



Arbitration CAS 2002/O/373 Canadian Olympic Committee (COC) & Beckie Scott / International Olympic Committee (IOC), award of 18 December 2003*

Panel: Mr Quentin Byrne-Sutton, President (Switzerland); Mr Michael Beloff QC (Great Britain); Mr Richard Young (USA)

Olympic Winter Games

Cross-country skiing

Standing to challenge a decision even if the claimant was not a party in the first instance

Exclusion of the Olympic Games

Interpretation of the Olympic Charter

1. **In Swiss civil procedural law, the basic principle is that a claimant has standing to sue and the claim is admissible providing the person is invoking a substantive right of its own, i.e. a right deriving from contract, tort or another source. Gaining an Olympic medal is one of the ultimate goals in a star athlete's career, which can bring with it many fruits, thereby giving her/him a very particular interest in challenging a decision if the modification of the decision could allow her/him to obtain a gold medal or a medal she/he did not get.**
2. **The interpretation of Rule 25 §2.2.1 of the Olympic Charter ("*In case of exclusion from the Games...any medals or diplomas obtained shall be returned to the IOC*") is that the exclusion of an athlete under this provision must always be combined with the disqualification of the sanctioned athlete from all the competitions in which she/he participated during the games and by the forfeiture of all related medals.**

In 2002, the two following proceedings were pending in front of the Court of Arbitration for Sport ("CAS"): CAS 2002/A/372 *Norwegian Olympic Committee v. IOC* and CAS 2002/A/373 *Canadian Olympic Committee v. IOC*. They originated in disputes over the award of medals in certain cross-country skiing competitions in the 2002 Salt Lake City Olympic Winter Olympic games.

The above proceedings were suspended with the parties' agreement, pending the outcome of the three following cases, arising out of the self-same disputes, which were running in parallel: CAS 2002/A/370 *L. v. IOC*; CAS 2002/A/371 *D. v. IOC*; CAS 2002/A/374 *M. v. IOC*. After final awards had been rendered dismissing the appeals in those three cases, the parties to CAS 2002/A/372 and CAS 2002/A/373 agreed to consolidate the two proceedings with a single Panel of three arbitrators to be appointed.

* NB: In relation to this case, see also the award CAS 2002/A/370 *L. / IOC*.

On 28 May 2003, CAS informed the parties that both cases within the consolidated proceedings had been assigned to the Ordinary Arbitration Division of CAS.

On 30 June 2003, Claimants filed their Main Submission, containing the following request for relief:

- “(a) an order annulling all results obtained by D. in competitions at the XIX Winter Games, including those in the Women’s 5 km Free Pursuit Cross-Country Skiing competition.*
- (b) An order amending the results for those competitions at the XIX Winter Games and re-distribute the medals and diplomas accordingly, including the award of the Gold Medal to Beckie Scott, the Claimant.*
- (c) an Order that the Respondent, the IOC bear the costs of this Arbitral proceeding before the CAS and the legal costs of the Claimants”.*

On 8 August 2003, the IOC filed its Answer, containing the following request for relief:

- “(a) A declaration that Claimants’ case is inadmissible; and/or*
- (b) A declaration that Claimants’ case is dismissed on the merits; and*
- (c) An order that Claimants pay all the costs and expenses arising out of this arbitration”.*

The hearing took place in front of the Panel on 9 September 2003 in Lausanne, Switzerland.

Before the Panel closed the hearing, the parties confirmed they had no objections regarding the composition of the Panel or its jurisdiction and indicated they did not deem this proceeding or the award to be confidential.

D. and L. are members of the Russian cross-country skiing team.

Prior to the 2002 Salt Lake City Olympic Winter Games, in two post-competition doping controls on 8 and 20 December 2001, L. tested positive for the banned substance *Darbepoetin*. L. nevertheless took part in the 2002 Salt Lake City Olympic Winter Games because the Fédération Internationale de Ski (the “FIS”) only imposed its sanction – a two-year suspension effective 8 December 2001 – in June 2002 after the Games.

On 15 February 2002, D., L. and Beckie Scott competed in the women’s 5 km pursuit cross-country skiing competition at the 2002 Salt Lake City Olympic Winter Games. They placed first, second and third respectively, with Beckie Scott receiving the bronze medal.

On 21 February 2002, before the start of the 4x5 km women’s relay cross-country skiing competition, D. and L. were asked to provide a blood sample and, subsequently, to provide a urine sample. Both withdrew from that competition.

On 23 February 2002, the results of the testing of the blood and urine samples taken on February 21, 2002 revealed the presence of *Darbepoetin* in the urine of both D. and L.

The acting Chair of the IOC Medical Commission, having been informed of the adverse finding on the “A” samples collected on 21 February 2002 set up an Inquiry Commission, pursuant to the By-Laws of the Olympic Movement Anti-Doping Code (“OMAC”).

The Inquiry Commission conducted its inquiry on February 23rd and 24th, 2002. It found that the presence of *Darbepoetin* in the urine of both D. and L. was confirmed by the laboratory’s report and that the substance *Darbepoetin* is an analogue/mimetic related substance to EPO, which is a prohibited substance according to the OMAC. The Inquiry Commission further found that *Darbepoetin* is capable of enhancing performance and is potentially harmful to an athlete’s health. Accordingly, the Inquiry Commission found that a doping offence had occurred.

The President of the IOC then established a Disciplinary Commission composed of five members of the Executive Board. The Disciplinary Commission held a hearing on 24 February 2002 addressing the finding of a doping offence against D. and L.

Before the Disciplinary Commission concluded its consideration of their cases on 24 February 2002, both D. and L. competed in the women’s 30 km classical event. In that competition, L. won the gold medal and D. placed 8th and received a diploma.

