

# ADR and Drug Testing in Professional Tennis: An Effective Doubles Team?

Ryan M. Rodenberg

Katie A. Featherston

Follow this and additional works at: <http://scholarship.law.marquette.edu/sportslaw>



Part of the [Entertainment and Sports Law Commons](#)

---

### Repository Citation

Ryan M. Rodenberg and Katie A. Featherston, *ADR and Drug Testing in Professional Tennis: An Effective Doubles Team?*, 16 Marq. Sports L. Rev. 31 (2005)

Available at: <http://scholarship.law.marquette.edu/sportslaw/vol16/iss1/4>

This Symposium is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. For more information, please contact [megan.obrien@marquette.edu](mailto:megan.obrien@marquette.edu).

# ADR AND DRUG TESTING IN PROFESSIONAL TENNIS: AN EFFECTIVE DOUBLES TEAM?

RYAN M. RODENBERG\*  
&  
KATIE A. FEATHERSTON\*\*

## I. INTRODUCTION

The sport of professional tennis is often described as a conflicted bowl of alphabet soup. Specifically, the number of acronyms with their hand in the sport is high – “WTA” (Women’s Tennis Association), “ATP” (Association of Tennis Professionals), “ITF” (International Tennis Federation), “USTA” (United States Tennis Association), “LTA” (Lawn Tennis Association), etc. If the big three sports management firms (Octagon, SFX Sports Group, and IMG) are added, there are even more. With interests that are different in scope and purpose, a unified alternative dispute resolution (“ADR”) mechanism to oversee drug testing and enforcement in professional tennis for both women and men would seem illusory, but it is not. The Tennis Anti-Doping Program (“Program”) is a reality. The three primary governing bodies of professional tennis worldwide, the ITF, the ATP, and the WTA, have signed on to the Program, partnering to make the Program an effective, yet understandable, ADR vehicle for protecting the integrity of professional tennis competition. This article will: (i) summarize the Program; (ii) discuss a small number of recent decisions impacting the Program; and (iii) explain why ADR, as implemented in the Program, is appropriate for professional tennis.

## II. OVERVIEW OF THE TENNIS ANTI-DOPING PROGRAM

### *A. Specific Aspects of the Program.*

The Program, created jointly by the ATP, the WTA, and the ITF in 1993,

---

\* Associate General Counsel, Octagon, McLean, Virginia. Mr. Rodenberg is a graduate of Creighton University and the University of Washington School of Law.

\*\* J.D. Candidate 2006, Marquette University Law School, Milwaukee, Wisconsin; Sports Law Certificate Candidate 2006, National Sports Law Institute, Milwaukee, Wisconsin.

is self-described as a “comprehensive and internationally recognized drug-testing program.”<sup>1</sup> The goals of the Program are to “ensure equal and fair competition on the field of play [and] protect the health of professional tennis players.”<sup>2</sup> The Program achieves uniformity by testing for all banned substances on the World Anti-Doping Agency (“WADA”) list and by conducting tests in accordance with the WADA Code.<sup>3</sup> General categories of substances that are banned at all times (in-competition and out-of-competition) include: (i) anabolic agents; (ii) hormones and related substances; (iii) beta-2 agonists; (iv) agents with anti-estrogenic activity; and (v) diuretics and other masking agents.<sup>4</sup> Substance categories prohibited in-competition only include: (i) stimulants; (ii) narcotics; (iii) cannabinoids; and (iv) glucocorticosteroids.<sup>5</sup> The Program also bars artificial oxygen transfer enhancements (e.g. blood doping), chemical or physical manipulation of the urine or blood to be tested, and gene doping.<sup>6</sup> Like virtually all other drug testing procedures in sports, the Program does permit therapeutic use exemptions, whereby a player can request permission to use, for documented medical reasons, substances whose use would otherwise be prohibited.<sup>7</sup>

In 2004, the most recent year testing numbers are available, the Program tested 664 male and female tennis players a total of 1501 times, a number that includes 1479 “in-competition” tests.<sup>8</sup> Among male players ranked in the top fifty of the ATP computer rankings, each such player was tested an average of 4.9 times in 2004.<sup>9</sup> The Program is administered for the ITF, the WTA, and the ATP by International Drug Testing Management (“IDTM”) in Sweden, a company that also administers drug testing for a number of other sports governing bodies, including track and field’s International Association of Athletics Federations (“IAAF”).<sup>10</sup>

---

1. TENNIS ANTI-DOPING PROGRAM 2005 INFORMATION SHEET (2005), available at <http://www.atptennis.atponline.net/en/common/TrackIt.asp?file=/en/antidoping/English.pdf>.

