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M&M Sport

THE HEAT IS ON.

When to cancel an event, **who** makes the call and **what** are the legal ramifications?

By Roland Davies

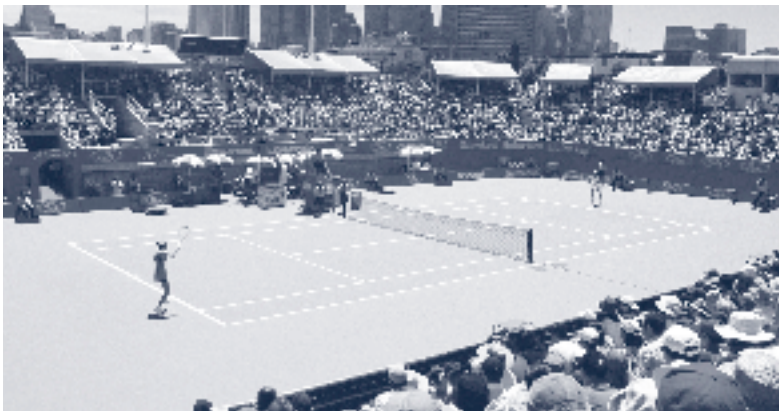
The sudden death of American Football player, Korey Stringer, due to heat stroke has caused sporting organisations to review the practice of competing in extreme temperatures. Exercising in extreme temperatures can place participants at risk of injuries such as dehydration, heat exhaustion, heat stroke and even death.

Sporting authorities are beginning to implement "heat policies" in an effort to minimise the dangers associated with competing in extreme temperatures. The Australian Football League, the National Rugby League and Soccer Australia are among many sporting authorities who have implemented heat policies. Queensland Cricket Coach, Terry Oliver, believes "Responsible heat policies are essential, particularly in extreme climates like Queensland".

Heat policies are guidelines which a sporting authority follows when temperatures reach extreme levels. The Australian Tennis Open Heat Policy is an example of a typical policy. The Australian Open Heat Policy provides that once the air temperature surpasses 35 degrees no further matches will take place on the outside courts until the weather cools below the maximum level.

Sports Medicine Australia has developed a checklist which details factors sporting organisations should consider prior to postponing an event:-

- Sporting organisations should consider climatic factors such as air temperature and humidity;
- Sporting organisations should consider the duration and intensity of an event which may be cancelled. The combination of intense exercise and extreme temperature should have a bearing on an organisation's decision to cancel an event;
- Sporting organisations should consider the acclimatisation of the participant. Events will be more likely to be cancelled if participants have had little preparation for exercise under hot conditions;
- Sporting organisations should consider the athletic ability of the participant. Physical characteristics of the athlete determine his or her ability to exercise in extreme conditions;
- Sporting organisations should consider the age and gender of the participants. Research indicates that young children and female participants are more susceptible to dehydration and heat stroke. It is important for sporting organisations to know if any of the participants have any predisposed medical conditions which can increase the likelihood of dehydration or heat stroke; and
- Sporting organisations must ensure that there is adequate hydration opportunities throughout the course of the event. Organisations should also avoid the hottest parts of the day when scheduling events.



It has long been recognised that sporting authorities owe participants a duty of care to take reasonable steps to avoid the risk of injury to players. This means the onus is on sporting authorities to ensure that adequate precautions are in place to protect against heat related injuries.

The fact that participants may be aware of the dangers of exercising during extreme temperatures may not release sporting authorities from liability in the event of injury. Courts have found in the past that sporting authorities may be liable despite the fact the injured participant had a knowledge and appreciation of the danger which caused the injury.

Courts look at various factors when assessing whether a sporting authority has been negligent. These factors include the magnitude of the risk of injury, the probability of its occurrence and the expense, difficulty and inconvenience of taking alleviating action.

The serious nature of the injuries associated with heat stroke coupled with the ease of postponing an event means there is a real possibility that courts may one day find a sports authority negligent for a heat related injury. It is for this reason that sporting authorities can ill afford not to have a heat policy.

A sporting organisation that has a heat policy is not automatically absolved from all liability relating to heat related injuries. Courts will not necessarily accept the heat policies of sporting authorities as setting the law's standard of reasonable care. Sporting authorities must ensure that their policies are genuinely aimed at implementing all reasonable measures that will prevent heat related injuries.