On 24 February 2002, in light of the report of the Inquiry Commission and the conclusions of the Disciplinary Commission, the IOC Executive Board made the following decision with respect to D.:

*“INTERNATIONAL OLYMPIC COMMITTEE
EXECUTIVE BOARD*

*DECISION
(Rule 25.2.2.1 of the Olympic Charter)*

[...]

CONSIDERING the above, pursuant to Rule 25, paragraph 2.2.1 of the Olympic Charter and the terms of the Olympic Movement Anti-Doping Code,

*THE EXECUTIVE BOARD OF THE
INTERNATIONAL OLYMPIC COMMITTEE DECIDES*

- 1. The athlete [D.] (Russian Federation), women’s cross-country skiing, is:
(i) disqualified from the women’s 30 km classical cross country skiing event
(ii) excluded from the XIX Olympic Winter Games Salt Lake City 2002, according to Chapter II, Articles 2.1 and 2.2 of the Olympic Movement Anti-Doping Code,*
- 2. The International Ski Federation is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.*
- 3. The National Olympic Committee of the Russian Federation is hereby ordered to return to the IOC, not later than 17:00 hours today, the diploma awarded to the athlete in relation to the above-mentioned event.*

4. *The decision shall enter into force immediately.*

*Salt Lake City, 24th February 2002
For the IOC Executive Board
François Carrard
Director General*

In June 2002, due to L.'s positive testing prior to the Olympic Games, the FIS suspended her from competition from 8 December 2001 to 7 December 2003. Accordingly, on 29 June 2003, the IOC's Executive Board announced its decision to annul all the results of L. obtained at the 2002 Salt Lake City Olympic Winter Games.

The affect of the above decisions upon Beckie Scott is that she would receive the silver medal in the women's 5 km free pursuit cross-country skiing competition at the 2002 Salt Lake City Olympic Winter Games.

However, Beckie Scott considers she is entitled to receive the gold medal in such event because D. should have had all her medals withdrawn, including the silver medal obtained in the women's 5 km pursuit cross-country skiing competition.

Consequently, Claimants decided to challenge the IOC's decision of 24 February 2002 and filed their claim with CAS as summarized above in section I of this award.

Claimants submit that for the following reasons both Beckie Scott and the COC have a sufficient interest in the determination of the consequences of D.'s exclusion from the 2002 Salt Lake City Olympic Games:

- The jurisdiction of the CAS to hear and decide the issues in this proceeding is clear from Rule 74 of the OC.
- Both Claimants, as members of the Olympic Movement, are interested parties in this proceeding by virtue of the provisions of the OC.
- All those who are members of the Olympic Movement, including the COC and Beckie Scott, have a mutual responsibility, both contractual and ethical, to uphold the OC which is a cornerstone of the Olympic Movement. Indeed, athletes sign a solemn declaration and give their Oath to do so before they may participate at Olympic Games. Accordingly, each has a corresponding right and interest in seeking to correct any breach of the Charter.
- The COC, as with all National Olympic Committees, has the exclusive powers for the representation of its country at the Olympic Games and the selection of athletes who will participate. In selecting athletes for the Olympic Games, National Olympic Committees are in effect guarantors that the athletes they send meet the athletic and ethical standards required by the Olympic Movement and the Charter. The COC has a direct and substantial interest in protecting the Olympic Movement when its athletes suffer unfairness in competition as a result of misconduct by others.
- Beckie Scott placed third in the women's 5 km free pursuit cross-country skiing competition and received the bronze medal. Had the mandatory provisions of Rule 25 of the OC been

applied by the IOC's Executive Board, and the medal of D. in that competition been returned, Beckie Scott would have had the best result in that competition and would be entitled, as a matter of fairness, to the gold medal. Beckie Scott, therefore, clearly has an interest, in addition to her interest as a member of the Olympic Movement, in the relief she seeks in this proceeding.

Claimants submit that when making its decision of 24 February 2002, the IOC applied the OC incorrectly, thereby breaching its own rules and causing medals to be wrongly attributed.

In substance, Claimants arguments and allegations include the following:

- The Olympic Movement and provisions of the OC emphasize that ethical and fair play are at the heart of the Olympism.
- The OC is the codification of the Fundamental Principles of Olympism.
- Nothing is a greater violation and perversion of those ethical principles of the Olympic Movement than doping by athletes in order to gain an unfair advantage in competition. It is the antithesis of ethical and fair play.
- Doping is the most serious ethical issue facing Olympic sport today. That the Olympic Movement treats it so is reflected in Rule 48 of the OC, which provides for a complete prohibition of doping in the form of the OMAC.
- Article 5.1 of the Bye-Law to Rule 49 of the Charter sets out the solemn declaration each athlete must sign as part of the entry form in order to be eligible to compete in any Olympic Games.
- At the Olympic Games, and during the Opening Ceremonies, athletes must take an Oath that their participation in the Games will be without doping.
- Accordingly, athletes may not belong to the Olympic Movement or participate in any Olympic Games unless they have unconditionally complied with the ethical requirement against doping and swear not to do so at the Games themselves. D. took the Oath at the 2002 Salt Lake City Olympic Winter Games and then she intentionally broke it to give herself an unfair competitive advantage.
- Rule 25.2.2.1 of the OC provides as sanctions:
“In the context of the Olympic Games: [...] with regard to competitors and teams: temporary or permanent ineligibility or exclusion from the Olympic Games; in the case of exclusion, any medals or diplomas obtained shall be returned to the IOC (Executive Board)”.
- On the plain wording of Rule 25.2.2.1, the IOC's Executive Board was obliged to order the return by D. of all medals and diplomas obtained by her at the 2002 Salt Lake City Olympic Winter Games and of the results of her competitions. By ordering the ultimate sanction of “exclusion” from such Games, the Executive Board was bound by the wording of Rule 25 to do so.
- Where the sanction imposed is “exclusion”, the Rule 25 of the OC provides that “...**any** medals or diplomas obtained **shall** be returned to the IOC”.