2. *Id.*

3. *Id.*

4. VII *The Code*, 7.06 *Tennis Anti-Doping Program 2005*, in ATP OFFICIAL RULE BOOK, 167-70 (2005), <http://www.atptennis.com/en/common/TrackIt.asp?file=/en/antidoping/rules.pdf> [hereinafter *The Code*]. See also *Appendix A, WTA Tour Tennis Anti-Doping Program 2005*, in 2005 WTA TOUR OFFICIAL RULEBOOK 263-314 (2005), available at <http://www.wtatour.com/global/pdfs/shared/thewtatour/officialrules/rules.pdf>.

5. *The Code*, *supra* note 4.

6. *Id.*

7. *Id.* at 7.06E

8. TENNIS ANTI-DOPING PROGRAM 2005 INFORMATION SHEET, *supra* note 1.

9. *Id.*

10. *Id.*

Like all ADR procedures, the Program's jurisdiction over players is based in contract. At the start of each year, male and female professional tennis players are required, prior to competing in any WTA, ATP, or ITF tournament, to sign a consent form whereby the signee agrees to be bound by all applicable rules, including the Program.<sup>11</sup> As an example, the ATP consent form includes the following relevant language:

I consent and agree to comply with and be bound by all of the provisions of the [ATP Rules], including . . . the Anti-Doping Program. . . . I also consent and agree that any dispute arising out of any decision made by the Anti-Doping Tribunal, or any dispute arising under or in connection with the Anti-Doping Program, after exhaustion of the Anti-Doping Program's Anti-Doping Tribunal process and any other proceedings expressly provided for in the Program, shall be submitted exclusively to the Appeals Arbitration Division of the Court of Arbitration for Sport ("CAS") for final and binding arbitration in accordance with the Code of Sports-Related Arbitration. The decisions of CAS shall be final, non-reviewable, non-appealable and enforceable.<sup>12</sup>

### *B. ADR Procedure for a Doping Offense under the Program.*

The Program outlines the procedures available to a player if her or his doping test is positive.<sup>13</sup> The Program's dispute resolution procedures provide an athlete who is suspected of doping with "fair and due process."<sup>14</sup> All players are presumed innocent and are allowed to continue playing tennis until a decision is rendered.<sup>15</sup>

When it is clear that a doping offense has occurred, the Administrator of Rules of the applicable tennis governing body appoints an Anti-Doping Tribunal ("Tribunal") to conduct the dispute resolution proceedings.<sup>16</sup> The player suspected of doping is sent a written notice, which includes: (i) a summary of the doping offense, including the suspected prohibited substances found in the player's sample and the factual background relied upon for the

---

11. See, e.g., *Consent Form*, in ATP 2005 OFFICIAL RULEBOOK 166 (2005), <http://www.atptennis.atponline.net/en/common/TrackIt.asp?file=/en/antidoping/rules.pdf>.

12. *Id.*

13. *The Code*, *supra* note 4.

14. TENNIS ANTI-DOPING PROGRAM 2005 INFORMATION SHEET, *supra* note 1.

15. *Id.*

16. *The Code*, *supra* note 4, at 7.06 K.1.a.

doping charge; (ii) a list of the possible consequences the player will face because of the doping offense; and (iii) a statement notifying the player of her or his right to have the doping offense disputed at a hearing.<sup>17</sup> If the player chooses to avail her or himself of dispute resolution procedures, then she or he must submit a written request to the Administrator of Rules within ten days of receipt of the notice.<sup>18</sup>

