

**Arbitration CAS 2006/A/1087 Daniel Collins v. Canoeing Australia, award of 5 May 2006**

Panel: The Hon. Justice Tricia Kavanagh (Australia), Sole Arbitrator

*Canoeing**Request for reinstatement after retirement from competition**Period of ineligibility to compete in international competition*

Although he/she has not been registered on the out-of-competition testing list of his/her sporting association, an athlete may be granted early reinstatement to international competitions when he/she has satisfied the requirements for a reinstatement to domestic competition because he/she has continued to compete in various competitions under his/her sporting association's rules and has made him/her available for in- and-out-of-competition testing throughout the period of time of his/her asserted retirement, even though he/she was not tested.

Mr Daniel Collins, a canoeist of both Australian and international reputation, made an application dated 5 May 2006 to the Oceania Registry of the Court of Arbitration for Sport (CAS) under Rule 8.5.8 of the Australian Canoeing (AC) Anti-Doping By-law (the By-law), to apply for early reinstatement from retirement in International competition.

Mr Collins is vastly experienced athlete in the sport of canoeing. He competed in the 1992 Barcelona Olympic Games and each Summer Olympic games since then up to and including the recent Athens Olympics. He has won a silver and a bronze medal from the Olympic Games, and has won a gold, silver and a bronze World Championship medal. From his own admission, he has represented Australia in some 4 Olympic Games and 11 world championships. He has competed as an elite Australian canoeist for some 18 years.

On 27 September 2005, Mr Collins gave notice to AC of his intention to retire from competitive events. On 25 November 2005, he gave notice to them of his intention to return to competitive canoeing. That brought him within the auspices of Rule 8.5.7 of the By-law, which relevantly states:

8.5.7 A retired *Athlete* may not compete in *Competitions* and *Events* conducted by or under the auspices of *AC* until the following periods expire:

For International Competition and Events

12 months from the date of the reinstatement request.

For domestic Competitions and Events

6 months from the date of the reinstatement request.

As such, in the normal course of events, clause 8.5.7 of the By-law would mean that Mr Collins would be required to be retired from competition for International events until 25 November 2006, and retired from domestic events until 25 May 2006.

Furthermore, a retired athlete must not only make a written request for reinstatement, but under the By-law clause 8.5.6, must also make themselves available for unannounced out of competition testing in accordance with AC Policy.

In accordance with the By-law, Mr Collins has made an application to AC, under clause 8.5.9, to be granted reinstatement and eligibility to compete in domestic competitions and events in accordance with the Rule. He revealed in evidence that he has been available for out-of-competition testing for the last 6 months, given his continuing competitive status with Surf Life saving Australia (SLSA), although he has not been tested. I note that the results throughout a long competitive career of such out-of-competition and in-competition testing have disclosed no violations whatsoever.

AC granted him the exemption and he was eligible to compete in domestic events from 6 February 2006.

Mr Collins performed to a high standard at the domestic competitions, and hence was selected to compete at an upcoming international competition, being the World Cup regatta in Poznan, which is being held in May of 2006. In particular, Mr Collins was to leave Australia to compete in his event on Monday 9 May 2006 (3 days time).

LAW

1. The application brought before me as an arbitrator is an application under clause 8.5.8 of the By-law, which provides as follows:

8.5.8 An *Athlete* may apply to the *Court of Arbitration for Sport (CAS)* Appeals Division to be eligible to compete in *International Competitions and Events* before the period set out in **Article 8.5.7** expires.

2. Of note, the clause allows an athlete to come before this Court, but it does not give the Court any guidance as to what is required in the consideration of the matter.

3. I accept the submissions of Mr Quill, a lawyer and a board member of AC who represented AC before me, that the Court could take guidance from the requirements of clause 8.5.9, which requirements had to be satisfied for a reinstatement to domestic competition. Clause 8.5.9 provides:

8.5.9 An *Athlete* may apply to the *Anti-Doping Control Officer (ADCO)* to be eligible to compete in domestic *Competitions and Events* before the period set out in **Article 8.5.7** expires. The *ADCO* may grant the application if:

- 8.5.9.1 the Athlete has been available for *Out of Competition Testing*;
- 8.5.9.2 the results of the *Out of Competition Testing* have disclosed no violation of this Anti-Doping Bylaw; and
- 8.5.9.3 there is no other evidence available to the *ADCO* to suggest that the *Athlete* has breached this Anti-Doping Bylaw during the period of the *Athlete's* retirement.