- In the French version of the Article, the phrase is “...**toutes** médailles...” and diplomas, in other words, any and all medals and diplomas are to be returned.
- Such wording does not confine the requirement to return medals to only those obtained in the competition for which the positive test was taken or to those obtained in a subsequent competition. As the plural is used it cannot be directed to one competition. Rule 25.2.2.1 must therefore refer to a medal(s) won before and, or, after the competition for which there was a positive doping test. If Rule 25.2.2.1 is to apply to a medal won after the fact, the forfeit of that medal occurs not because of a positive test associated with the later competition but because the athlete has violated the ethics of the Olympic Movement and the Oath and is not worthy to be an Olympic champion. If that is a basis for forfeit of a medal subsequently won, it must also be a basis for forfeit of a medal won previously.
- Clearly the drafters of Rule 25.2.2.1 of the OC intended that, whatever the reason for imposing the ultimate sanction of “exclusion”, if an athlete had engaged in such conduct that an order of “exclusion” from the Games was warranted then coupled with that order there had to be an order that all medals won by that athlete at the Games would have to be returned;
- If Rule 25.2.2.1 was interpreted otherwise, the deterrence factor associated with the anti-doping prohibition and, indeed, the credibility of the commitment of the Olympic Movement to anti-doping is undetermined. An athlete like D., who engaged in multiple competitions at the Olympic Games in question, can play the odds associated with the timeliness and the nature of doping control testing and still go home with medals declaring she is an Olympic champion. This could not have been the intent of Rule 25.2.2.1.
- In committing the act of doping, D. has demonstrated that the Declaration she signed and the Oath she gave to compete within the ethical framework of the Olympic Movement was false. If she had been truthful, of course, she would not have been permitted to participate at all in the 2002 Salt Lake City Olympic Winter Games and therefore would have no medals from any competition. To permit D. to keep any medals or ranking from those Olympic Games, once her false Oath is discovered, allows her to benefit from her deception to the detriment of others and does not hold her fully accountable for the act of doping and its assault on the Fundamental Principles and ethical framework of the Olympic Movement, as Rule 25 plainly intended she should be.
- In Copenhagen, on March 5, 2003, the major sport federations, the National Olympic Committees and nearly eighty (80) world governments approved the World Anti-Doping Code (the “Code”), Version 3.0, by backing a resolution that accepted the Code as the basis for fighting doping in sport. The resolution also set out the responsibilities of the Olympic Movement and the world governments to adopt and implement the Code, which is now underway. Article 10 of the Code reflects a consensus in the Olympic Movement, and the sports world generally, consistent with Rule 25 of the OC that where the doping offence is an egregious one requiring the ultimate sanction, forfeit of all medals at the Olympic Games is appropriate.
- For the above reasons, Rule 25 of the OC provides that where the ultimate sanction of “exclusion” is imposed, all medals must be forfeited.
- It is apparent from the decisions of the IOC’s Executive Board that this requirement of

Article 25 was not addressed or considered by it in imposing the appropriate sanctions upon D.

- Accordingly, the IOC's Executive Board failed to comply with the mandatory provisions of Rule 25 of the OC in the sanctions it imposed upon D. Although, under Rule 1 of the OC, the IOC is the supreme authority of the Olympic Movement, it is not free to depart from the provisions of the OC in exercising that authority.

In substance, the IOC submits that for the following reasons the Claimants lack standing to make their claims:

- Rule 25§ 4 of the OC does not give the competitors of the sanctioned athletes or their NOCs standing at the hearing before the IOC Executive Board. It must follow that they also have no standing to appeal before CAS the ultimate decision of the IOC Executive Board.
- In keeping with the foregoing rule, Claimants were neither heard by the IOC Executive Board when it deliberated on D.'s doping infraction, nor did Claimants receive notification in writing of the IOC's decision because they were not a "concerned" party.
- Consequently, to prevail on standing, Claimants must establish a procedural right before CAS which they did not have before the IOC Executive Board. Such a position would be illogical.
- Claimants have ignored Rule 25 (4) of the OC when asserting standing on the basis of an alleged interest in the IOC decision relating to D.
- As they were not a party to the IOC's 24 February 2002 decision, Claimants cannot appeal it. Moreover, Claimants are not making a contractual or tortious claim. Consequently, it is incumbent on them to demonstrate a relevant nexus to the IOC's decision.
- Under the test provided by Article 48 of the Swiss Administrative Federal Law on Procedure, Claimants have not met any of the three following cumulative conditions, ie, that
 - The applicant is in a special (particularly close) relationship with the contested decision.
 - The applicant is aggrieved by the contested decision.
 - The applicant has an interest worthy of protection.
- With regard to Beckie Scott:
 - The Claimants have not identified a particularly close relationship with the IOC's decision on D.
 - The fact that such athletes would have the prospect of securing a medal or superior medal if D. is stripped of her medal does not make Beckie Scott's relationship more special than that of the other competitors in the same races. Thus, either the Panel accepts that all of the athletes in the events in which D. competed have the requisite relationship to the IOC decision, or that none do.
 - Likewise, with respect to possible economic benefits like premiums and rewards linked to the results achieved in the Olympic competitions, distinguishing the interest of athletes based on whether or not they are proximate to medal placing would be unsound. A sponsor, for example, may very well accord its financial backing on the basis of a placement in the top ten.