If the player fails to provide such written notice, she or he waives the right to a hearing and accepts the consequences outlined in the written notice.<sup>19</sup> The Chairman of the Tribunal will then release a statement announcing the doping offense and listing the player's punishment.<sup>20</sup> The same statement will be released if, at any time, the player admits the doping offense.<sup>21</sup> In the case of a player admitting a doping offense, the player and the tennis governing body may submit suggestions to the Tribunal for the player's punishment.<sup>22</sup>

If the player chooses to have a hearing concerning the doping offense, she or he will be notified of the identities of the members of the Tribunal and be allowed to express any concerns about the members chosen to hear the dispute.<sup>23</sup> The members of the Tribunal not being objected to by the player will rule on the legitimacy of the player's objection.<sup>24</sup> If the player's objection to a Tribunal member is deemed legitimate, the Administrator of Rules will appoint a replacement member.<sup>25</sup>

Within twenty-one days of the player's receipt of notice of the doping offense, the Chairman of the Tribunal meets in person or by telephone with the applicable tennis governing body, the player, and both parties' legal representatives.<sup>26</sup> At this meeting, the date of the hearing, the dates when the parties will have to submit briefs outlining their arguments, and the dates when the parties will have to exchange witness lists are determined.<sup>27</sup> In addition, the Chairman makes any other necessary orders, including orders concerning document production.<sup>28</sup>

---

17. *Id.*

18. *Id.* at 7.06 K.1.b.

19. *Id.*

20. *Id.*

21. *Id.* at 7.06 K.1.c.

22. *Id.*

23. *Id.* at 7.06 K.1.d.

24. *Id.*

25. *Id.* at 7.06 K.1.e.

26. *Id.* at 7.06 K.1.f.

27. *Id.*

28. *Id.*

The player need not be present at the hearing and can be represented by counsel.<sup>29</sup> The procedure for the hearing is at the discretion of the Chairman of the Tribunal, as long as each party is allowed to present its case, including calling and questioning witnesses.<sup>30</sup> The tennis governing body may have the hearing transcribed if it so wishes.<sup>31</sup> The hearing is conducted in English, but an interpreter will be provided at the player's request.<sup>32</sup> The tennis governing body is responsible for the costs associated with the Tribunal and the hearing.<sup>33</sup>

The tennis governing body has the burden of proof concerning the existence of the doping offense.<sup>34</sup>

The standard of proof shall be whether [the applicable tennis governing body] has established the commission of the alleged Doping Offense to the comfortable satisfaction of the Anti-Doping Tribunal, bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.<sup>35</sup>

If the player is charged with the burden of rebutting a presumption of guilt, the standard of proof is beyond a reasonable doubt.<sup>36</sup> The hearing is not governed by judicial rules of evidence; therefore, either party is allowed to establish facts by "any reliable means."<sup>37</sup>

At the conclusion of the hearing, the Tribunal deliberates in private.<sup>38</sup> An opinion that a doping offense has occurred must be unanimous, and all members of the Tribunal must participate in the decision.<sup>39</sup> If the consensus is that the player committed the doping offense, the Tribunal determines the appropriate consequences according to the guidelines provided in the Program.<sup>40</sup> The decision is issued in writing and includes: (i) what doping offense, if any, has occurred; (ii) the applicable consequences; and (iii) the

---

29. *Id.* at 7.06 K.2.b.

30. *Id.* at 7.06 K.2.c.

31. *Id.* at 7.06 K.2.d.

32. *Id.* at 7.06 K.2.e.

33. *Id.* at 7.06 K.5.c.

34. *Id.* at 7.06 K.3.a.

35. *Id.*

36. *Id.* at 7.06 K.3.b.

37. *Id.* at 7.06 K.4.

38. *Id.* at 7.06 K.5.a.

