AUSTRALIAN FOOTBALL LEAGUE v CARLTON FOOTBALL CLUB LTD*

I INTRODUCTION

The *Williams Case*, as would be expected from a legal case in Melbourne involving a leading football player, a leading football club and the Australian Football League ('AFL'), has attracted mass review, comment and criticism. Carlton's victory at first instance, the two–one reversal by the Court of Appeal and Carlton's attempts to stay the appeal decision both in the Court of Appeal and the High Court made great legal drama and provided masses of copy for the media. The decisions are important for two reasons. First, the court reviewed the rules of natural justice in the context of commercial playing contracts. Second, the case provides a salutary lesson for sporting bodies to establish and conduct their disciplinary tribunals, mechanisms and procedures with care.

This case note will examine the two decisions and their effects on and implications for sporting bodies.

II THE DECISION AT FIRST INSTANCE

A *The Facts*

The plaintiffs in the case were Greg Williams, a prominent AFL football player, and the club he was contracted to play for, the Carlton Football Club ('Carlton'). The defendants were the AFL and the three relevant members of the AFL Tribunal. Williams was suspended by the AFL Tribunal ('the Tribunal') for nine weeks for 'unduly interfering' with a field umpire in breach of the player's contract ('the contract') to which the AFL, Carlton and Williams were all parties. Although the contract provided that the Tribunal's decision was to be final and binding, the plaintiffs challenged the decision in the Supreme Court of Victoria ('the Court') on the basis that the Tribunal breached the terms of the contract and the rules of natural justice in reaching its decision to suspend Williams.

B *The Key Legal Issues*

The key legal issues in the case were:

1 The jurisdiction of the Court to hear the case, given that the rules of the game, which formed part of the contract, provided that the Tribunal's decision should be final;

* This case note considers both the trial and appeal cases: *Carlton Football Club Ltd v Australian Football League* (Supreme Court of Victoria, Hedigan J, 29 May 1997); *Australian Football League v Carlton Football Club Ltd* (Supreme Court of Victoria, Court of Appeal, Tadgell and Hayne JJA and Ashley AJA, 25 July 1997) ('*Williams Case*').

2 Whether the contract contained implied terms that the Tribunal must properly interpret the meaning of the playing laws in making its decisions;

3 Whether the Tribunal could only reach its decision based on the existence of probative or 'rational' evidence established by the party laying the charge; and

4 Whether the above terms, being the duties of proper interpretation and minimum rational evidence, were also a part of the rules of natural justice required to be observed by the Tribunal, independent of the contract.

This argument was framed on grounds analogous to those often pursued in administrative law. The argument included unreasonableness, based on the Tribunal's misapprehension of the facts such that no reasonable Tribunal could have reached that decision; and a lack of probative evidence, given the overwhelming evidence that the player did not unduly interfere with the umpire. Evidence of the parties and various witnesses, including a neuropsychologist's analysis of Williams' sense of awareness at the time of the interference, was submitted to the Court in both written and video form.

In disputing these claims by the plaintiffs, the AFL submitted that the Tribunal did not misinterpret the rule regarding 'undue interference with an umpire' as far as the evidence necessary to establish the charge was concerned. Accordingly, it was submitted that the Tribunal's decision was open to it on the evidence and that it could not be challenged as unlawful.

C *Findings*

Hedigan J applied his own assessment of the facts to determine whether the obligations required to be observed by the Tribunal in making its decision were in fact breached. His Honour ruled in favour of the plaintiffs and permanently restrained the AFL from giving effect to Williams' suspension. Apart from his findings on the points of law and his assessment of the facts, Hedigan J also commented generally on the adequacy of the Tribunal's rules in providing a fair hearing to those brought before it. Specifically, his Honour found the following:

1 Despite the rule providing for the Tribunal's decision to be final and binding, the case was nonetheless justiciable before the Court.

2 The Court had no power to re-hear the case on its merits due to the private contractual nature of the parties' relationship but it was held that this was not in fact a re-hearing of the case. Rather, the Court was determining the question of law, namely whether there was a breach of contract or natural justice in the way in which the Tribunal made its decision.

3 The contract did include the implied terms claimed by the plaintiffs; namely that the Tribunal had an obligation to both properly interpret the rules upon which Williams was charged, and also to make decisions 'based only on probative evidence rationally considered'.[1]

[1] *Carlton Football Club Ltd v Australian Football League* (Supreme Court of Victoria, Hedigan J, 29 May 1997) 50. In implying the terms, the court referred particularly to *BP Refinery (Westernport) Pty Ltd v Hastings Shire Council* (1977) 180 CLR 266.