- Moreover, the Olympic ideals would not admit of a class division between medallists and non-medallists in defining the requisite interest for standing before CAS.
 - Consequently, Beckie Scott does not have an interest more worthy of protection than the other participants in the races in question.
 - In dealing with a doping offence committed by a specific athlete, the IOC cannot be expected to have in its contemplation every other athlete in a competitive relationship to the doped athlete. In the time the IOC has available to render a decision on whether or not to discipline an athlete for a doping offence, the interest of that athlete must be paramount, without the IOC being further burdened by a necessity to reflect upon other possible interests involved. The temptation for IOC officials to opt for the less confrontational choice of not sanctioning would be a ramification of Claimants' position that would have a chilling effect on the fight against doping in sport.
 - If the Panel were to declare Beckie Scott's case to be admissible, the floodgates for endless litigation over results in sporting events would thereby be opened. Indeed, if athletes were entitled to challenge a decision of the IOC to which they were not a party on the basis of a competitive relationship to the sanctioned athlete, this would entangle the IOC in an endless web of challenges and appeals that would render its position intolerable.
 - The fact that competitors of sanctioned athletes cannot be given such role is confirmed in the provisions of the World Anti-Doping Code which will be coming into force on 1 January 2004, since its Article 13.2.3, which defines the persons entitled to appeal, does not include athletes or their federations who might benefit from having another competitor disqualified.
 - Any informal public statements made by representatives of the IOC in relation to its sanctioning policy at the 2002 Salt Lake City Olympic Games is irrelevant in these proceedings because they are not the IOC's submissions before this Panel.
 - The award in CAS 2002/A/371 *D. v. IOC* is not *res judicata* in relation to the different sanction which is being requested in this proceeding and D. has never been heard in relation to such requested sanction, despite such right being a matter of public policy. Consequently, if the Panel granted the relief requested by Claimants, there is nothing that would prevent D. from invoking the right to be heard again and from appealing the new IOC decision on additional sanctions, thereby in effect re-opening the previous CAS decision on liability in CAS 2002/A/371 *D. v. IOC*.
- With regard to the COC:
- It cannot have an independent interest in safeguarding that of its athletes, since the athletes are not procedurally prevented from instituting CAS proceedings on their own accord.
 - It has no immediate interest of its own in the correct distribution of medals.
 - If the Panel does not accept the basis for Beckie Scott's standing in this proceeding, it follows that the COC cannot have an interest in safeguarding the athletes' interest.

In substance, the IOC submits that Claimants' argument that the IOC incorrectly applied its own rules is without merit for the following reasons:

- The reference to Rule 25 of the OC in the IOC's decision of 24 February 2002 was in the preamble of the decision, whereas its operative parts referred only to the relevant provisions of the OMAC.
- The OMAC is a *lex specialis* that governs the issue of doping at the heart of this proceeding.
- Whereas Rule 25 of the OC regulates sanctions for breaches of ethical principles in general, Article 3 of Chapter II of the OMAC (entitled "*The Offence of Doping and its Punishment*") contains precise sanctions for doping offences.
- It is clear from the position of Rule 25 within the OC and from its title and content that it regulates sanctions for breaches of ethical principles in general, rather than providing sanctions for doping offences.
- Indeed, Rule 25 neither makes reference to disqualification from an event as a possible doping sanction nor actually mentions the word "doping". This is because the task of regulating sanctions for doping offences falls to the OMAC.
- Consequently, where a doping offence is involved, Rule 25 of the OC can only be applied and interpreted in light of the OMAC.
- There is nothing in the wording of Rule 25 of the OC or any other element of interpretation indicating that the sanction of "exclusion" referred to in Rule 25 has the "mandatory" consequence of making any decision of exclusion operate *ex tunc*, i.e. from the beginning of the Olympic Games.
- On the contrary, the applicable provisions of the OMAC only lead to the invalidation of the result obtained and to the forfeiture of the corresponding medal [Article 3 § 3, Chapter II, of the OMAC provides: "*Any case of doping during a competition automatically leads to invalidation of the result obtained (with all its consequences, including forfeit of any medals and prizes), irrespective of any other sanctions that may be applied*"]; such approach being in keeping with the principle of strict liability in doping offences as articulated for example in CAS 2001/A/317 *A. v. FILA*. Indeed, because of the nature and foundation of strict liability, it can only have the consequence of causing disqualification and forfeiture of a medal in the event for which an athlete was tested positive for doping.
- This principle applies both to in-competition and out-of-competition tests, as confirmed by Article 3§ 5 of Chapter II of the OMAC, which reads as follows:
"The penalty for an offence committed by a competitor and detected on the occasion of an out-of-competition test shall be the same, mutatis mutandis, and shall take effect from the date the positive result was recorded or the date on which the final judgement further to an appeal is pronounced, whichever is the more recent".
- In other words, whatever sanction is applied, it cannot be retroactive. Thus, any interpretation of Rule 25 of the OC that would result in a possible retroactive sanction would be at odds with the prevailing principle that sanctions take effect no earlier than when the positive doping test was recorded.
- The non-retroactivity of a punishment is also required by public policy.

- A grammatical interpretation of Rule 25 § 2.2.1 of the OC confirms that the medals to be returned were only those related to the event in which disqualification took place. The plural was used in Rule 25 because the qualifying introductory clause is also in the plural (“... *with regard to individual competitors and teams...*”) so concordance in syntax is accordingly required: two or more medal winners (plural) will obviously have to return their medals (plural). The grammatical logic of Rule 25 of the OC is confirmed by the concordance in syntax in Rule 50 of the OC, this time in the singular. Moreover, public policy requires that any ambiguities in a provision be construed in favour of the accused in disciplinary proceedings.
- When making its decision on 24 February 2000 the IOC intended to impose the maximum sanction allowable under the applicable rules. Given the principle of strict liability embodied in the rules, the IOC deemed the exclusion of D. from the Olympic Games without stripping him of the medals obtained in events prior to the positive testing to constitute the strictest possible sanction.