39. *Id.*

40. *Id.*

player's right to appeal.<sup>41</sup>

If the player is found not guilty of the doping offense, the decision is not published.<sup>42</sup> The player's identity remains confidential.<sup>43</sup> However, if the player is found guilty of a doping offense, the decision is published within twenty days.<sup>44</sup>

The player does have a right to appeal the Tribunal's decision.<sup>45</sup> Nonetheless, the decision of the Tribunal will remain in effect during the appeal process.<sup>46</sup> An appeal concerning any part of the decision of the Tribunal may be appealed to the CAS within twenty-one days of the receipt of the Tribunal's decision.<sup>47</sup> The appeal is subject to the CAS rules concerning Appeal Arbitration Hearings.<sup>48</sup> If the CAS chooses to accept the appeal, it will conduct a de novo hearing of the doping issue, and its decision replaces any decision of the Tribunal.<sup>49</sup> There is no further right of appeal for any of the parties from the CAS decision.<sup>50</sup>

### III. SAMPLE DECISIONS AND DEVELOPMENTS

#### *A. Bohdan Ulihrach.*

The case of male tennis player Bohdan Ulihrach ("Ulihrach") provides a thorough examination of the ADR procedure when a doping offense occurs in professional tennis. Ulihrach, a Czech, has been playing professional tennis since 1994.<sup>51</sup> In October 2002, while participating in the Kremlin Cup in Moscow, Russia, Ulihrach submitted to a drug test.<sup>52</sup> In December 2002, he received written notice from the Administrator of Rules of the ATP that the sample taken in Moscow showed illegal levels of Norandrosterone and

---

41. *Id.* at 7.06 K.5.b.

42. *Id.* at 7.06 K.5.d.

43. *Id.*

44. *Id.*

45. *Id.* at 7.06 O.1.

46. *Id.*

47. *Id.* at 7.06 O.2.

48. *Id.*

49. *Id.* at 7.06 P.1.

50. *Id.* at 7.06 P.3.

51. *Decision of the ATP Tour Anti-Doping Tribunal on the Appeal of Bohdan Ulihrach*, ¶ 1 (2003), [http://www.atptennis.atponline.net/en/common/TrackIt.asp?file=/en/antidoping/PLAYER\\_decision\\_Ulihrach.pdf](http://www.atptennis.atponline.net/en/common/TrackIt.asp?file=/en/antidoping/PLAYER_decision_Ulihrach.pdf).

52. *Id.* at ¶ 4.

Noretiocholanolone.<sup>53</sup> Ulihrach requested a hearing before the Tribunal.<sup>54</sup> The hearing was held in April 2003.<sup>55</sup> Ulihrach alleged that he did not take a prohibited substance and that he did not know the origin of the illegal levels of the substances.<sup>56</sup> He argued that the Tribunal should not apply strict liability or, in the alternative, it should consider his lack of intent and fault when considering the consequences of the doping offense.<sup>57</sup>

Like most anti-doping programs in sports, the Program follows a rule of strict liability, meaning that regardless of intent or fault, the presence of a prohibited substance in a player's sample is evidence of a doping offense.<sup>58</sup> In the case of Ulihrach, the Tribunal was not willing to stray from this rule, and even though Ulihrach claimed that he did not ingest a prohibited substance and that he did not know what caused the illegal levels in his sample, he was suspended from professional tennis for a period of two years.<sup>59</sup> Additionally, Ulihrach was required to forfeit all prize money and ranking points earned at the tournament where the doping offense occurred and any prize money and ranking points earned after that tournament.<sup>60</sup>

In May 2003, Ulihrach submitted an appeal to the CAS,<sup>61</sup> but before CAS could rule on whether or not to grant the appeal, the Tribunal decided to reopen Ulihrach's case.<sup>62</sup> Between May and June 2003, the ATP learned of an electrolyte product being distributed by ATP trainers to its players that could possibly be the source of the prohibited substance in Ulihrach's sample.<sup>63</sup> Between August 2002 and May 2003, twenty-seven ATP players showed varying levels of nandrolone metabolites in their samples, one of whom was Ulihrach.<sup>64</sup> Because of the make-up of the test results, the ATP determined that the same electrolyte substance had to be causing the increased levels of nandrolone in all of these cases.<sup>65</sup> It was also determined that PAN

---

53. *Id.* at ¶¶ 5-6.

54. *Id.* at ¶ 7.

55. *See id.*

56. *Id.* at ¶ 17.

