

ORIGINAL: FRENCH

INTERNATIONAL OLYMPIC COMMITTEE

ETHICS COMMISSION

DECISION with recommendation

No. D/01/08

CASE No. 02/2007

Mr Floyd Landis

v/

Mr Richard Pound, IOC member and WADA Chairman,
and the World Anti-Doping Agency (WADA)

REFERRAL and FACTS:

1. On 22 May 2007, the IOC President submitted to the Ethics Commission a complaint sent on behalf of Mr Floyd Landis, a cyclist who took part in the 2006 Tour de France cycling competition. The complaint was against Mr Richard Pound, IOC member and Chairman of the World Anti-Doping Agency (WADA), and against WADA itself.

2. The complaint accuses Mr Richard Pound of being in breach of the fundamental principles of the Olympic Charter, the World Anti-Doping Code and the IOC Code of Ethics, and in particular of having failed to:

- respect the rights of athletes;
- safeguard the dignity of individuals involved in the Olympic Movement;
- abide by his duty not to engage in actions causing mental injury to the participants;
- scrupulously respect the provisions of the World Anti-Doping Code and the related rules and regulations, and their obligations not to harass the participants.

Attached in support of this complaint were four press articles published between August 2006 and June 2007, correspondence between Mr Richard Pound and a counsel for Mr Landis and the official publication of the composition of a Court of Arbitration for Sport (CAS) panel which sat in 2003.

The following press articles were attached:

- *It's Time to Come Clean*, published on 9 August 2006 in *Citizen Special* and written by Mr Richard Pound;
- *The Righteous Fury of Dick Pound*, published in January 2007 in the magazine *Wired* and written by Mark McClusky;
- *The Scold*, published on 7 January 2007 in the *New York Times Magazine* and written by Michael Sokolove;
- *Floyd the Man; the Landis Affair* and *You're the Arbitrator; the Landis Affair*, published in June 2007 in the magazine *Bicycling* and written respectively by Loren Mooney and Roy M. Wallack.

3. In its written observations, dated 12 June 2007, WADA requested confirmation of decision D/1/07 in which the Ethics Commission asserts its lack of jurisdiction vis-à-vis WADA.
4. In his written observations of 12 June 2007, Mr Richard Pound, IOC member and WADA Chairman, challenged both the validity of the referral made on behalf of the athlete and the previous analysis by the Ethics Commission concerning its jurisdiction regarding his acts as WADA Chairman. He also argues that this complaint constitutes an abuse of process by the athlete, and recalls his right of response to the public

statements made by athletes. He explains his sometimes confrontational way of expressing himself, arguing that doping will not disappear from sport without such vigorous confrontation.

5. On 20 September 2007, an American Arbitrators Association panel of arbitrators declared Mr Floyd Landis to be guilty of doping acts on the occasion of the 2006 Tour de France. WADA and its Chairman refused to make any comment on this decision in the media. Mr Floyd Landis appealed this decision before the Court of Arbitration for Sport (CAS).
6. On 14 November 2007, Mr Richard Pound sent the IOC President a letter on behalf of the WADA Executive Committee, challenging the IOC's jurisdiction over him as WADA Chairman, arguing that the WADA Foundation Board members are answerable only to the WADA Foundation Board and Executive Committee, and that otherwise this would be an attempt by the IOC to influence the way in which WADA conducts its affairs. On 19 November 2007, the IOC President asked the Ethics Commission for its position on this letter.
7. As Mr Craig Reedie, an Ethics Commission member, is also a member of the WADA Foundation Board, he is in a conflict of interests situation. Pursuant to point C of the Ethics Commission Statutes, he has not taken part in this decision.

ANALYSIS:

A – Concerning the validity of the referral cited by Mr Richard Pound

8. The Commission recalls that, while any natural or legal person can submit a complaint to the IOC Ethics Commission, only the IOC President has the power to refer a complaint to the Commission if he deems that an analysis and possible recommendations by the Ethics Commission are necessary. As a result, the legal nature of the person submitting the complaint matters little; it is only the referral by the IOC President which is relevant.

In this particular case, the complaint received by the Commission on 16 May 2007 was forwarded to the IOC President, who referred it to the Commission in a letter dated 22 May 2007.

B – Concerning the jurisdiction of the Commission with regard to the World Anti-Doping Agency

9. The Ethics Commission notes that it has not been provided with any reason that would justify altering its previous conclusion found in its decision D/1/07 of 2 February 2007 concerning the complaint by Mr Lance Armstrong against Mr Richard Pound and WADA.