4 Aside from the contract, the Tribunal's obligations to players appearing before it included the duty to observe natural justice when making its decisions.[2]

Hedigan J held that the obligations owed by the Tribunal specifically included a duty to correctly interpret the relevant laws,[3] and to base decisions only on evidence, taken as a whole, reasonably capable of supporting the finding.[4]

Applying the facts of the case and assessing evidence from the parties, witnesses and medical experts, Hedigan J found that the Tribunal made an unlawful decision. It wrongly interpreted the playing law, including an overly-strict construction of umpires as 'untouchable', and ignored accidental or involuntary contact situations. In addition, the Tribunal's decision was not based on evidence logically capable of supporting its decision, and consequently, no reasonable Tribunal could have come to its conclusion.

D *An Analysis of the Decision*

Hedigan J's analysis of the law regarding general obligations owed by contractual controlling bodies with disciplinary powers was legally sound, and, although entering some new ground, was a rational extension of the law. Hedigan J's findings, regardless of their application to the particular set of facts, provide an important precedent for other sporting bodies performing similar functions.

The 'new ground' pursued by Hedigan J primarily concerned the obligation to rely only on 'logically probative evidence' being applied to private contractual disciplinary bodies that are outside the traditional administrative law realm. This extension of the obligation was achieved by Hedigan J on two bases: first, that private tribunals were analogous to statutory tribunals in administrative law in that they also 'make decisions with a substantial effect on the affairs of the parties, on financial interests and reputation, and on the conduct of a national sport followed and loved by many Australians'.[5] Second, Hedigan J found that this was an obligation owed as an implied contractual term, based on traditional contract law principles.

His Honour considered that the foundation for the implication of such terms was 'fairness and reasonableness'.[6] In applying this test, Hedigan J stated that 'had the parties specifically adverted to them at the time of the making of the [c]ontract, they would have agreed that it was a term [as] "it goes without saying" or "that's obvious"'.[7] His Honour did admit, however, that '[t]his [was] a

[2] *Carlton Football Club Ltd v Australian Football League* (Supreme Court of Victoria, Hedigan J, 29 May 1997) 43. The court relied primarily on *Dickason v Edwards* (1910) 10 CLR 243.

[3] *Carlton Football Club Ltd v Australian Football League* (Supreme Court of Victoria, Hedigan J, 29 May 1997) 43; *Lee v The Showmen's Guild of Great Britain* [1952] 2 QB 329; *Fagan v National Coursing Association SA Incorporate* (1974) 8 SASR 546.

[4] *Carlton Football Club Ltd v Australian Football League* (Supreme Court of Victoria, Hedigan J, 29 May 1997) 46. The court referred to the decisions in *Mahon v Air New Zealand* [1984] AC 808 and *Minister for Immigration and Ethnic Affairs v Pochi* (1980) 31 ALR 666.

[5] *Carlton Football Club Ltd v Australian Football League* (Supreme Court of Victoria, Hedigan J, 29 May 1997) 46.

[6] Ibid 49.

[7] Ibid.

developing field and [that he was] speaking entirely and only as a judge sitting at first instance'.[8]

Relevant cases in the administrative law field, where there traditionally have been challenges to the way decisions are made,[9] indicate a readiness by the courts to rely on the slightest evidence to satisfy the 'rational probative evidence' test. The courts are also very wary of overstepping jurisdictional limits which prevent courts from re-hearing and deciding the merits of a case which the parties agreed would be exclusively within the domain of the private disciplinary body. The courts' role is to ensure that decisions are made in a lawful way. Courts are not concerned with what decisions are actually made, regardless of how unmeritorious or 'bad' they may seem.

III THE *WILLIAMS CASE* ON APPEAL

A *Grounds of Appeal*

The appeal was said to turn on what was agreed between Williams, Carlton and the AFL in the contract. The AFL's grounds of appeal included the following:

1 That the Court at first instance had no power to hear the case due to the existence of the rule providing for Tribunal decisions to be final and binding. Further to this, the Court involved itself in reviewing the merits of the Tribunal's decision which it had no power to do;

2 That contrary to the Court's findings, there was no obligation, either as an implied contractual term or in natural justice, that the Tribunal make its decisions based on a minimum standard of probative or 'rational' evidence. It was submitted that players are only entitled to expect that the Tribunal will not act for an improper purpose or dishonestly in making its decisions;

3 That Hedigan J erred in his conclusion that, based on the evidence, no reasonable Tribunal could have reached the decision it made.