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Pregnant Women in Sport:

The Trudy Gardner Decision

By Stephanie Smith

The Federal Magistrates Court has recently held that the South Australian Netball Association's (the SANA) decision to ban Trudy Gardner from playing netball whilst pregnant in June 2001, was discriminatory. Ms Gardner was awarded $6,750.00 in agreed damages for the hurt and humiliation that she suffered for the loss of match payments and sponsorship throughout the period of her ban. The decision now confirms that pregnant women have the right to continue to participate in sport whilst pregnant.

The Federal Magistrates Court rejected the argument presented by SANA that the move to ban women playing netball whilst pregnant was protected by the voluntary bodies exemption in section 39 of the Sexual Discrimination Act. Federal Magistrate Raphael held that Trudy Gardner was not a member of SANA and could not be a defacto member as membership was limited to state and federal organising bodies. Therefore it was held protection under section 39 of the Sexual Discrimination Act can only be applied to those relationships that voluntary bodies have with other member organisations, and not to those relationships that the voluntary body has with individuals.

The controversy that has arisen as a result of this action has forced the Australian Sports Commission to release national guidelines regarding pregnant women in sport. Whilst the guidelines stress that pregnant women should seek medical advice before participating in sport, they reiterate that the final decision as to whether or not to participate is to be left to the individual. It has been suggested that women in some sports should sign disclaimers and undertake pregnancy testing. The implementation of such procedures is yet to be observed, and in light of the Trudy Gardner decision, unlawful as women participating in sport cannot be discriminated against due to pregnancy. The exemptions contained in the SDA are being increasingly read narrowly by the Courts, so as ensure that the rights of women are continually upheld and developed.

Another Win for the Rabbitohs

By Joe Carey

The recent decision of *Francis v South Sydney District Rugby League Club* has demonstrated that both players and coaches need to be wary when negotiating contracts. The Applicant, Michael Francis, was a forward for Souths during the 1998 season when he suffered an AC joint dislocation of his shoulder during a match against Newcastle. The injury left Francis with the choice of either undergoing immediate surgery and not playing for the remainder of the season, or returning to the field in three weeks and continuing to play. In his pleadings, Francis claimed that the head coaches for Souths promised him that he would be re-signed for the 1999 season if he deferred surgery. In reliance upon these promises, Francis resumed playing shortly after his injury.

In November 1998, Francis was informed by Souths that he would not be offered a contract for the 1999 season. As he had recently undergone surgery on his shoulder, he had lost weight and fitness and was unable to obtain another club for the 1999 season. Consequently, Francis brought an action against Souths for breach of contract, negligence and unconscionable conduct (among other things) on the basis of the promise made by the head coaches.

Of particular importance to this matter was whether the head coaches, Steve Martin and Craig Coleman, possessed any actual or apparent authority from Souths to engage players in contracts with the club. South's internal structure included a 'Retention Committee' whose role was to negotiate with players for contractual purposes. At no time had this role ever being delegated to the Steve Martin or Craig Coleman. However, evidence before the Court suggested that the Retention Committee generally accepted the head coaches recommendations with regards to which players they wanted to sign.

In examining this issue Lindgren J noted

A Sporting Chan

By Jason Walsh

Recent legislation passed by the Queensland Parliament is set to provide protection for those persons who act as volunteers from claims of negligence liability. The Civil Liability Act 2003 ("the Act") is in response to the Ipp report, which was commissioned in 2002 to address the escalating costs associated with public liability insurance, which was crippling many sporting bodies. The Act protects volunteers from claims of negligence when performing community work that has been organised by a community organisation. A community organisation under the Act is limited to Corporations and Authorities of the State. A community organisation does not include an Incorporated Association and volunteers acting for such organisations are not protected from claims of negligence liability as set out in the Act.

To be afforded the protection provided under the Civil Liability Act 2003, a volunteer must be performing "community work". Community work is defined as work that is not for private financial gain and includes

work undertaken for a sporting purpose. Thus, a person performing community work for a community organisation is protected

that Francis was not exactly a 'babe in the woods' as he had been involved with contract negotiations on previous occasions within his rugby league career. Additionally, Souths had informed Francis' agent that the task of signing players was solely the responsibility of the Retention Committee and not the coaches. In these circumstances, the Court felt that Francis understood that while the coaches' opinion carried sway with Retention Committee, it was ultimately not the coaches' choice as to who Souths' signed. At no time had Souths held Martin or Coleman out as having the power or authority to offer contracts to players. Therefore, the Court determined that the promise made to Francis did not form the basis of a contract as the player was well aware that the coach could not offer that contract. Francis' claims on the basis of negligence, unconscionable conduct and breach of the Trade Practices Act were also dismissed.