LAW

1. The parties are not in dispute as to the jurisdiction of CAS to resolve this dispute. Jurisdiction stems from Rule 74 of the OC, which states:
“Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration”.
2. The OC also provides in Article 19.4:
“The decisions of the IOC, taken on the basis of the provision of the Olympic Charter, are final. Any dispute relating to their application or interpretation may be resolved solely by the IOC Executive Board and, in certain cases, by arbitration before the Court of Arbitration for Sport (CAS)”.
3. Accordingly and contrary to the suggestion of the IOC, by deciding upon the correct interpretation of the provisions of the OC, CAS is exercising an adjudicative function, and not purporting to act as an executive or legislative body.
4. Identical legal questions are often characterized differently from one legal order to another. For example, one legal order might deem a certain issue to be a matter of substantive law, while elsewhere it would be deemed a question of procedure.
5. The present case raises questions that, in comparative law, would most likely be characterised in part as procedural – the question of admissibility (under Swiss law, a further distinction exists between “*recevabilité*” – which is considered a matter of procedure and broadly speaking can be deemed to encompass the notions of admissibility and standing to sue [“*qualité pour agir*”] encountered in common law jurisdictions – and “*légitimation active*” – constituted by the

underlying substantive right upon which standing is based) – and in part as substantive – the interpretation of the provisions of the OC and of the OMAC.

6. Moreover, as the panel discuss briefly below, given the relationship between the parties involved and nature of the claims, a question arises whether the admissibility of the claims should be resolved on the basis of rules of civil procedure or on the basis of rules of administrative procedure.
7. Thus, the Panel needs to determine what rules apply to both procedural and substantive questions.
8. Pursuant to Rule 74 of the OC quoted above, the parties have chosen that their dispute be adjudicated, “... *in accordance with the Code of Sports-Related Arbitration*” (the “CAS Code”).
9. Pursuant to R45 of the Code of Sports-related Arbitration: “*The Panel shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law. The parties may authorise the Panel to decide ex aequo et bono*”.
10. R45 of the CAS Code constitutes a form of choice-of-law rule. It confirms the parties’ freedom of choice resulting from the provisions of chapter 12 of the Swiss Private International Law Act (“PILact”), which encompasses the underlying provisions of law applicable to all international arbitration with their seat in Switzerland. This arbitration constitutes an international arbitration with its seat in Switzerland as defined by Article 176 of the PILact.
11. Article 187 of the PILact gives the parties a large degree of autonomy in selecting the applicable substantive law (according to Article 187 of the PILact (free translation): “*The Arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection*”) - including the possibility of choosing a national law or private regulations (see e.g. A. BUCHER/P.-Y. TSCHANZ, *International Arbitration in Switzerland*, Basle and Frankfurt on the Main 1988, pp. 95-128; P. LALIVE/J.-F. POUDRET/C. REYMOND, *Le droit de l'arbitrage interne et international en Suisse*, Lausanne 1989, pp. 387-403). Moreover, the parties’ choice can be tacit, e.g. result from their conduct during the proceedings (see A. BUCHER/P.-Y. TSCHANZ, *op.cit.*, p. 99, N° 200; P. LALIVE/J.-F. POUDRET/C. REYMOND, *op.cit.*, pp. 390, N°4).
12. It is not necessary to determine whether that R45 of the CAS Code also applies to matters of procedural law. The question can be left open since Article 182 § 1-2 of the PILact allows the parties to select the procedural rules of their choice, and, failing such choice, allows the arbitral tribunal to determine the applicable procedural rules. It reads as follows (free translation):

“The parties may, directly or by reference to arbitration rules, determine the arbitral procedure; they may also submit it to a procedural law of their choice.

Where the parties have not determined the procedure, the arbitral tribunal shall determine it to the extent necessary, either directly or by reference to a law or to arbitration rules”.

13. In the present case the parties have chosen the CAS Code. However, just as the CAS Code does not directly regulate the substantive issues it does not exhaustively regulate procedural questions.
14. As a result, the parties have based their arguments throughout the proceedings, i.e. in their pre-hearing written submissions and in their oral submissions, on the provisions of the OC and the OMAC as well as on CAS jurisprudence relating to doping cases. The Panel considers that by doing this the parties have made a corresponding choice of rules. Consequently, the Panel will decide the dispute on such basis. CAS jurisprudence has notably refined and developed a number of principles of sports law, such as the concepts of strict liability (in doping cases) and fairness, which might be deemed part of an emerging "*lex sportiva*". Since CAS jurisprudence is largely based on a variety of sports regulations, the parties' reliance on CAS precedents in their pleadings amounts to the choice of that specific body of case law encompassing certain general principles derived from and applicable to sports regulations.
15. With respect to any issues that cannot be resolved solely on the basis of the rules invoked by the parties, the Panel will apply Swiss law in conformity with R45 of the CAS Code, whereby "... *in the absence of such a choice...*" the dispute shall be decided "... *according to Swiss law*". In this case, the application of Swiss law is also appropriate because it is closely connected with case, due to the IOC, whose rules are being invoked on the merits, having its seat in Switzerland.
16. Under Swiss law, the conditions of admissibility of a claim are different depending on whether rules of civil procedure or rules of administrative procedure are applied.
17. Which rules should be applied depends on the characterization of the claim as a matter of civil law or as a matter of administrative law.
18. In the present case, with respect to its conditions of admissibility, the claim might appear somewhat hybrid in nature, since, although it relies primarily on contract for its merits, the decision of the IOC being challenged was issued by an organization of such importance and authority over the regulation of the Olympic Games that it has a position similar to that of a public authority issuing a decision.
19. Nevertheless, since the claim is primarily contractual in nature the Panel considers first whether it is admissible by reference to rules of civil procedure.
20. In Swiss civil procedural law, the basic principle is that a claimant has standing to sue and the claim is admissible providing the person is invoking a substantive right of its own, i.e. a right deriving from contract, tort or another source (see e.g. W. HABSCHEID, *Droit privé judiciaire Suisse*, Genève 1981, pp. 187-191; F. HOHL, *Procédure civile*, Tome I, Berne 2001, p. 97, N° 433).