B *Submissions*

The AFL argued that the parties had agreed in the contract that a decision of the Tribunal was final and binding. Therefore, the Court could only interfere to declare the Tribunal's decision of no effect if there was no reasonable basis in fact or law for making it, which did not arise in the circumstances of this case.

Williams and Carlton argued that the contract required the Tribunal to make its decisions 'properly', based on a minimum standard of probative or 'rational' evidence, failing which the Court could interfere to declare the Tribunal's decision of no effect if there was no reasonable basis in fact or law for the decision.

[8] Ibid.

[9] See generally *Tippett v Harness Racing Authority of New South Wales* (Supreme Court of New South Wales, Spender AJ, 16 June 1995); *Gibbs v Racing Penalties Appeal Tribunal* (Supreme Court of Western Australia, Wallwork J, 14 January 1997).

C *Findings*

The judges took very different approaches to the appeal. It is therefore necessary to examine each judgment.

1 *Tadgell JA*

Tadgell JA considered the fundamental issue to be whether the AFL was entitled to maintain the decision of the Tribunal, namely that Williams infringed the provisions of paragraph 16.9.1 of the *Laws of Australian Football* (*'Law 16.9.1'*) and to enforce the penalty that was imposed.

Tadgell JA affirmed previous authority that the court has jurisdiction to interfere in a matter before a domestic tribunal if the conclusion reached by the tribunal is plainly absurd or unreasonable; or such that 'no reasonable man could honestly arrive' at the conclusion; or that the conclusion was reached in disregard of 'one of the fundamental principles of natural justice' or of 'common justice'.[10]

This legal principle is based on the simple proposition that if a domestic tribunal was designed to inquire into facts, there must be due inquiry. As Tadgell JA noted, '[t]he Tribunal must do the job it was designed to do and not merely go through the motions of doing it.'[11]

The law does not countenance the establishment or the existence of any body for the purpose of acting dishonestly or without good faith. Rather than implying a term that a body will act honestly and in good faith, the law assumes that will be done.[12] His Honour stated that '[i]n a case where a court will exercise jurisdiction to interfere with the decision of a domestic tribunal, it should be seen as a jurisdiction to encourage and secure the tribunal's due performance of its task'.[13]

Tadgell JA considered it clear that the Tribunal had jurisdiction in accordance with the contract to hear and determine the charge that Williams did 'unduly interfere' with an umpire, and if the offence was established, to fix a penalty. His Honour then clearly stated that the Tribunal had jurisdiction to do so to the exclusion of the courts.[14] He stated that 'it would be extravagant to expect that, wherever a contracted player is accused of having committed a reportable offence, he has the right to have the matter of his liability, and any penalty, determined by a court of law'.[15]

However, it did not follow that the AFL Tribunal was constituted as the final arbiter of the interpretation of the *Laws of Australian Football.* If there was

[10] Tadgell JA referred to *Dr Warren's Case* (1835) reported in Grindrod's *Compendium of the Laws and Regulations of Wesleyan Methodism* (5th ed, 1857) 371: *Williams Case* (Supreme Court of Victoria, Court of Appeal, Tadgell and Hayne JJA and Ashley AJA, 25 July 1997) 6–7.

[11] *Williams Case* (Supreme Court of Victoria, Court of Appeal, Tadgell and Hayne JJA and Ashley AJA, 25 July 1997) 7.

[12] Ibid 8.

[13] Ibid 8–9.

[14] Ibid 10.

[15] Ibid.

doubt about their meaning, any of the parties to the contract was entitled to seek the opinion of the court.[16]

Tadgell JA reasoned that the Tribunal's jurisdiction to hear and determine the charge carried with it jurisdiction to interpret the law and to apply it to the facts as it found them. He found that the meaning of 'undue interference with an umpire' was by no means self-evident.[17] After setting out the various ways in which the provision may be interpreted, he stated that to leave this matter for interpretation and application by a lay tribunal, 'without the benefit of legal argument, is at best less than ideal and at worst unfair, or at least thoroughly unsatisfactory to all concerned'.[18] Having said that, Tadgell JA concluded that the parties had actually agreed that the AFL Tribunal system should be the means of hearing and determining charges for reportable offences against the *Laws of Australian Football*.[19] Further, he stated:

