THIS SPORTING LIFE

In the playgrounds of our youth, the ultimate form of juvenile sanction was to pick up one's toys and not play with the delinquent anymore. Today in the never-ending search for effective ways of signalling international disapproval, the sports boycott has become a novel addition to the arsenal of countries seeking less damaging alternatives to economic warfare.

Embargoes and boycotts originally came into being as measures designed to force nations to cease illegal or undesirable activities. Economic sanctions have been largely unsuccessful in the past because few countries possess the monopolistic control over an irreplaceable resource that is necessary to bring sustained pressure to bear. There is also growing scepticism as to whether even an effective sanction will really bring about fundamental changes in the way a state treats its citizens or conducts its foreign policy. Whatever the practical effect, the imposition of a sanction will invariably be read by the world community as a signal of disapproval. If these signals come more frequently and firmly, the delinquent state may well hesitate before it takes the next objectionable action.

Sports boycotts appear particularly well suited to this form of signalling for they generate intense world-wide media coverage and often have a direct effect upon the offending state's citizens. These boycotts are quick to mount and withdraw and are self-limiting. They are a unique resource — for example there can only be one Australian Olympic team — and any ban is subject to strict control through passport/visa restrictions.

The imposition of a sports boycott does, of course, entail some personal cost to the frustrated competitors and spectators. But the injury is limited to the one event and does not involve the substantial economic and trading damage that a resource/technology embargo would cause. And it is said the athletes are always free to attend the event as individuals, though not representatives of their country.

But perhaps the most laudable aspect of a sports boycott is that it avoids the unconscionable use of the food weapon and makes a gesture without breaking important trade contacts which provide a very real bridge between ideologically disparate nations while strengthening the fabric of international interdependence. Trading relations are beneficial to all parties and the world in general. They should not be used by a government for short-term grandstanding.

In 1976 the U.N. Department of Political and Security Council Affairs Centre Against Apartheid instituted the sports boycott in an international campaign to eliminate apartheid. It was promoted as the eagerly awaited sanction for the hitherto toothless conventions affirming human rights. The following year the General Assembly adopted the *International Declaration against Apartheid in Sport*, one article of which specifically called upon states to consider the withholding of entry permits to offending teams. Individual black African states had been unilaterally pursuing such a policy and lobbying for recognition of the tactic in regional/community organizations such as the British Commonwealth of Nations which drew up the somewhat hollow Gleneagles Agreement in 1977. That document merely sought 'to discourage' sporting contact with South Africa, however, Australia, for one, has chosen to interpret it as a prohibition of any contact even down to denying transit visas to the Springboks rugby team on their way to matches in New Zealand.

Some Third World countries are expanding the concept of a sports boycott to include not only individual athletes participating in South African events but even those who play the rogue state on their own soil. While this may be going too far, it does show the resolve of the black states on the issue.

By far the most heated and long-standing debate has been the question of whether sport is indeed a legitimate weapon at the disposal of a government. At one time the various national perceptions of the role of sport in society were equally valid. But observers now believe recent events have overtaken the traditional Western argument that sport and politics should not mix. Even if it were still possible to say that sport should take place in a political vacuum, that assertion would fail to impress those aggrieved Third World nations which fervently believe that sport, one of the few

levers they have, should be used politically. After Moscow, the Third World can justly claim that the West has accepted the principle of a sports boycott for strategic policy reasons at least.

There is also little merit in arguing, as New Zealand has recently done, that only small nations have been singled out for criticism over continued sporting contacts with an outlawed state. International relations have long been plagued by *realpolitik* considerations in the observance of morally defensible principles such as humanitarian intervention. Norms of behaviour are strenuously asserted when it suits, even if they have been dormant for some time or only fitfully applied. Yet inexcusable acts cannot be defended by pointing to the equally untenable practices of more powerful states which have managed to avoid the international spotlight.

In practice the question of politics in sport usually resolves itself into the issue of who is responsible for letting a team in or out of the country. The major disputes between sporting bodies and sovereign states have occurred most often in the Olympic context. For instance, West Germany could have been in breach of the U.N. sanctions against Rhodesia if it had allowed the Rhodesian team to enter in 1972. Eventually, though, the invitation was withdrawn by the International Olympic Committee and not the host nation. Often the same problem can occur in the bloc imposing the boycott. When the Supreme Council for Sport in Africa called for the 1976 boycott of the Montreal Games without adequately consulting all the member states of the O.A.U., several African nations voiced their anger at being presented with a *fait accompli* by a sports body.

