingly it follows that we do not accept the submissions made on behalf of Mr Baggaley that the decisions of the ACI and SLSA should be set aside. His appeals against such decisions should be and are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

89. The appeals of Mr Baggaley against the decisions of ACI of 14 December 2006 and SLSA of 15 January 2007 are dismissed.

90. The question of costs is reserved. The Panel directs that the parties within 21 days of this date file with the CAS Oceania Registry their submissions relevant to the question of costs.

Sydney, 6 March 2007

THE COURT OF ARBITRATION FOR SPORT

The Hon Allan **McDonald** QC
President of the Panel

Malcolm **Holmes** QC
Arbitrator

John **Boultbee** AM
Arbitrator