While unfortunate for Francis, this case highlights that players must be diligent to ensure any contract offers are formal offers from persons within organisations who are authorised to make such offers. Simply relying on an informal statement by an unauthorised agent will not form the basis of a legal contract. Conversely though, coaches within sporting organisations should be mindful of how informal comments made during the negotiation period may be interpreted by players.

ce for Volunteers

from claims of negligence, providing they were acting in good faith.

A volunteer will not be acting in good faith if they knew or ought to have reasonably known they were acting outside the scope of activities authorised by the community organisation or if they were acting against instructions given by the community organisation. A volunteer will also not be protected from negligence liability under the Act if they are paid for the services they are providing, however, reimbursement of a volunteer's reasonable expenses associated with performing the work will not preclude the operation of the protection afforded by the legislation. The Act does not protect a volunteer from negligence liability if the volunteer is carrying out a criminal offence or the volunteer failed to exercise due care and skill because they were under the influence of alcohol.

The Parliament, in enacting the new legislation, has not expressly excluded the liability of community organisations for the negligent acts or omissions of volunteers. The Ipp committee reported that the relationship between a volunteer and volunteer organisation is not akin to that of an employer and employee, where the law of agency sees an employer being deemed responsible for the negligent acts and omissions of its employees, under the principle known as 'vicarious liability'. The Ipp Committee determined that a volunteer is not an agent of the community organisation to whom they provide their services and it follows that liability will not attach to the community organisation for the negligent acts or omissions of its volunteer workers under the law of agency. This is not to say that a community organisation is immune to a claim being brought against it for the actions of its volunteers. There is certainly scope for a community organisation to face proceedings for the acts or omissions of its volunteers in other areas of law such as Contract, Torts and Trade Practices.

The Civil Liability Act 2003 seeks to afford greater protection for volunteers acting in good faith, whilst ensuring the current legal responsibilities and obligations of community organisations are maintained.

The Civil Liability Act 2003 was given Royal Assent on 9 April 2003.

DRUG Warne-ing

By Jason Walsh

The Australian Cricket Board Anti-Doping Committee has suspended Australian cricketer Shane Warne from playing cricket for both his state and country until 10 February 2004. The international cricketer tested positive for a banned diuretic in a urine sample provided to the Australian Sports Drug Agency (ASDA) in January 2003. Warne, who has struggled with his weight over the years, blamed the positive test on a "fluid" tablet given to him by his mother. In proclaiming his innocence Warne told the Anti-doping Committee he took the tablet for cosmetic reasons, hoping it would remove his double chin before appearing before the television cameras.

At the hearing before the Australian Cricket Board (ACB) Anti-Doping Committee it was determined Warne was bound by the Australian Cricket Board's Anti-Doping Policy by virtue of his contract with the ACB, and in testing positive to a banned diuretic had committed a doping offence by using a prohibited method. A prohibited method is defined in the Australian Cricket Board's Anti-Doping Policy as one where a substance is used to attempt to alter the integrity and validity of samples used in doping controls. As a diuretic is a drug that is designed to reduce the amount of fluid in the body, it masks the existence of performance enhancing drugs, such as anabolic steroids, and Warne, by supplying ASDA with a positive drug sample, was found to have contravened the ACB's Anti-Doping Policy.

Under the Anti-Doping Policy of the ACB a cricketer who is found guilty of providing a positive drug sample faces a minimum two year suspension from playing international cricket and from competing in any events conducted under the jurisdiction or auspices of the ACB. The Anti-Doping Committee, however, has the capacity to vary the minimum two year suspension and in this instance the Committee was of the opinion that Warne should only receive a twelve month ban. The Anti-Doping Committee thought it just to reduce Warne's suspension as evidence submitted to the Committee indicated Warne gained no performance advantage from using the diuretic, nor had he used the diuretic to mask the use of a performance enhancing substance. The Committee was not, however, moved to waive the ban altogether, believing that Warne, in his capacity as a professional sportsman, acted recklessly in taking the tablet by failing to make any enquiries as to the contents of the tablet or whether the tablet was in fact a banned substance.

Fanatical Fans
JUST WHO IS RESPONSIBLE?

