



Sports Law Post COVID

Commonwealth Law Conference 2023

Goa, India

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The Pre-Pandemic World



An International Federation Perspective

- Rugby World Cup 2019
- Importance of RWC to World Rugby's operations
- RWC in Japan concluded 2 November, 2019
- 3 canceled matches due to Super Typhoon Hagibis: New Zealand v. Italy, Namibia v. Canada, and England v. France
- Threatened lawsuit for potential cancellation of an additional match: Japan v. Scotland
- Tournament rules in place to deal with cancelled matches
- No ill effect to World Rugby revenue or operations



Rugby World Cup 2019



Canadian Men's Rugby Team helping to clear damage to stadium in Kamaishi, Japan after match cancellation



The Pandemic Hits – March 2020



- Effect on contracts with sponsors, broadcasters, players, and local organizations
- Does Force Majeure clause include a pandemic?
- Who (or WHO) declares a pandemic

Force Majeure Clauses



Wording of Force Majeure Clauses

- “Pandemic,” “Flu Pandemic,” “Natural Disasters,” “Government Act”
- Look at:
 1. language of force majeure clause,
 2. catch-all phrases (“without limitation”), and
 3. contract as a whole
- “Material adverse change” clause rather than, or in addition to, force majeure clause

Disruption of Sports During the Pandemic



- Qualifying Tournaments for Rugby World Cup, Olympics, et al.
- RWC 2023 Qualifying disrupted
- FIFA World Cup qualifying: Vanuatu and Cook Islands could not field team in qualifying tournament in Qatar.
 - Argentina-Brazil qualifying match halted shortly after kick-off
- Olympic Qualifying – Qualified athletes / teams held over in most cases
- Flexibility needed for NOC's, NGB's, IFs, Competition Organizers
- Grievance procedures to deal with issues expeditiously
- University scholarships and extra year of eligibility

The New Reality during COVID



Pod seating



Enforcing Mask Mandates?



The dangers of not following your own policy

Athlete Health Issues



- Vaccination / Proof of Negative Test
- Who has authority to mandate?
- Kyrie Irving (NBA's Brooklyn Nets) example



Novax?



- Novak Djokovic example -- Australia cancels visa after Tournament organizers had given an exemption from vaccination



- Australia cited fear of becoming “icon” for anti-vaxxers
- Anti-vax is here to stay
- Team vs. individual sports

Player Contracts



- Player's contract expires in June but competition postponed until September
- In large part, there was admirable cooperation between sports stakeholders and athletes
- Premiership Rugby Clubs reduced salary cap to £5 million from £7 million
- NFL rules on COVID outbreak. No mandatory vaccination but teams could face potential forfeit if a game had to be cancelled due to a COVID outbreak in that team's locker room

European Professional Club Rugby vs. RDA Telecom

- Q' finals, semifinals & final of EPRC suspended
- RDA sought to terminate broadcast contract
- Force majeure clause given effect:
 - ... “any circumstances beyond the control of a party affecting the performance by that party of its obligation under this Agreement, including inclement weather, serious fire, storm, flood, lightning, earthquake, explosion, acts of public enemy, terrorism, war, military operation, insurrection, sabotage, civil disorder, epidemic, embargoes and labour disputes of a person other than a party.”

What Now?



Force Majeure Clauses Post COVID:

- “Beyond the reasonable control of a party, there is a delay or inability to perform”
- Will be written and construed more rigidly
- Pandemic may no longer be unforeseeable, so more important for precise language
- Consider a “material adverse change” clause

Sport Goes on



Thank you!

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