21. For the reasons examined in relation to the merits of the claim, there is no doubt that Beckie Scott is invoking a contractual right of her own in challenging the IOC's decision of 24 February 2000. Consequently, her claim is admissible.
22. Alternatively under Swiss rules of administrative procedure, the claim would also be admissible; the basic principle being that an appellant has standing to sue if she/he has an interest worthy of protection (see e.g. P. MOOR, *Droit administratif*, Volume II, Berne 2002, pp. 626, N° 5.6.2). This is deemed to be the case if the appellant is factually and directly affected by the litigious decision in a fashion that can be eliminated by its annulment and if the appellant did not have the opportunity to be heard in the first instance.
23. In light of the ideals underpinning the Olympic Movement (according to Rule 3 §1 of the OC, the Olympic Movement encompasses the athletes by providing that “*In addition to the IOC, the Olympic Movement includes the International Federations (IFs), the National Olympic Committees (NOCs), the Organizing Committees of the Olympic Games (OCOGs), the national associations, clubs, and the persons belonging to them, particularly the athletes whose interests constitute a fundamental element of its actions*”); see e.g. in this respect, P. ZEN-RUFFINEN, *Droit du Sport*, Zurich 2002, p. 148, N° 428) and formulated as *Fundamental Principles* in the OC, and given the hopes, goals and dedication of athletes participating in the Olympic Games, it is difficult to imagine an interest more worthy of protection than the interest of an athlete in securing an Olympic medal which she/he considers to have won fairly. More specifically, gaining an Olympic medal is one of the ultimate goals in a star athlete's career, which can bring with it many fruits, thereby giving her/him a very particular interest in challenging a decision if, as in the present case, the modification of the decision could allow her/him to obtain a gold medal or a medal she/he did not get. Moreover, since Rule 25§4 of the OC did not afford Beckie Scott the opportunity of being heard by the IOC Executive Board when it made its decision of 24 February 2002, her only means of challenging the decision was by means of an arbitration claim.
24. The IOC's allegation that the claim should not be admissible because doing so would open the floodgates to endless litigation and make its regulatory role impossible to fulfil, is a policy consideration on which the Panel cannot adjudicate and which has no legal significance with respect to the conditions of admissibility of the claim. Against the IOC's argument may be juxtaposed the consideration that unless persons in Beckie Scott's position are accorded standing a wrong may be incapable of rectification, and a breach of Rule 25 of the OC committed with impunity.
25. That said, the fact that this Panel deems admissible the specific claims of a particular athlete in the circumstances of this case does not imply that competitors of sanctioned athletes will necessarily have standing to sue in other cases and circumstances or that they will have sufficient interest in filing suit or benefit from an appropriate forum for doing so. Standing to sue depends on having an underlying cause of action which needs to be established in each case and athletes who lack any chance of obtaining a medal or top ranking even if the sanctioned athlete loses a medal may not have sufficient interest in pursuing a claim (see the discussion in: G. KAUFMANN-KOHLER, *Arbitration at the Olympics*, Kluwer Law International 2001, p. 36). It is noteworthy in this relation that under Article 13.2.3 of the World Anti-

Doping Code, version 3.0 of 20 February 2003, the circle of persons with standing to challenge a decision has been limited.

26. The Panel considers that in this case the COC interest in challenging the IOC's decision of 24 February 2000 overlaps with the interest of Beckie Scott and that the COC is not invoking a substantive right of its own under the OC.
27. Consequently, and not least because the Panel is admitting Beckie Scott's claim, the COC's claim is not admissible.
28. Beckie Scott is not a member of the IOC. The primary basis of her relationship with the IOC is contractual.
29. The contractual relationship notably derives from the document entitled "*Entry Form-Eligibility Conditions*" (the "entry form") by which all athletes participating in the Olympic Games submit (regarding submission clauses in general and the contractual relationship they engender, see P. ZEN-RUFFINEN, *op.cit.*, p. 235, N° 680 and references) to the OC and OMAC in the following terms:

"I agree to comply with the Olympic Charter currently in force and, in particular, with the provisions of the Olympic Charter regarding the eligibility for the Olympic Games (including Rule 45 and its bye-law), the Olympic Movement Anti-Doping Code (Paragraph 1 of Rule 48), the mass media (Rule 59 and its bye-law) and the prohibition on forms publicity or propaganda on person or on clothing and equipment worn or used at the Olympic Games (Paragraphs 1 and 8 of the bye-law to Rule 61). I agree to comply with the Olympic Movement Anti-Doping Code in force at the time of the Olympic Games.

