

WHEN SPORT INFLAMES PASSIONS IT IS EASY TO BE CAUGHT UP IN MEDIA HYPE, ESPECIALLY WHEN IT INVOLVES THE CAPTAIN OF ONE OF THE NATION'S PROUDEST TEAMS. HOWEVER, IT PAYS TO LOOK BEYOND THE HYPE AND COME TO YOUR OWN CONCLUSIONS.

ISTOCKPHOTO

Justice in sport: the James Horwill saga

In June and July this year, the British and Irish Lions Rugby Union team toured Australia for the first time in 12 years. The tour was a perfect example of why people are so passionate about sport – it showcased drama, physical prowess and national pride. It also involved the Australian Wallabies captain James Horwill being caught up in an epic saga that could not have been better scripted by the media.

After the first test in Brisbane, Horwill was charged with stamping on Lions lock Alun Wyn Jones's head, causing Wyn Jones to require stitches. He was found not guilty at the judicial hearing and allowed to play on in the series. However, the International Rugby Board (IRB) chose to appeal the decision, claiming it was in the interest of player welfare and the future of the game that the original decision be reviewed on both fact and law.

This caused uproar in the media, with one commentator insinuating a conspiracy by the northern hemisphere to distract the Wallabies during the formidable tour.¹ The controversy was that such an appeal had never before been made by the IRB, and it was claimed that there seemed to be a case of double jeopardy against Horwill – being acquitted of his charge in one hearing, only to be tried again on the same charge.

The local media cried foul and instigated a public campaign against the IRB, trying to influence the independent appeal officer's decision. One journalist created the twitter hashtag #justiceforhorwill, which gained widespread use. There was even speculation that the appeal officer had to find Horwill guilty simply because the IRB had brought him in to make the judgment.²

What could easily be missed when reading about Horwill's case in mainstream and social media is that appeals are actually standard procedure in any judicial process, including in sport. Most sporting codes have a right of appeal contained within their rules and regulations.

When reviewing the decision of Graeme Mew, the appeal officer, it is clear he was determined to be seen as independent and just. Mr Mew stated at [4]: "As in many sporting codes, the IRB's regulations provide for a right of appeal from disciplinary decisions taken at first instance. Both Judicial Officers . . . and Appeal Officers . . . are independent of the bodies that appoint them. Cases must be decided on their facts and in accordance with the applicable Laws of the Game, regulations and other applicable governing documents and principles, without regard to opinions expressed by members of the rugby establishment, the media, the public or any other constituency. The

procedures followed must respect principles of fairness and natural justice".³

Mr Mew also indirectly addressed the claims of double jeopardy, stating at [8]: "In most cases – including this case – an appeal does not involve a rehearing of the disciplinary complaint. The appeal is heard and determined on the basis of the record of the decision and the evidence received and considered by the [Judicial Officer]".

This statement made it clear that this was not a second trial on the same issue, but rather an appeal – a process allowed by IRB Regulation 18.7.1 – and therefore no element of double jeopardy came into play.

Horwill was subsequently acquitted of the charge and allowed to continue as captain of the national side in the once-in-a-generation series.

It is easy to be caught up in media hype, especially with topics of popular interest such as sport. However, as can be seen from this simple analysis, it pays to dig deeper and get past the hype to look at the issues, the facts and the process, and keep an open mind. ■

NEIL JOUBERT is a Monash University juris doctor student.

- 1 I Payten, "Wallabies captain James Horwill shocked by re-opening of trampling charge from first Lions Test", *The Daily Telegraph*, 29 June 2013.
- 2 P Smith, "Rugby Supremos Caught in Own Maul", *The Australian*, 3 July 2013.
- 3 *IRB v Horwill* (2013) IRB Appeal Hearing.