57. *Id.*

58. *Id.* at ¶ 18 (citing *The Code Rules C.1.a, C.3*).

59. *Id.* at ¶ 44.

60. *Id.* at ¶ 45.

61. *Decision of the ATP Tour Anti-Doping Tribunal on the Re-opening of the Hearing Appeal of Bohdan Ulihrach*, ¶ 2 (2003), <http://www.atptennis.atponline.net/en/common/TrackIt.asp?file=/en/antidoping/decision.pdf>.

62. *Id.* at ¶ 6.

63. *Id.* at ¶ 3(6).

64. *Id.*

65. *Id.* at ¶ 5.

Pharmaceutical, a supplement manufacturer, had been selling products that were 700% stronger than its labels stated.<sup>66</sup> The electrolyte product being distributed may have been produced by PAN.<sup>67</sup> Ulihrach had been given the electrolyte tablet by ATP trainers at the Moscow tournament and another tournament in late September 2002.<sup>68</sup> The Tribunal chose to exonerate Ulihrach because of these newly discovered facts.<sup>69</sup>

Applying the doctrine of equitable estoppel,<sup>70</sup> the Tribunal ruled that the burden of proof shifted to the ATP.<sup>71</sup> The ATP was unable to produce evidence proving that the illegal levels in Ulihrach's sample did not come from the electrolyte product.<sup>72</sup> Additionally, the Tribunal ruled that the ATP was precluded from enforcing its strict liability rules because its trainers were the source of the prohibited substance.<sup>73</sup> Therefore, Ulihrach was reinstated and allowed to keep his ranking points and prize money.<sup>74</sup> Subsequent news stories reported that the ATP also paid Ulihrach an undisclosed sum of money and agreed to facilitate his entry into tournaments by granting him special wild cards exemptions.<sup>75</sup>

### *B. Stefan Koubek.*

On January 18, 2005, the ITF Independent Anti-Doping Tribunal rendered a decision in the case of Austrian male professional tennis player Stefan Koubek ("Koubek").<sup>76</sup> Koubek has consistently been ranked as one of the top 100 singles players in the world for the last several years.<sup>77</sup> Based on a positive drug test conducted on May 29, 2004, during the French Open in

---

66. *Id.* at ¶ 3(4).

67. *Id.*

68. *Id.* at ¶ 3(3).

69. *Id.* at ¶ 29.

70. *Id.* at ¶ 26. "Equitable estoppel is to be applied as a matter of fairness and good conscience to estoppe the person whose conduct has brought the situation about from asserting their legal rights against another party who may have been misled or affected by that conduct." *Id.*

71. *Id.* at ¶ 28.

72. *Id.*

73. *Id.* at ¶ 27.

74. *Id.* at Orders(1). "The orders issued in connection with the Decision of the Tribunal dated 1 May 2003 set out at paragraph 1 herein are hereby withdrawn . . ." *Id.*

75. Richard Vach, *Agassi, Roddick Rip ATP Leadership*, TENNIS X.COM, Feb. 14, 2004, <http://www.tennis-x.com/printstory/2004-02-14/c.php>.

76. *International Tennis Federation Independent Anti-Doping Tribunal Decision in the Case of Stefan Koubek*, ¶ 1 (2005), [http://www.itftennis.com/shared/medialibrary/pdf/original/IO\\_6137\\_original.PDF](http://www.itftennis.com/shared/medialibrary/pdf/original/IO_6137_original.PDF).

77. *Id.* at ¶ 5.

Paris, Koubek was charged with having a glucocorticosteroid in his system.<sup>78</sup> Koubek did not dispute the presence of the prohibited substance in his system but did put forth a two-pronged defense. First, Koubek asserted that he bore “no fault or negligence” for the offense, as defined in the Program.<sup>79</sup> Second, Koubek posited that his use of the glucocorticosteroid was not intended to enhance his sport performance within the meaning of the Program.<sup>80</sup>