The relevant provisions and rules have been brought to my attention by my National Olympic Committee (NOC) and/or my National Sports Federation".
30. Under Swiss law – which does not require that contracts in general take a specific form – the signature of such document combined with the organisation of the Olympic Games by the IOC and the athlete's participation therein creates a contract between them.
31. Since the entry form makes reference thereto, the OC and the OMAC are incorporated into the contract, thereby becoming contractual terms and conditions that bind both parties, i.e. the IOC and the athlete who signed the form. Furthermore, it is a general principle of Swiss contract law (named "*principe de la confiance*" / "*Vertrauensprinzip*"), derived from Article 2 of the Swiss civil code and developed by the Swiss federal tribunal, that when construing the clauses of a contract it is necessary to consider what a party should have expected in good faith the other party to understand in the circumstances.
32. For the above reasons, the Panel considers the IOC and Beckie Scott are bound by reciprocal contractual obligations. Such contractual obligations include those stemming from the OC and the OMAC for both parties, since when requiring Beckie Scott to sign an undertaking to abide by the OC and the OMAC, the IOC must necessarily have expected in good faith that Beckie Scott understood the IOC would do the same, i.e. that the IOC would correctly apply its own regulations. In this connection, it is noteworthy that the Swiss federal tribunal has

held that, independently from a contractual relationship, a sports organization has an enforceable duty to act in good faith vis-à-vis athletes and to account for their legitimate expectation that the rules they are competing by will be respected (ATF 121 III 350 *Fédération Suisse de Lutte Amateur c. Grossen*).

33. Consequently, Beckie Scott is entitled to invoke any breach by the IOC of the provisions of the OC and the OMAC.
34. According to Rule 26 of the OC, its provisions can only be modified by a valid decision of the IOC's general assembly.
35. Thus, the body responsible for managing the IOC has the duty to apply and enforce the provisions of the OC. This duty stems from Article 69 of the Swiss civil code, whereby in an association: "*The management has the right and the duty to manage the affairs of the association and to represent it in conformity with its statutes*" (free translation).
36. With respect to the IOC, this role and duty of management is borne by the IOC's Executive Board, since pursuant to Rule 26 §6 of the OC: "*The Executive Board manages the affairs of the IOC. In particular, [...] it attends to the observance of the Olympic Charter*".
37. In other words, in its capacity as managing body of the IOC, its Executive Board does not have any discretion to modify the statutes but must apply them. It follows that Beckie Scott is entitled to challenge this misapplication by the Executive Board of the provisions of the OC.
38. The IOC is established in the form of a Swiss association and it was not contested during the proceedings that the OC constitutes in effect the IOC's statutes (see also P. ZEN- RUFFINEN, *op.cit.*, p.148, N° 429). As such, the OC is hierarchically the paramount body of rules governing the IOC's activities. However, this does not prevent the OMAC containing provisions which flesh out the former in the sense of a *lex specialis*.
39. That said, the Panel considers that with respect to the meaning and consequences of an athlete's exclusion from the Olympic Games the provisions of the OC and of the OMAC do not contradict each other, since the OMAC does not envisage or encompass such a sanction. Moreover, Chapter II, Article 3.3, of the OMAC recognizes that invalidation of a result is not necessarily the only consequence of commission of a doping offence, since it is imposed "*... irrespective of any other sanction that may be applied*".
40. The OMAC was not designed to regulate doping only during the Olympic Games (see e.g. the fifth "Whereas" of the OMAC's Preamble; concerning the scope of application of OMAC, see also P. ZEN- RUFFINEN, *op.cit.*, p. 441-442, N° 1251-1252) and in practice is therefore also applied by other entities than the IOC in connection with a large variety of types of competitions.
41. Accordingly, the OMAC does not contain any provisions relating to the exclusion of athletes from a specific championship or set of games, but limits itself to defining sanctions which are

applicable in all competitions – notably bans, fines, suspensions and disqualification with forfeiture of medals/prizes – and which can be decided by the competent authority within the relevant sports organisation. These sanctions are defined in Chapter II, Article 3, of the OMAC.

42. On the other hand, Rule 25 of the OC provides sanctions that can only be decided by the IOC's Executive Board; some of which, notably that of an exclusion from the Olympic Games, are only applicable "*[i]n the context of the Olympic Games*" (Rule 25.2.2).
43. For above reasons, the Panel considers that the sanction of exclusion contained in the IOC's decision of 24 February 2002 relating to D. was and could only be based on Rule 25 of the OC; the reference in the decision to Chapter II, Articles 2.1 and 2.2 of the OMAC only serving to define what constituted doping. This is confirmed by the position and wording of the two references to Rule 25 § 2.2.1 in the decision, one reference being directly under the heading "Decision" and the other reference introducing the holding of the decision with the words "... pursuant to Rule 25, paragraph 2.2.1 of the Olympic Charter".
44. Should then the IOC in application of that rule, once it had determined that exclusion was the appropriate sanction, have required D. to return all her medals?
45. We observe at the outset that the issue is one of construction of the particular rules in play. Whether or not an athlete should only lose a medal in respect of a race for which he tested positive or whether he should lose all medals won at the particular event in consequence of such single positive test is a matter on which reasonable people can hold different views as to what justice requires. The World Anti-Doping Code, Articles 10.1 and 10.1.1 (see the World Anti-Doping Code version 3.0 of 20 February 2003), addresses the issue in a precise way. In this case, the Panel is however concerned only with Rule 25 § 2.2.1 of the OC.
46. The Panel considers the wording and grammar of Rule 25 § 2.2.1 of the OC do not provide with absolute clarity whether or not the "... exclusion from the Olympic Games..." (which is discretionary) entails the disqualification of the sanctioned athlete from all the competitions in which she/he participated during the games, although the language explaining the necessary consequences of exclusion "*any medals... obtained shall be returned to the IOC Executive Board*" is consistent with a conclusion that it does.
47. Thus, the meaning of Rule 25 § 2.2.1 of the OC must be further sought in a broader interpretation of the provisions of the OC, complementing the literal with the purposive approach to interpretation.
48. An examination of the OC as a whole reveals that it is founded upon the Fundamental Principles of Olympism and of the Olympic Movement. This is stated as follows in Fundamental Principle N° 9 introducing the OC: "*The Olympic Charter is the codification of the Fundamental Principles*".