> There is no implication or legal fiction about it. That is what the contract provides, and the respondents do not seek to invoke the doctrine of restraint of trade or to put any other argument attacking the validity of the contract.[20]

Having found that it could not be concluded that the Tribunal misconstrued *Law 16.9.1*, his Honour found that there was no need or opportunity to decide whether there was an implied term in the contract that the Tribunal 'would properly interpret the relevant laws of football'.[21]

Tadgell JA considered authorities in which it was acknowledged that the courts can interfere with the decision of a domestic tribunal if it is such that 'no reasonable man could come to the conclusion that the facts proved amounted to the offence charged under the rules'.[22] He distinguished between a situation where there was no information available to the tribunal on the basis of which reasonable and honest minds could possibly arrive at the conclusion reached, which a court may review; and reviewing the material in order to decide whether the tribunal properly appreciated or treated it, which a court may not review.[23]

Tadgell JA affirmed High Court authority[24] that a court has no jurisdiction to review the findings of a domestic tribunal for the purpose of examining their correctness. He found that, in reviewing the facts, Hedigan J misled himself into performing the impermissible task of reviewing the Tribunal's decision to determine whether it was correct.[25]

Accordingly, in analysing the evidence, Tadgell JA concluded that Hedigan J had usurped the Tribunal's task, as it was not a legitimate function of the court to

16 Ibid 11.
17 Ibid 14, 19.
18 Ibid 10.
19 Ibid 10–11.
20 Ibid.
21 Ibid 15.
22 Ibid 16.
23 Ibid 17.
24 *Australian Workers' Union v Bowen [No 2]* (1948) 77 CLR 601.
25 *Williams Case* (Supreme Court of Victoria, Court of Appeal, Tadgell and Hayne JJA and Ashley AJA, 25 July 1997) 18.

review the correctness of the Tribunal's appraisal. Having said this, Tadgell JA found that in any event, there was evidence on which the Tribunal could be satisfied that the player infringed *Law 16.9.1*, upon a rational interpretation of that evidence.[26]

Although not a 'finding' of the case, Tadgell JA expressed a view that the issues of law on which the appeal depended were essentially reduced to those concerning the jurisdiction of the Court, and the basis on which a court could interfere with a tribunal's decision. His Honour appeared to suggest that other legal arguments may have been available to Carlton and Williams on a contractual basis, noting that the respondents did not 'seek to invoke the doctrine of restraint of trade or to put any other argument attacking the validity of the contract'.[27]

2 *Hayne JA*

Hayne JA based his judgment on whether the Tribunal's finding was open to it having regard to its construction of *Law 16.9.1*. After some discussion of the possible meanings of *Law 16.9.1*,[28] Hayne JA dealt with the question of the appeal by reciting the evidence that was available to the Tribunal, including the video and Williams' own statements,[29] and then stating that on either parties' contention as to the construction of *Law 16.9.1*, there was evidence from which the Tribunal could conclude that there had been a breach. However, his Honour noted that there was no reason given by the Tribunal for its decision, and accordingly, there was no explicit statement of the construction of the rule which was adopted by the Tribunal.[30] On his Honour's view, this was sufficient to dispose of the case, allowing the appeal. However, in *obiter*, Hayne JA commented on other aspects of the case.

Hayne JA considered that there was a great distinction between an implied term obliging the Tribunal to act not only on a true construction of *Law 16.9.1*, but also on evidence that proved the case, and an implied term precluding the AFL from enforcing a decision of the Tribunal where there was no evidence to support that finding.[31] His Honour declined to decide whether or not obligations of 'reasonableness' or 'logically probative evidence' were implied terms of the contract. Accordingly, he did not expressly overrule Hedigan J on this issue.[32] With respect to the justiciability of the matter, his Honour considered that the provision in the rules that the tribunal's decision be 'final and binding' did not oust the jurisdiction of the court in an action for breach of contract, or if the

26 Ibid 19.
27 Ibid 11.
28 *Williams Case* (Supreme Court of Victoria, Court of Appeal, Tadgell and Hayne JJA and Ashley AJA, 25 July 1997) 9–11 (Hayne JA).
29 Ibid 9–10.
30 Ibid 10–11.
31 Ibid 12–13.
32 Ibid 14.

decision was contrary to basic principles of law, ie a decision 'that no reasonable person could come to'.[33]