In the hearing, one described by the Tribunal as containing a “considerable amount of evidence,” the Tribunal concluded that Koubek was naïve in his understanding of anti-doping rules but had knowingly agreed to be bound by such rules, as evidenced by his January 5, 2004 signature of a consent form.<sup>81</sup> At a mandatory ATP player meeting on January 17, 2004, in Melbourne, Australia, Koubek received informational brochures regarding the Program, but he proceeded to throw them away.<sup>82</sup>

In the spring of 2004, Koubek, a left-handed player, testified that his right wrist began to hurt, and he sought treatment from an Austrian physician named Dr. Leixnering in Vienna.<sup>83</sup> Koubek visited Dr. Leixnering’s medical office on May 15, 2004 and received an injection containing an anesthetic and the prohibited substance.<sup>84</sup> Neither Koubek nor Dr. Leixnering obtained a therapeutic use exemption prior to the injection.<sup>85</sup> Through substantial, but conflicting testimony from Koubek and Dr. Leixnering the Tribunal concluded that Dr. Leixnering administered the injection because “[Dr. Leixnering] was confident that the dose was so low that it would not lead to a positive test result.”<sup>86</sup> Later, after being presented with the testing results, Dr. Leixnering acknowledged that the injection he administered was the cause of the positive drug test.<sup>87</sup>

With this factual background, the Tribunal concluded that it was obligated to apply the Program’s mandatory sanctions.<sup>88</sup> As such, the Tribunal stripped Koubek of his 2004 French Open prize money (Euros 35,230) and ATP

---

78. *Id.* at ¶¶ 1-2.

79. *Id.* at ¶ 3.

80. *Id.*

81. *Id.* at ¶¶ 6, 11.

82. *Id.* at ¶¶ 12-13, 15.

83. *Id.* at ¶¶ 17, 19.

84. *Id.* at ¶¶ 27, 29.

85. *Id.* at ¶ 29.

86. *Id.* at ¶ 41.

87. *Id.* at ¶ 47.

88. *Id.* at ¶ 68.

ranking points (seventy-five entry points and fifteen race points).<sup>89</sup> In doing so, the Tribunal dismissed Koubek's "no fault or negligence" argument but found that he "succeeded in establishing on the balance of probabilities that his use of [the glucocorticosteroid] leading to the positive test result was 'not intended to enhance sport performance.'"<sup>90</sup> Because the positive test at issue was Koubek's first offense, the Tribunal exercised its discretion, as allowed under the Program, and concluded that: (i) Koubek "is not a cheat;" (ii) Koubek's prize money and ATP ranking points earned in tournaments following the 2004 French Open should not be disqualified; and (iii) Koubek should be suspended for a period of three months commencing December 21, 2004.<sup>91</sup> On January 31, 2005, Koubek appealed the Tribunal's decision to the CAS, but he did not find that forum any more friendly, as the CAS dismissed his appeal on March 1, 2005, thereby upholding the decision of the Tribunal.<sup>92</sup>

#### IV. APPROPRIATENESS OF ADR AS A PART OF THE PROGRAM

The Program's ADR procedures provide the most effective and efficient means of settling doping disputes. The Program provides many of the same advantages provided by other ADR proceedings such as the CAS's arbitration hearings available to Olympic athletes. In addition, the Program provides an additional safeguard to protect professional tennis players from false claims of doping.

First, by settling disputes through a hearing before the Tribunal, tennis players and the applicable tennis governing bodies expend less money. Generally speaking, ADR proceedings take less time than judicial proceedings, so they cost the parties less money.<sup>93</sup> The evidentiary rules that apply in a courtroom are less strictly applied in an ADR proceeding, which allows for a much quicker procedure.<sup>94</sup> A tennis player is only required to pay his or her attorney's fees in connection with a hearing before the Tribunal.<sup>95</sup>

Second, the nature of athletic competition requires quick decisions, which

---

89. *Id.* at ¶ 44, 117.

90. *Id.* at ¶ 91.

91. *Id.* at ¶¶ 112, 117.

92. ITF Tennis, *CAS Decision on Koubek Appeal*, ITFTENNIS.COM, Mar. 1, 2005, <http://www.itftennis.com/abouttheitf/news/article.asp?id=13332>.

