



SPORT | Issue No. 10 | *Tragedies in sport – there are no winners*

July 2015

In very recent times there has been the tragic circumstance of a professional rugby league player being killed in a Queensland Cup game.

Whenever a sportsman or woman is seriously hurt let alone killed whilst playing sport, it sends a shudder through the whole of society as, even at a professional sports level, sport is deemed to be something that people enjoy, and participate in because they enjoy it. Sports go to great lengths to seek to make safe the environments, even in body contact or combat sports.

Games of cricket, rugby and rugby league are generally considered relatively safe and certainly, on a percentage basis, the number of people killed or permanently injured playing these sports is minute.

Where there is high-speed contact, whether that be by the ball in cricket or by bodies in the contact sports, there is risk, and occasionally this risk ends in tragedy.

What should sport do to react to these tragic circumstances and, if foul play is alleged, what should sports do in relation to the disciplining of players, and what, if any, impact do findings of foul play have on subsequent civil or criminal proceedings?

These are all complex questions which arise when the sport, the participants and the family of the deceased are all going through a time of sadness and reflection.

The first thing you recognise is that disciplinary tribunals, civil courts and criminal courts all operate differently. Disciplinary tribunals are called domestic tribunals and are regulated by their own rules, and the Courts are bound by their rules. Significant differences lie around the onus of proof and the rules of evidence.

The rules of most disciplinary tribunals say that the rules of evidence (as they apply to Courts) do not apply to the Tribunal, and the Tribunal may consider such matters as it sees fit without regard for the rules of evidence. The Tribunal of course has an obligation to be fair, to act without bias and to allow the respondent the opportunity to be heard as natural justice requires.

The onus of proof is another area of significant difference. To be convicted of a criminal offence, the onus of proof is beyond reasonable doubt. To succeed in a civil action, the onus of proof is the balance of probabilities. Whilst different tribunals have different onus of proof, a common one seems to be a decision with which the tribunal is comfortably satisfied.

The next issue is whether, in such a tragic circumstance, disciplinary proceedings should proceed prior to the matter being heard by a Court (if there are criminal charges, or even potentially a Coroner's hearing).

Given the different onus of proof, a finding in one of these jurisdictions does not necessarily lead to a finding in another. We saw this of course in the very famous O.J. Simpson case where, whilst he was not convicted of a criminal offence, he was found to be civilly liable.

Whilst there is no reason to postpone disciplinary proceedings until after other Court proceedings have been resolved, often Sports consider that it be appropriate to allow the police investigation to be concluded as the police are better equipped to investigate matters and to provide evidence than is the Sport. Clearly the Sport should not interfere with a police investigation.



Accidents happen and unfortunately they also happen in sport. Tragedies occur and Sports have to find their own way of responding to these tragedies.

The death of Phillip Hughes led to a Test Match being postponed. Other Sports have not cancelled or postponed other matches and have interpreted that neither the deceased nor the deceased's family would want to see the game hurt or cancelled.

The death of a fit young athlete is a tragedy and, as with all tragedies, all anyone or any organisation can do is the best they can in the circumstances, having regard to all of the experiences that they gained or observed from dealing with similar circumstances in their sport and others.

There are no winners.



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