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CATHERINE ORDWAY

Drugs in Sport

This article is an extract from a paper presented by Catherine Ordway and Simon Rofe of Browne & Co, for the College of Law. The paper discusses the development of anti-doping policies in Australia and internationally.

The issue of drugs in sport has grown in importance during the past 30 years since the International Olympic Committee (IOC) drafted its first list of prohibited substances and methods in 1968. Drug testing was introduced that year at the Mexico Olympic Games.

The prohibition on the use of drugs in sport reflected the philosophy that drugs either gave athletes an unfair advantage, or were dangerous to health or both. In recent times, with the discussion on the prohibition of marijuana, a third philosophy has been promoted — namely, that athletes have a public responsibility as role models.

Historical Perspective

This development must be understood in its historical context. Even a cursory examination of the archives will support the view that since time began, athletes have searched for ways to improve their performance and overcome the opposition. Athletes are said to have ingested concoctions of wild mushrooms and plant seeds, and given their horses the same, in an attempt to improve upon their natural talents.

While the history prepared by the Australian Sports Drug Agency (ASDA) suggests that these attempts were "one of the significant reasons for the dissolution of the ancient Olympic games", it seems more likely that the stigma attached to the use of certain substances is a modern phenomenon.

Altering the athlete's diet to attain peak fitness remains an essential part of

training routine. Historically it appears that no moral distinction was made between a heavyweight wrestler choosing to eat fatty meat and a Roman gladiator using non-dietary substances to enhance bravery and aggression. Products like mescaline were used in sport, after it was discovered that American indigenous men took it in preparing for battle.

In the 19th century, Dutch canal swimmers dropped ether on sugar cubes and swallowed them to increase endurance. Strychnine with brandy and egg white was given to US runner, Thomas Hicks, when he collapsed during the marathon in the 1904 Olympic Games. He revived sufficiently to win the gold medal.

Change in Philosophy

At some point in history, however, society decided that a line had to be drawn between those substances that were 'fair' and those that gave the athlete an 'unfair' advantage.

In the 19th century the word 'doping' appeared with its current negative connotations. It is believed that this word was derived from 'dop', which originated from a South African drink made of an extract of walnuts, with xanthines (found in caffeine) and alcohol added. The drink was intended to improve endurance in ceremonial dances. There is no suggestion that the drink or the word 'dop' had any moral restrictions to its original use.

Today, athletes are encouraged to eat carbohydrates in the form of pasta and bread, and plenty of fruits and vegetables.

This is considered an acceptable form of performance enhancing, as is the use of vitamin supplements. Although it cannot be said that these supplements are 'food' in the common sense of the word, there is no suggestion that this constitutes doping.

Vitamin tablets have endured a degree of processing and chemical enhancement, and yet Graham Kelly in his book *Sport*

and the Law describes the early development of pharmacological recipes consisting of plant and animal extracts as "ominous". Arbitrarily, some substances are taken as 'foods' and have community acceptance, while others are labelled 'cheating' and attract a negative stigma.

The change in community attitudes, from no moral limitations on the ingestion of substances to one of extensive restriction, coincided with the rapid improvements in scientific knowledge in the 19th century and the consequent influx of laboratory manufactured substances. The change did not stem from a concern that athletes would not be able to afford the new pharmacological benefits, as the technology had in fact increased the quantity and quality of products available. The disapproval, reflected in Kelly's use of the word "ominous", stemmed from the number of deaths in sport attributed to the use of non-dietary substances.

The first known sporting death was a Dutch cyclist in 1886, who was found to have taken heroin and cocaine. A Welsh racing cyclist, Arthur Linton, died in 1896 after taking strychnine. Before amphetamines became widely available in the 1930s, strychnine was the drug of choice and was used with alcohol (and often with caffeine). During this period, and throughout this century, doping was used very effectively in the horse racing industry to both enhance and suppress the talents of particular horses. There were many questionable horse deaths, including that of our own Phar Lap.

The win-at-all-costs mentality began to be eroded by the increase in the number of deaths in sport, and the philosophy of protecting the health of the athlete took hold. There was also the growing view that the unrestricted use of performance enhancing substances had gone too far, and the athletes themselves could not be relied upon to look after their own health. Questions began to be asked at the 1952

Olympic Winter Games when syringes and empty drug vials were found in the speed skaters' locker rooms. Again, at the Melbourne Summer Games of 1956, evidence of drug taking was discovered in the cyclists' locker rooms.

International Movement

The International Cycling Union (UCI) was the first international sports federation (IF) to introduce drug testing in the 1950s. It was known that professional cyclists used drugs freely, mainly stimulants such as amphetamines.

Most cyclists of the 1950s considered drugs a necessity.