Recently we have seen a tendency for Western governments to urge their sporting bodies and Olympic committees to voluntarily impose the ban and assume responsibility for such a decision. The idea behind this appears to be that the government can somehow avoid legal responsibility for an unfriendly act which is really the free decision of its citizens and therefore outside the realm of international law. Equally weak is the British Foreign Office practice of 'losing' the visas of politically embarrassing teams, such as those of the Taiwanese in 1976.

This reluctance to be seen to make a decision on sports boycotts is somewhat curious given that these same countries have not hesitated in the past to institute more serious economic embargoes in similar circumstances of international protest. The West should take a stand on the issue of sports boycotts and stop trying indirectly to influence sports administrators who are the first to admit that they do not understand all the implications of their decisions. Governments should either accept the boycott as a valid foreign policy weapon and take control of it as they have done with trade embargoes or denounce the practice and let athletes freely associate with whomever they please. The uncharitable will no doubt say that in sports-mad democracies an administration would commit political suicide if it were to move arbitrarily and restrict the individual freedom of its athletes. Yet equally unpopular decisions must be faced when a government decides to impose an economic or technology ban.

In light of the past practice of the Third World, the current trend of the United Nations and the West's limited acceptance of the principle, it seems that some form of sports boycott has been recognized in the international community. If Spengler was right and countries do go through a life-cycle of growth, maturity and decline, then perhaps at our present stage of development the psychology of the playground is not all that out of place.

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CASE NOTES

BARRELL INSURANCES PTY LTD v. PENNANT HILLS RESTAURANTS PTY LTD[1]

Damages — Lump sum award — Whether inflation to be taken into account — Effect of real and nominal interest rates — Whether taxation on income from award to be considered.

There is no question that the courts face a difficult task in assessing damages for future outgoings or loss of future earnings when faced with unpredictable changes in the value of money. Their guiding principle is that the compensation awarded 'should as nearly as possible put the party who has suffered in the same position he would have been in if he had not sustained the wrong'.[2] The possibility of future changes in the circumstances of the injured party entails notorious difficulties in satisfying that principle which are exemplified by the need to discount for 'contingencies' or 'the vicissitudes of life'. But a more insidious problem is the fact that the value of an award may change dramatically over time because of changes in the purchasing power of money. The significance of the attitude taken by the courts to this problem is demonstrated by the history of Pennant Hills Restaurants' claim against Barrell Insurances. The assessment of damages for an item of loss involving future payments by the plaintiff ranged from $88,000 by the trial judge to $406,551 by the New South Wales Court of Appeal. In the High Court it was held by a majority that the correct assessment was $118,000. However, three members of the Court put the figure at about $162,000.[3] The substantial variation between each of these sums was referable almost entirely to differences of opinion relating to the way the courts should deal with the effects of inflation in calculating damages awards.

In essence the problem to which changes in the value of money gives rise is one of uncertainty, and the reasoning in *Barrell* represents an intelligent consideration of the issues involved, although no single, satisfactory solution emerges as subsequent developments in the State Supreme Courts have shown.[4] These developments will be noted in the course of examining the principal case. However, it is already clear that the judgments in *Barrell* do not represent the High Court's final word, even in the near future, on the matters with which the case deals. Accordingly, the present note is intended more to identify briefly the alternatives which the Court has posed for itself than to examine the current law in any detail.

[1] (1981) 34 A.L.R. 162.

[2] *Lim Poh Choo v. Camden and Islington Area Health Authority* [1980] A.C. 174, 187 *per* Lord Scarman.

[3] (1981) 34 A.L.R. 162. These figures refer to one item of loss only, not the whole of the award. The second figure is based on the judgment of Stephen J. but excludes allowance for one particular item of loss, nursing expenses, which he alone would have allowed.

[4] See *Barker v. Nielsen* (Supreme Court of Victoria, unreported; judgment delivered 31 March 1981); *Hankin v. Jetson* (Supreme Court of Victoria, unreported; judgment delivered 22 June 1981); *Tadorovic v. Waller* (Court of Appeal of New South Wales, unreported; judgment delivered 13 March 1981); *Brazel v. Annis Brown* (Court of Appeal of New South Wales, unreported; judgment delivered 13 March 1981).