As a result, it decides to maintain its decision to lack jurisdiction with regard to the part of the complaint against WADA, pursuant to the World Anti-Doping Code.

C – Concerning its jurisdiction with regard to the personal activity of Mr Richard Pound, IOC member

10. The Ethics Commission notes that Mr Richard Pound, as an IOC member, is an Olympic party as defined by the Code of Ethics, and that, based on the application of such Code by the IOC Session and Executive Board, IOC members in their personal activities must respect their obligations vis-à-vis the Olympic Charter and Code of Ethics at all times, including in their activities outside the IOC.

The Olympic Charter makes no provision to the effect that, because of their function, certain IOC members who find themselves in a particular situation are released from all or part of their obligations.

There is no question of the IOC attempting to influence the decisions made by an IOC member outside the organisation, merely of ensuring that the Olympic Charter is respected.

Rule 22 of the Olympic Charter states that: "The IOC Ethics Commission is charged with defining and updating a framework of ethical principles, including a Code of Ethics, based upon the values and principles enshrined in the Olympic Charter of which the said Code forms an integral part. In addition, it investigates complaints raised in relation to the non-respect of such ethical principles, including breaches of the Code of Ethics and, if necessary, proposes sanctions to the IOC Executive Board."

As a result, pursuant to the Olympic Charter, the IOC Ethics Commission decides to hold that it has jurisdiction over the part of the complaint concerning an IOC member.

D – Concerning the analysis of the complaint

11. The Ethics Commission observes that neither the letter sent by Mr Richard Pound to a counsel to Mr Floyd Landis, nor the participation of an IOC member in an arbitration panel in a different case from the present one may be considered to demonstrate a breach of the Code of Ethics.
12. The Ethics Commission further observes that the first three articles cited quote comments by Mr Richard Pound before notification, on 9 February 2007, of the IOC Executive Board's decision reminding Mr Richard Pound, IOC member and Chairman of WADA, that a duty of reserve is indispensable to respecting the Olympic spirit when making public statements which could affect the reputation of other people. It deems that all the comments made before notification of this decision are covered by its effects. As a result, it notes that only the article published in *Bicycling* magazine in June 2007: *You're the Arbitrator; the Landis Affair*, needs to be taken into consideration.

This article quotes Mr Richard Pound's comment to the effect that: *"There's not the slightest bit of doubt that Landis doped," he told Bicycling magazine in March. "It's very standard [for athletes] to drag it out for months and challenge the procedures. They hope evidence will get lost or witnesses will die off. They hope a few minor human errors will change everything. It won't."*

13. The Ethics Commission observes that, at the time that Mr Richard Pound made his comment to the journalist from *Bicycling* magazine, the anti-doping rules violation by Mr Floyd Landis had not been established, as the case was still pending; he was merely accused of an anti-doping rules violation.
The Ethics Commission thus notes that, in June 2007, Mr Floyd Landis still benefited from the fundamental principle of being "presumed innocent".

OPINION:

14. The IOC Ethics Commission reiterates its approval of and support for the unceasing fight against the scourge of doping conducted by WADA and its successive chairmen.
15. It recalls that, in accordance with the principle set out under point 4 of the Fundamental Principles of Olympism in the Olympic Charter, "the Olympic spirit, which inspires the whole Olympic Movement, requires mutual understanding, a spirit of friendship, solidarity and fair play" within the Olympic Family. In this regard, a degree of prudence

is indispensable to respecting the Olympic spirit, particularly when an anti-doping rules violation by an athlete has not yet been established.

16. In this particular case, the Commission recommends that the IOC Executive Board remind Mr Richard Pound, an IOC member, of the need to comply with the duty of reserve when making public statements which could affect the reputation of others, and in particular when an anti-doping rules violation by an athlete has not yet been established.

DECISION:

The Ethics Commission, after deliberating in accordance with its Statutes, decides:

1. to declare that it has no jurisdiction with regard to the complaint against the World Anti-Doping Agency, pursuant to the World Anti-Doping Code;
2. to recommend that the IOC Executive Board remind Mr Richard Pound, IOC member, of the need to comply with the duty of reserve indispensable to respecting Olympism when making public statements which could affect the reputation of others, in particular when an anti-doping rules violation by an athlete has not yet been established.

Done in Lausanne, 21 January 2008

For the Chairman,
Pâquerette Girard Zappelli
Secretary to the Ethics Commission