93. JAY E. GREINIG, *ALTERNATIVE DISPUTE RESOLUTION WITH FORMS*, § 3.2 (2d ed. 2003).

94. *Id.* The judicial rules of evidence do not apply during hearings before the Anti-Doping Tribunal. *The Code*, *supra* note 4, at 7.06 K.4.

95. The Code states that the tennis governing body is responsible for all costs associated with the alternative dispute resolution procedures. *The Code*, *supra* note 4, at 7.06 K.5.c.

can be facilitated through ADR procedures.<sup>96</sup> Doping disputes are time-sensitive because a positive doping test results in the disqualification of the athlete from tennis tournaments and can result in the loss of ranking and the forfeiture of prize money.<sup>97</sup> Likewise, if one player is determined to be ineligible, then another player could step in and have the opportunity to compete in a professional tennis tournament, but once the tournament is played, the opportunity is gone.<sup>98</sup> The Program requires that hearings be held within sixty days of the date on which the player requested a hearing.<sup>99</sup> The Tribunal is also instructed to render a decision as quickly as possible after the hearing.<sup>100</sup> The traditional adjudication process in the courts does not provide for expeditious decisions. For these reasons, lengthy court battles are not an option for professional tennis players. The tournament is not going to wait for an athlete's day in court or for a judge to render a decision.

Third, because tennis is an international sport with tournaments held around the world and athletes from different countries, jurisdictional issues could frequently arise if disputes were settled in the court systems. In the Program, parties do not have to worry about conflict of law issues between various countries.

Fourth, the Program includes a confidentiality safeguard to help protect the tennis players that come within the purview of its jurisdiction. In order to protect athletes from the stigma that accompanies a positive doping test, the Program has a very strict confidentiality policy, which prohibits the public release of the name of an athlete accused of doping until the Tribunal has published its decision or until the player has admitted the doping offense.<sup>101</sup> In contrast, the WADA Code allows for the public release of information regarding an alleged anti-doping offense after administrative review procedures but prior to an ADR proceeding.<sup>102</sup>

The need for such strict confidentiality became very clear at a tennis exhibition in December 2004, when fifth ranked Russian Svetlana Kuznetsova was accused of doping prior to any confirmation by Belgian Sports Minister Claude Eerdeken.<sup>103</sup> Eerdeken announced that a female tennis player who

---

96. Melissa R. Bitting, Comment, *Mandatory, Binding Arbitration for Olympic Athletes: Is the Process Better or Worse for "Job Security"?*, 25 FLA. ST. U. L. REV. 655, 660 (1998).

97. *The Code*, *supra* note 4, at 7.06 L, M.

98. Bitting, *supra* note 96, at 660.

99. *The Code*, *supra* note 4, at 7.06 K.1.f.i.

100. *Id.* at 7.06 K.5.a.

101. *Id.* at 7.06.Q. 3.

102. WORLD ANTI-DOPING AGENCY, WORLD ANTI-DOPING CODE art 14, 14.2 (2003), [http://www.wada-ama.org/rtecontent/document/code\\_v3.pdf](http://www.wada-ama.org/rtecontent/document/code_v3.pdf).

103. Stephen Bierley, *Kuznetsova Will Not be Punished*, GUARDIAN UNLIMITED, Jan. 19, 2005,

participated in an exhibition match in Charleroi in December had given a urine sample that showed traces of ephedrine.<sup>104</sup> Kuznetsova was quickly identified as the player, and she was forced to answer to the allegations throughout the 2005 Australian Open.<sup>105</sup> Ephedrine is not a banned substance under the Program for players when they are outside of competition.<sup>106</sup> The exhibition match in Belgium was not considered to be in competition; therefore, even if Kuznetsova had ephedrine in her system, she would not have been in violation of the Program.<sup>107</sup> If the Belgian Sports Minister would have followed the Program's confidentiality policy, Kuznetsova's alleged violation could have been dismissed without the media and public ever knowing it existed, and Kuznetsova could have concentrated exclusively on tennis during the first Grand Slam tournament of the year.<sup>108</sup> WTA and ITF officials offered harsh criticism of Eerdeken's actions when they stated that it was a "disgraceful and irresponsible act," and the governing bodies "did not support any disclosure regarding the identity of any player involved in an adverse anti-doping finding, unless proper procedures have been followed."<sup>109</sup>