3 *Ashley AJA*

Ashley AJA considered the key issue for determination to be whether or not the AFL was empowered to enforce the Tribunal's decision.[34] His Honour held that the court had jurisdiction to entertain the proceeding, which was not ousted by agreement of the parties.[35] His Honour based this view on a number of grounds, including that he was reluctant to construe the 'wayward verbiage' of the rules as ousting the court's jurisdiction,[36] and that he agreed with the contention of Carlton and Williams that the Tribunal misdirected itself as to the meaning of *Law 16.9.1* and therefore the construction of this Law involved a question of law.[37]

On a review of authorities, his Honour determined the content of the 'no evidence' principle as follows:

> That a court may intervene in a case of the present type if there is 'no evidence' which supports a decision, ... [or] if a decision may properly be described as being perverse ... irrational ... unreasonable ... not based in material having rational probative force ... [or] such that no reasonable man could (honestly) arrive at [it].[38]

Furthermore, Ashley AJA held that 'a decision [would] not be based in material having rational probative force if it [were] founded upon irrelevant material'.[39] His Honour further held that if a decision were not based on evidence tending rationally to show the existence of facts consistent with the finding, it could properly be categorised as falling into one of the above categories.[40]

Having determined that the construction of *Law 16.9.1* was a question of law, Ashley AJA considered there were two reasons why the court must determine the proper construction of the rule and review the evidence:

1 If *Law 16.9.1* was misconstrued in a relevant way, the Tribunal wrongly assumed jurisdiction and the AFL would be in breach of the contract if it sought to enforce the Tribunal's penalty; and
2 If *Law 16.9.1* was not misconstrued, the question remains whether there was any evidence to support the Tribunal's findings and decision.[41]

Unlike the other judges, his Honour considered that in order to determine whether there was any defect in the Tribunal's construction of the Law, it was necessary to analyse the material. He did not consider it possible to decide

[33] Ibid 15–16.
[34] *Williams Case* (Supreme Court of Victoria Court of Appeal, Tadgell and Hayne JJA and Ashley AJA, 25 July 1997) 9 (Ashley AJA).
[35] Ibid 10.
[36] Ibid.
[37] Ibid 10–11.
[38] Ibid 16–17.
[39] Ibid 17.
[40] Ibid.
[41] Ibid 14–15.

whether there was evidence which would support the decision without subjecting it to analysis.[42]

Ashley AJA determined that a mental element was a necessary part of the offence. Having considered the evidence from the video and that of the neuropsychologist, he agreed with Hedigan J's conclusion that the mental element was absent on the facts. He could not conceive that a reasonable body of people, acting rationally, would come to any other conclusion.[43]

His Honour therefore found there was no material before the Tribunal which could have permitted the Tribunal to make the decision it did.[44] Accordingly, he dismissed the appeal on the basis that the Court had jurisdiction to interfere where there was 'no evidence' to support a finding that a charge had been established.

Ashley AJA declined to decide whether the obligations of natural justice and proper interpretation were implied contractual terms. Accordingly, he did not expressly overrule Hedigan J on this issue.

D *Results of the Appeal*

In essence, only Tadgell JA took direct issue with Hedigan J's findings of law. He affirmed the 'no evidence' principle, but considered that no misconstruction of the terms of *Law 16.9.1* by the Tribunal was revealed.

Hayne JA also affirmed the 'no evidence' principle, but disagreed with Hedigan J's application of the facts to the law. Hayne JA then declined to review any other points of law, having made his decision on the basis of the first point of law.

Accordingly, the majority judges allowed the appeal on different grounds. The dissenting judge, Ashley AJA, essentially agreed with the approach taken by Hedigan J, in concluding that the court had jurisdiction to intervene in favour of Williams because no reasonable tribunal, acting rationally and on the evidence before it, could have reached the conclusion that Williams had 'unduly interfered' with an umpire. It is regrettable that such different approaches were taken and different conclusions reached. Consistent approaches with some commonality of conclusions would have been advantageous in assisting sporting bodies in setting up their rules, procedures and tribunals.

IV THE IMPLICATIONS FOR SPORT

A *Broader Implications of the* Williams Case

The implications of the *Williams Case* extend beyond the suspension of Williams to the issue of the AFL's autonomy. More generally, the decision affects members of sporting and other organisations.

[42] Ibid 23.
[43] Ibid 32.
[44] Ibid 31.