Most of the cyclists of that era considered them a necessity. In 1959 the Association Nationale d'Education Physique in France formed a Doping Commission. At the 1960 Rome Games, Danish cyclist Kent Enemark Jensin collapsed and died during the cycling road race. He was later found to have taken amphetamines (Ronital) and a nicotine-type of stimulant. In 1960 the Council of Europe, a group of 21 western European nations, tabled a resolution against the use of drugs in sport. France enacted national anti-doping legislation in 1963, which was followed by Belgium in 1965. Anti-doping policies were then developed in the 1960s by other IFs, including the International Amateur Athletics Federation (IAAF).

In the 1967 Tour de France, the great British cyclist Tommy Simpson collapsed and died while ascending Mont Ventoux. He was found to have been heavily dosed with stimulants. This death in particular received wide publicity and alerted the sporting authorities to the danger inherent in drug use in sports. That year, the IOC decided that it must take the initiative in a strong anti-drug stance, and established the IOC Medical Commission. By 1968 the IOC had drafted its list of prohibited classes of substances and methods, and drug testing was introduced for the first time at the Mexico Olympic Games held that same year.

The first athlete to be disqualified

Catherine Ordway

Former Adelaide lawyer, Catherine Ordway is a solicitor in the Sydney office of Browne & Co practising in commercial law, trade practices law and intellectual property, primarily focusing on the sports and entertainment industry.

The clients of Browne & Co whom Catherine advises include the Australian Olympic Committee and the Australian Football League.



Much of Catherine's work surrounds doping. This year, Catherine has been drafting the anti-doping policies for the 32 Olympic national federations and has prosecuted a number of athletes under the AOC's anti-doping policy in the Court of Arbitration for Sport and the National Sports Dispute Centre. On behalf of the AOC, Catherine also reviews the sponsorship and licensing agreements for 2000 and beyond.

from the Olympic Games for drug use was Sweden's Hans-Gunnar Liljenvall. Liljenvall was a modern pentathlete who had helped his team win a bronze medal at the 1968 Olympic Games. Prior to the shooting event, he drank a few beers to help steady his nerves. At testing, his blood alcohol level was over the allowable limit. Although drinking was commonplace among modern pentathletes in those days, the medal was withdrawn and the team suspended.

Anabolic steroids were not tested for until the 1972 Olympic Games, although the American physician, John Ziegler, had invented them in the late 1950s. Anabolic steroids were developed as replacements for natural steroids, such as testosterone, to help patients who were unable to maintain their body weight. It was found that anabolic steroids would allow the body to add protein, rather than it being taken away from the muscles. It was not long before athletes discovered their usefulness in building muscle mass, despite the serious side effects.

The first athlete to be disqualified for the use of anabolic steroids in the

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Olympic Games was Bukhaava Buida, who won the lightweight silver medal for Mongolia in the 1972 judo competition. He was found to have used Dianabol (methandienone) and his medal was withdrawn.

That same year, swimmer Rick de Mont was penalised for using an asthmatic preparation containing ephedrine, which he had been openly using since he was a child, unaware that it was prohibited. The use of ephedrine also led to the suspension of Nordic skier, Galina Kalakova, from the Soviet Union in 1976. Also suspended at the Montreal 1976 Olympics was the Bulgarian weightlifter, Blagoi Blagoev, for using anabolic steroids to assist his second place result in the 82kg division.

Despite these findings, the IOC methods of testing for prohibited drugs were considered insufficient to prevent athletes from using drugs. Athletes, coaches, and their doctors were able to learn enough about the drugs to know how long they had to be withdrawn from the athlete before a competition.

The athletes were then able to pass frequent drug tests despite being habitual users. While drug manufacturers will always be one step ahead of the testing agencies, these criticisms are being partially addressed by performing random out-of-competition tests on athletes all year round.

Anti-Doping in Australia

In Australia, the drugs in sport issue was comprehensively addressed in 1987 when representatives of the Australian Olympic Committee (AOC) and the Australian Sports Commission (ASC) met with the Federal Minister for Sport, John Brown, and his advisers. Agreement was reached for both the AOC and ASC to adopt anti-doping policies embodying the same principles and similar language. The AOC's policy was subject to its first major test the following year when Alex Watson tested positive at the Seoul Olympic Games for an excessive quantity of caffeine. Watson became the first member of an Australian Olympic Team to be disqualified from an Olympiad for a drug-

related offence, and he was subsequently suspended under the AOC policy.

In 1988, amid considerable publicity, the Senate Standing Committee on Environment, Recreation and the Arts conducted an inquiry into the use by Australian athletes of performance enhancing drugs and the role to be played by federal agencies. As a result, in 1990 the Federal Government enacted the *Australian Sports Drug Agency (ASDA) Act* to set up ASDA as Australia's premier and independent drug testing and education organisation by 1991. The actual analysis of samples is conducted by the Australian Government Analytical Laboratory (AGAL) at Pymble, which had already achieved IOC accreditation by 1990. In 1996, AGAL set up the Australian Sports Drug Testing Laboratory (ASDTL) specifically to conduct drugs in sport analysis.