By Kate Williams

Football hooligans, unruly pockets of crowd behaviour at the tennis, and disruptive soccer fans. As long as there is passion in sport, there will continue to be spectators who bring the game into disrepute. Hooliganism and crowd disturbances are logistical and legal minefields for sporting organisations. Regulating aspects of crowd behaviour has also become a concern for both local administrators and officials at ground level. So who is responsible for unruly crowd behaviour? The short answer is, it depends which sporting event you are attending.

The Venue

Crowd behaviour, for many sports including Australian Rules Football, is a venue specific problem; namely the venue has its own code of behaviour which must be adhered to. Clubs, as tenants of the venue, have little to no responsibility for crowd behaviour which falls squarely within ground management's control. Unruly spectators are monitored and policed through the use of closed circuit television and security guards. Under section 32 of the Queensland's Major Sports Facilities Act 2001 (which controls Suncorp Metway Stadium, The Gabba and other venues) it is an offence:-

(a) To disorderly create a disturbance on facility land; or

(b) Enter that part of facility ground (without approval) that is usually used by persons' engaged in sport; or

(c) Interfere with a person engaged in sport or entertainment on facility land.

Any person found guilty of this section will be punishable by a maximum of 20 penalty units. Police have the power to fine, suspend and/or ban the offender from the venue and in certain instances may imprison the offender/s. It is now commonplace for venues to have alcohol free zones, family zones and separate supporter areas specifically designed to eliminate potential trouble.

The Club

In stark contrast, Soccer Australia is forcing regional clubs to take responsibility for their fans' actions. The Board recently fined a club, Sydney United, $40,000, for bringing the game into disrepute following crowd disturbances during a round 14 match which saw up to twenty flares and firecrackers set off amongst fans and a brawl which left one man with a broken jaw. In handing down the punishment Soccer Australia ordered:-

1) the club to ban all identified offenders from future games;
2) the club to take steps to identify offenders; and
3) the club to assist other clubs in ensuring the ban is effective at all grounds.

In addition, the Board determined that all clubs must undertake random bag searches as part of further security checks at National Soccer League matches.

The Referee

Crowd behaviour is controlled somewhat differently again under the Davis Cup tennis tournament's rules and regulations. As opposed to the venue or club determining ramifications for unruly spectators, the Referee is himself empowered to determine the outcome of crowd disruption.

During Davis Cup matches, a "Partisan Crowd Rule" exists. This means that each country is under an obligation to control its supporting spectators. In the event that a country's spectators "unreasonably" interrupt or influence a match or where players are "unreasonably" provoked and/or intimidated, the Referee can penalise such country's player a point, or even a game. In circumstances that are flagrant and particularly injurious to the success of a match, the Referee also has the authority to declare a default for the violation of this section.

Whilst crowd interruptions are wholly unanticipated, there are certain measures that can and should be taken by local authorities, clubs and governing bodies to decrease the risk of this antisocial and dangerous behaviour. Regardless of where the responsibility for crowd disturbances ultimately lies, it is clear that unruly behaviour will not be tolerated.

Editorial

By John Mullins

There is an enormous amount happening in the sports law world. In this edition we cover a range of topics starting with the Shane Warne affair. In our brief article, we simply seek to outline the facts on what occurred, without entering into the debate as to the appropriateness or otherwise of the decision. Certainly, very recent revelations about Carl Lewis and the US Olympic Committee is going to keep the drugs in sport issue on the front page for quite some time.

We write a brief article on the Trudy Gardner decision. This is a decision of a Federal Magistrate and whilst it seems to confirm that pregnant women are now entitled to play sport, what is actually says is that pregnant women cannot be discriminated against. I do not think it answers all issues and raises the question: If a pregnant woman lost her child as a result of an act which occurred on the sporting field, does she have the right to sue the perpetrator and the sport? Resolving the discrimination issue does not solve all potential problems.

The Queensland the Civil Liability Act provides that there will no liability where the person injured was involved in a dangerous recreational activity. Will a woman playing pregnant be deemed to be participating in a dangerous recreational activity?

The Civil Liability Act has now also enacted volunteer protection. It is important to note for all clubs that whilst the volunteer may be protected the club itself does not enjoy the same position.

The South Sydney Rugby League Club is still not enjoying great success on the football field but it seems to be winning most of its off field legal battles in recent times. There is an interesting case where they were sued and were successful against the player.

Two other articles deal with sporting events and deal with the need for extreme heat policies in Australia and the need for control of fanatical fans, particularly pertinent with the impending opening of Suncorp Stadium. Indeed, the Major Sports Facilities Authority Act provides some interesting provisions in relation to crowd behaviour.

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