The harm to players or members of organisations who are unlawfully disciplined is potentially significant, particularly in the increasingly lucrative area of professional sport, which Hedigan J referred to as a 'business of delivering nation-wide entertainment.'[45]

The loss claimed by the plaintiffs in this case, for example, included not only immediate economic loss for the nine weeks suspension, but also damage to the player's career and reputation. The Chief Executive Officer of the Carlton Football Club, Mr Steven Gough, submitted that upon the unlawful exclusion of Williams, the club could 'miss out on as much as $1.475 million of gross income were it not to make the finals this year',[46] as well as suffering substantial decreases in future membership and sponsorship.

Hedigan J made several pointed criticisms of the AFL Tribunal and the rules under which it operates, including the lack of an appeal process for appropriate decisions, the fact that there is no requirement to provide reasons for its decisions, and the absolute prohibition against legal representation. Ashley AJA made similar comments. Hedigan J stressed that cases such as this are likely to be rare and that:

> [I]t would be a costly and unhappy error of judgment, particularly by the multitude of clubs and players at lower levels, to believe that the result is a precedent for results in other cases on different facts.[47]

B *Justiciability*

Hedigan J considered the case to be unique because it involved contact with an umpire, the consequences for the parties were substantial, and there was a breach of contract.[48] If one looks across the entire spectrum of sporting tribunals, this is arguably correct. However, this case does have significant implications for other sporting bodies performing similar functions, particularly in two respects.

First, the appeal decision affirms the power of a court to supervise the way disciplinary bodies make their decisions, ensuring they do so in accordance with certain fundamental principles deemed to be in accordance with the rules of natural justice.

This does not necessarily mean that such bodies are hamstrung in controlling their own operations, as scope remains for them to exclude explicitly any obligations they would otherwise impliedly owe. For example, following the *Williams Case*, players or members are more likely to be aware of what basic rights they can expect when confronted by a disciplinary proceeding, having expressly consented to a certain process when signing the membership or playing contract.

[45] *Carlton Football Club Ltd v Australian Football League* (Supreme Court of Victoria, Hedigan J, 29 May 1997) 28.
[46] Ibid 6.
[47] Ibid 58.
[48] Ibid 60.

Second, certain elements of the content of the basic implied rights that a player or member can expect (unless specifically excluded) when confronted by disciplinary proceedings have been examined by the courts, and a minimum standard has been enunciated. As outlined above, these include an obligation to reach a decision which is 'reasonable' on the evidence before the tribunal.

C *Establishing Disciplinary Procedures*

A clear message for sports associations from the *Williams Case* is the need for well drafted and clearly expressed disciplinary rules. Sporting associations must consider whether natural justice is to be explicitly provided for in their disciplinary mechanisms. Where persons rely upon a sport for their livelihood or other proprietary rights, natural justice must be included, according to all judges. In any event, the rules must be clear, concise and cogent.

Rules should be developed in a structured manner. Whilst *ad hoc* amendment of rules may have served organisations (sometimes well) in the past, Ashley AJA's judgment serves as a timely reminder that where these rules may impact on a person's livelihood or other proprietary rights, a court will be reluctant to construe badly expressed or ambiguous rules to the detriment of the member or player concerned.

The constituent rules and specific disciplinary regulations should cover all stakeholders. Too often, the rules deal only with 'members' of the association. Consideration should be given to other stakeholders such as individual participants, umpires, coaches and other officials. In this way an association will be able to take disciplinary proceedings against other persons involved in the sport who have submitted themselves to the association's disciplinary jurisdiction.

Finally, as has been said many times, the constitution and disciplinary rules must expressly empower an association's disciplinary body, and set out its obligations and operation. Clear expression and delivery of these terms will forestall costly legal proceedings, delays and uncertainties.

D *Conduct of Disciplinary Hearings*

Disciplinary bodies must be properly constituted. This means that persons appointed to the disciplinary body must not be 'biased' or find themselves in a situation of conflict. This does not prohibit persons who are parents or who otherwise have an interest in a participant from being available to sit on a tribunal. It simply means that person may not sit in a matter involving the child or other relevant participant or where it may appear that bias may operate.

A number of disciplinary bodies and mechanisms may be utilised by sporting associations. The sports association must decide whether disciplinary hearings will be conducted by the committee or board, an independent tribunal or some other body. It is also possible for an appeal to be determined by the general membership.

It is useful to develop standard notices for advising the participant of the disciplinary action to be taken. This ensures proper notice of the charge and the outcome, and any avenues of appeal should be clearly set out.