The policies of the AOC and ASC have both been revised over the years, with the AOC adopting amended policies in 1992, 1995 and 1996. The amended policies were revisions of the initial

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policy. During 1997 however, the AOC embarked upon a major review involving a consideration of the policies of the IFs, the decisions of the Court of Arbitration for Sport (CAS) and in consultation with its Athletes Commission 23 and the ASC. As a result a new policy was adopted and became effective on 1 December 1997. The ASC adopted its new policy in March 1998.

From July 1997 the AOC and the ASC have had discussions to develop the direction of the ASC and the AOC anti-doping policies and model policies for the NFs (Olympic and non-Olympic). The two policies are substantially the same, although worded differently, with only a few key areas that agreement is yet to be reached on. To assist the national federations (NFs) that are members of the AOC in complying with their obligations under the AOC policy, a model policy was prepared and sent out to the NFs at the end of 1997 for them to use as a template in developing their own policy.

Each NF is subject to the rules of its IF, and therefore the NF policy must incorporate the key requirements of the IF anti-doping policy to comply with those obligations. Where the IF rules conflict with domestic rules set down by the AOC, ASC or even the NF, the IF rules will prevail. The NFs must strictly follow the IF's policy on sanction periods and definitions of prohibited substances and methods (and any therapeutic allowances). If the IF stipulates the hearing body for the NF to refer matters of dispute to, then this requirement will override the AOC and ASC preference for using the CAS.

During the Olympic Games, however, the IOC and its Olympic Charter is the governing body. Accordingly, competitors in the Olympic Games are bound by the IOC Medical Code and, therefore, the substances and methods prohibited by the IOC. That there may be differences between the substances and methods prohibited by the IOC as against the relevant IF is clearly shown by the recent Rebagliati matter at the 1998 Nagano Winter Olympic Games concerning the detected presence of marijuana in a sample provided by the Canadian snowboarder.

Seven New Council Faces following keenly contested Annual Elections

A keenly-contested 1998 Council election resulted in seven new members being elected to the Council of The Law Society. Sixteen members nominated for the eight 'ordinary' positions which become vacant by rotation each year. New faces on the Council for a two-year term will be:

- Sonia Bolzon (Lynch & Meyer);
- Michael Doyle (Jervis Thomas & Doyle);
- David Howard (Barrister, Kingston Chambers);
- Peter Norman (Andersons); and
- Alex Ward (Ward & Ward).

Several retiring members of Council were not successful. These were Elizabeth Connolly, Ian Nosworthy and Sean Ryan who stood for an 'Ordinary' member spot after several years as a 'Junior' member of Council. A casual vacancy will also arise because of Martin Keith successfully standing for the position of Treasurer. This will be filled by the new Council at its November meeting. Council will also vote to fill the two 'Ordinary' positions on the Executive left vacant by the decision of Sybella Blencowe and Geoffrey Britton to retire.

In the election for two 'Junior' members of Council, the successful candidates were Lucy Byers (Crown) and Tim White (Tindall Gask Bentley) who defeated Paul White (Dixon Gallasch) in the ballot. The three 'Country' nominations were all elected unopposed. They were Paul Boylan (Boylan & Co), Thomas Rymill (Thomas Rymill & Co) and Hugh Steele (Heuzenroeder & Heuzenroeder).

All key Executive positions were filled without an election being required:

- Lindy Powell QC (Bar Chambers) moves from President-Elect to become the first woman President of The Society since it was established in 1879;
- Stephen Connell (Thomson Playford) becomes President-Elect;
- Dymphna (Deej) Eszenyi (Camatta Lempens) becomes Vice President; and
- Martin Keith (Kingston Chambers) takes over as Treasurer.

Results of the election were:

In the Ordinary Member category, the candidates received the following votes:

*BOLZON, Sonia	364
*CALDICOTT, Craig	433
*CARDONE, Rosie	524
CONNOLLY, Elizabeth	273
*DOYLE, Michael	423
GREENWELL, David	205
*HOWARD, David	425
LIVESEY, Mark	330
McLACHLAN, Andrew	213
*NORMAN, Peter	352
NOSWORTHY, Ian	296
PALK, Leni	273
PARSONS, Jo	324
RYAN, Sean	281
*STRICKLAND, Steve	389
*WARD, Alex	348

In the Junior Member category, the candidates received the following votes:

*BYERS, Lucy	54
TOTHILL, Paul	35
*WHITE, Tim	54