The athlete satisfied that criteria and a domestic exemption has been allowed.

4. Although having retired from AC in September 2005, Mr Collins continued to compete, perhaps though not as such an elite athlete, under the SLSA Rules in various competitions. He therefore was available for domestic testing by ASDA throughout that time, being the entire time of his AC retirement period. Importantly, although he was not tested (either in-competition or out-of-competition) in that period of time, he submitted, and I accept, that he has over his 18 year career been "hit tested" approximately 50 times or more, with the requirement of providing both a urine sample and blood sample. He has never returned a positive result for a banned substance. He has therefore enjoyed the early return granted by AC, and was selected to compete in the aforementioned upcoming international event.
5. After his selection to the World Cup team, Mr Collins was notified by letter from ASADA that, according to their records:

As he was not on the TRP, meaning Registered Testing Pool for Surf Life Saving Association's out of competition testing list,

they,

do not consider he was available for out of competition testing as required under Australian Canoeing anti-doping policy.

I note that it was ASADA itself who advised Mr Collins, via the same letter, of the opportunity he had to make this application to the Court under the AC rules.

6. I am of the same view as the Committee of AC. I accept Mr Collins did in fact make himself available for out-of-competition testing. I am satisfied in coming to that conclusion, and after having read the written assurances of SLSA exhibited before me, I find that Mr Collins has been available for out-of-competition testing throughout the period of time of his asserted retirement.
7. Further, from the material submitted to me in this matter, I am confident that the attitude of the International Canoeing Federation (ICF) is supportive of the athlete's return to competition.
8. A letter dated 24 March 2006 from AC to Mr Collins, contains a statement from the ICF as follows:

“We did discuss this at our committee meeting, in fact, the ICF has never received a document indicating that this athlete has retired from competition. Therefore, from our perspective, he was never retired and was always eligible for doping controls.

As he never gave written notice of retirement to the ICF, Article 5.6 does not apply.

It appears that he may need to satisfy the National Federation/National Anti-Doping Organisations *but the ICF has no requirements*" (my italics).

9. I note that the CAS Oceania Court Registry was first contacted regarding this matter late in the evening of Thursday 4 May, and the application itself filed with the Registry on Friday morning 5 May 2006. As a result, a successful hearing would have been a pyrrhic victory unless determined immediately. Therefore it was necessary for the hearing to be held a mere 6 hours after the application was first filed. It is regrettable that due to the extreme urgency of the matter, the concerns or otherwise of potential interested parties, in this case ASADA and perhaps the International Canoeing Federation, were unable to be heard. However, I am satisfied I have before me evidence as to their interests in this matter. I am acutely aware of this fact, and make my decision bearing this in mind.
10. I have no evidence before me to suggest in any way that there has been, or could have been, a violation of the anti-doping By-law. In fact, I find it quite significant that not only was he available for testing at all times during his said period of retirement, but that he had undergone (as have most elite athletes in Australia) a significant number of both out of competition and in-competition testing and has never returned a positive finding.
11. I am therefore persuaded in taking all of the above considerations into account that it is appropriate for the Court of Arbitration for Sport to reconsider a date that would make Mr Collins eligible to compete in international competitions and events under Rule 8.5.8 of the Policy.
12. The question of what date one would select is a matter of interest to me and I have heard submissions from the parties. In the normal course of events, I would allow that exemption to commence from today's date, the 5th of May, 2006. However, I note from the history put before me that Mr Collins was selected for international competition on 13 March 2006 and I would, so long as it's within my power as it appears to be, allow this exemption from 13 March 2006 which date would make absolutely clear and validate his selection.
13. The Court of Arbitration for Sport therefore rules that Mr Daniel Collins is eligible and granted early return to international competition from retirement, from 13 March 2006.

The Court of Arbitration for Sport rules that:

1. The award be made public in accordance with Rule 59 of the CAS Code.
2. Mr Daniel Collins is eligible for, and is granted, early return to international competition from retirement, dated from 13 March 2006; and
3. There be no order as to costs.