Standard hearing procedures should also be developed. Whilst the form of the hearing may be at the discretion of the disciplinary body, that body should, as a matter of practice, conduct proceedings in a consistent manner. Only exceptional circumstances may give rise to deviations from standard practice.

The sporting association must first determine whether appeals on the original decision are allowable. If the answer to this is 'yes', the question that arises is whether the participant will be entitled to appeal on any grounds, or only on specific grounds. The latter is generally preferable.

Where a lay tribunal has decided a matter, there should be some imperative to allow the appeal by way of a full re-hearing of the matter, as opposed to a hearing of the appeal based on the evidence before the lower tribunal.

E *Levels of Appeal*

Another issue that sporting associations should consider following the *Williams Case* is the appropriate number of levels of appeal. It is the norm in sport that there be at least one level of appeal from a decision of the committee of management, usually to the members in general meeting. At least one level of appeal should be retained, or, if not in place, implemented.

Options for appeal may be appropriate, that is, an aggrieved player or member may choose to go to the members in a general meeting or an internal appeal tribunal. As discussed briefly below, sports associations may even elect to allow appeals to external specialist bodies. Such bodies can only hear disputes by agreement of the parties.

F *Internal v External Mechanisms*

As demonstrated above, there will always be an opportunity for challenges from the highest internal tribunal mechanism to a court where the tribunal has made a decision based on 'no evidence', or it is a decision that 'no reasonable person could have made'.

This position was accepted by all Court of Appeal judges, although Hayne JA accepted the proposition as *obiter*. Even Hedigan J at first instance warned that his decision in respect of the *Williams Case* did not signal 'open slather' on challenging routine tribunal decisions.[49]

Accordingly, the cases in which one is likely to see legal proceedings challenging decisions of domestic tribunals remain limited to cases in which an individual's livelihood, or other legitimate expectations, are involved; or a contractual relationship exists between individual and association; or there has been a decision based on 'no evidence', or a decision that 'no reasonable person could have made'.

[49] See above n 47 and accompanying text.

Richard Evans makes a sound point in respect of individuals playing in high level sport:

> Regardless of what happens, unless changes are made to the AFL's disciplinary procedures there will always be a danger that the suspension of a key player, particularly during the finals, will immediately be met with an injunction. To avoid this threat, the AFL Tribunal needs to change its procedures.[50]

This raises the question of whether the AFL, and indeed any sporting organisation, should consider the introduction of an appeal system. The answer is a resounding 'yes', particularly where significant financial or other legitimate interests are involved.

The increasingly professional nature of football and many other sports demands appropriate appeal avenues and the consistent application of the rules of natural justice. It is in sport's interests to assess and determine whether appeals are better decided internally or externally. My view, which is essentially supported by the courts, is that sport should resolve its own disputes internally. This may include the ultimate decision being made by the members in general meeting. However, the circumstances must be re-examined to determine whether this is appropriate.

Nonetheless, many sports are providing external appeal mechanisms to bodies such as the National Sports Dispute Centre ('the Centre'), or the Court of Arbitration for Sport ('the Court'). Sports associations should consider these as options. When disputing parties go to these bodies, they do so by agreement. Part of the agreement is the waiver of any further legal avenues, so the decision of the Centre or the Court is final.

V CONCLUSION

The *Williams Case* is an important legal development regarding sporting bodies' disciplinary mechanisms and athletes' fundamental rights, particularly in respect of playing contracts. Whilst the appeal decision leaves some uncertainty as to the precise scope of a tribunal's obligations, it is clear that tribunal decisions, even those of an entirely domestic nature, without any underpinning in statutory or public law, are, in appropriate circumstances, reviewable and able to be overturned by the courts. Furthermore, tribunals are bound to make decisions that are reasonable having regard to the material before them.

The bottom line for sporting bodies is that the *Williams Case* serves as a clear lesson that to avoid trips to the law courts, they must ensure that their disciplinary bodies, mechanisms and procedures, including their rules, are clear both in language and in operation.

IAN FULLAGAR*

[50] Richard Evans, 'The Greg Williams Case: The End of Copping it Sweet' (1997) 71(7) *Law Institute Journal* 45, 47.

* BA (Tas), LLB (Tas), LLM (Melb); Partner, Rigby Cooke. The author acknowledges the significant contributions to this case note of Lisa Comben and Simon Just.