Quite the contrary result occurred in the doping controversy involving British tennis player Greg Rusedski. Rusedski tested positive for nandrolone at the 2003 RCA Tennis Championships in Indianapolis, Indiana.<sup>110</sup> This test was taken in July, only nine months after Bohdan Ulihrach tested positive for the same substance in Moscow, and one month after the ATP learned of an electrolyte product being distributed by its trainers, which could have been causing an abnormally high number of positive doping tests involving nandrolone. The ATP followed the rules of the Program and refused to identify or confirm that Rusedski had tested positive.<sup>111</sup> However, Rusedski went public in an effort to draw attention to the large amount of players testing positive, stating "[w]e now have over 47 samples (out of 120 top players

---

<http://sport.guardian.co.uk/tennis/story/0,,1393387,00.html>.

104. Afsati Dzhusoiti, *They Came for Kuznetsova*, KOMMERSANT: RUSSIA'S DAILY ONLINE, Jan. 18, 2005, <http://www.kommersant.com/page.asp?id=539491>.

105. *Id.*

106. *Id.*

107. Bierley, *supra* note 103. Kuznetsova admitted to taking a cold remedy prior to the exhibition match, which could have explained the ephedrine in her system. *Id.*

108. Kuznetsova was beaten in the quarterfinals by Maria Sharapova. *Women's Singles Draw*, EUROSPORT.COM, [http://www.eurosport.com/home/pages/v4/12/s57/e7184/draw\\_lng2\\_spo57\\_evt7184\\_gnd2\\_part2.shtml](http://www.eurosport.com/home/pages/v4/12/s57/e7184/draw_lng2_spo57_evt7184_gnd2_part2.shtml) (last visited Sept. 21, 2005).

109. Bierley, *supra* note 103.

110. Richard Vach, *ATP Could Make an Example of Rusedski Drug Test*, TENNIS-X.COM, Jan. 9, 2004, <http://www.tennis-x.com/story/2004-01-09/c.php>.

111. *ATP Response to Greg Rusedski's Statement*, ATP.COM, Jan. 9, 2004, [http://www.atptennis.com/en/common/TrackIt.asp?file=/en/antidoping/Rusedski\\_Response.pdf](http://www.atptennis.com/en/common/TrackIt.asp?file=/en/antidoping/Rusedski_Response.pdf).

tested) demonstrating elevated levels of nandrolone. The odds of this happening at random are billions to one against."<sup>112</sup> Rusedski was later exonerated at a hearing before the Tribunal in March 2004.<sup>113</sup>

The time restraints on the resolution of disputes arising out of doping offenses and the consequences that could result from a doping charge require a quick, inexpensive, and confidential dispute resolution procedure. Without the Program, tennis players could be held out of tournaments needlessly, losing opportunities for ranking points and prize money.

## V. CONCLUSION

The ADR procedures inherent in the Program help make the drug program in professional tennis effective. It remains to be seen, however, whether the United States Congress agrees with this conclusion.<sup>114</sup> On April 5, 2005, the House Government Reform Committee sent a letter to the ATP and the WTA asking for information concerning their drug-testing policies.<sup>115</sup> While the majority of Congress' attention appears to be devoted to the major North American team sports of baseball, basketball, and football, the drug programs in other sports will likely be subject to increased scrutiny as well in the not too distant future. Until then, the Program will likely continue to meet its twin goals of ensuring a level playing field and protecting the health of the tennis players subject to the Program.

---

112. Vach, *supra* note 110.

113. Stephen Bierley, *Rusedski Drug May Not Have Come From Trainers, Says ATP*, *GUARDIAN*, Mar. 17, 2004, <http://sport.guardian.co.uk/print/0,3858,4881522-108554,00.html>.

114. *NBA, NHL, MLA, ATP Among Those Queried*, *ESPN.COM*, Apr. 5, 2005, <http://sports.espn.go.com/espn/news/story?id=2030494>.

115. *Id.*