49. One of the main purposes of Olympism is to promote ethical behaviour in sports and more generally to help build a healthy, ethical environment within which athletes can practice sports, as formulated in two following Fundamental Principles (see the introduction to the OC, Fundamental Principles 2 and 6):

“Olympism is a philosophy of life, exalting and combining in a balanced whole the qualities of body, will and mind. Blending sport with culture and education, Olympism seeks to create a way of life based on the joy found in effort, the educational value of good example and respect for universal ethical principles.

The goal of the Olympic Movement is to contribute to building a peaceful and better world by educating youth through sport practiced without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play”.

50. In relation to such goals, Rule 2 of the OC imposes specific duties on the IOC, in the following terms:

“The role of the IOC is to lead the promotion of Olympism in accordance with the Olympic Charter. For that purpose the IOC:

[...]

***6** supports and encourages the promotion of sports ethics;*

***7** dedicates its efforts to ensuring in sports the spirit of fair play ...*

***8** leads the fight against doping in sport ...*

[...]”

51. The Panel considers that the above Fundamental Principles upon which the OC is based and the IOC's corresponding duty to fight doping and promote sports ethics, are irreconcilable with an interpretation of Rule 25 § 2.2.1 of the OC which would allow an athlete excluded from Olympic Games for doping to retain any Olympic medals gained at such games. To put it another way, allowing an athlete to retain certain medals while excluding her/him from the Olympic Games on the basis of Rule 25 § 2.2.1 would amount to ignoring the Fundamental Principles upon which the OC is founded and make a mockery of the confidence placed in such principles by other athletes. That the exclusion under Rule 25 § 2.2.1 stems from the ethical consideration that doping is incompatible with Olympism is confirmed by the fact that Rule 25 of the OC comes under the general heading “IOC Ethics Commission Measures and Sanctions”. Moreover the more severe the sanction, the greater the pressure on the athlete to ensure that his body is drug free. So principle and pragmatism pull in the same direction.

52. Consequently, the Panel's interpretation of Rule 25 § 2.2.1 of the OC is that the exclusion of an athlete under this provision must always be combined with the disqualification of the sanctioned athlete from all the competitions in which she/he participated during the games and by the forfeiture of all related medals.

53. During the hearing in this proceeding, the IOC asserted that when making its decision on 24 February 2002 the IOC's Executive Board had intended to impose the maximum sanction allowable under the applicable rules. This means that the IOC Executive Board deemed D.'s doping offence inexcusable under the terms of the OC and that had the IOC's Executive

Board not felt constrained by an erroneous interpretation of Rule 25 § 2.2.1 of the OC, it would have disqualified D. from all the competitions in which she participated at the 2002 Salt Lake City Games and forfeited all the medals she obtained.

54. For the reasons examined above, the Panel considers that it necessarily follows from the IOC Executive Board's decision to exclude D. from the 2002 Salt Lake City Olympic Games that she be disqualified from all the competitions she participated in and that all her corresponding medals be forfeited.
55. By limiting the consequences of the exclusion to D.'s disqualification from the women's 30 km classical cross country skiing event alone and to the forfeiture of the one corresponding medal, the Executive Board misinterpreted and misapplied Rule 25 § 2.2.1 of the OC and Beckie Scott is entitled to request that the IOC apply the OC correctly by taking a new decision based on the meaning of Rule 25 § 2.2.1 given in the reasons of this award.
56. Since in this proceeding only the legal meaning and scope of application of Rule 25 § 2.2.1 of the OC have been determined and adjudicated, there is no room for the IOC Executive Board now to make any factual reassessment of the evidence upon which it decided on 24 February 2002 that D. had committed a doping offence which entailed the application of Rule 25 § 2.2.1. D. representatives were heard at the time in keeping with Rule 25 § 4 of the OC, i.e. before the IOC Executive Board made its decision, and this Panel has not reviewed any facts or evidence in that connection because D. is not a party to this proceeding, although given the opportunity to participate in it.
57. Consequently, the matter is hereby remitted to the Executive Board of the IOC to render a new decision in accordance with this award.
58. Because Beckie Scott is waiting to receive the medal she is entitled to, the Panel considers the IOC must render its new decision as soon as possible. However, in order to leave the IOC sufficient time to prepare its new decision and since the scheduled date for the next meeting of its Executive Board is the end of February 2004, the Panel considers 15 March 2004 to be an appropriate deadline within which the new decision must be rendered.

The Court of Arbitration for Sport rules:

1. The request for relief filed by Beckie Scott on 30 June 2003 is admitted.
2. The request for relief filed by the Canadian Olympic Committee on 30 June 2003 is rejected.
3. The decision of 24 February 2002 issued by the Executive Board of the International Olympic Committee is annulled.

4. The matter in dispute is remitted to the Executive Board of the International Olympic Committee with the order for it to render a new decision, by 15 March 2004, whereby in effect the IOC:
 - i. Confirms the exclusion of D. from the XIX Olympic Winter Games of Salt Lake City 2002.
 - ii. Disqualifies D. from all the cross-country skiing competitions in which she participated at the XIX Olympic Winter Games of Salt Lake City 2002.
 - iii. Annuls all the results obtained by D. at the XIX Olympic Winter Games of Salt Lake City 2002.
 - iv. Gives the necessary orders and takes the measures required to withdraw all the medals obtained by D. at the XIX Olympic Winter Games of Salt Lake City 2002.
 - v. Gives the necessary orders and takes the measures required to amend accordingly the rankings in the women's 5 km free pursuit cross-country skiing competition at the 2002 Salt Lake City Olympic Winter Games, in which D. participated; ensuring in particular that Beckie Scott is ranked first and awarded the Olympic gold medal in the foregoing competition.

5. (...)