



## Volume 80 –15 November 2010

Welcome to Volume 80 of *The Commentator*.

First up in this edition, David Garnsey provides us with a summary of some of the sessions from the ANZSLA Conference 2010.

Also in this edition, University of Melbourne student, James Paterson writes a review of what sounds like a most interesting book, “The Law of Hockey” by Canadian Professor John Barnes.

Anzsla President, Ian Hunt reviews the recent ANZSLA conference in Sydney, previews next year’s conference in Christchurch and discusses the possibility of a National Sports Dispute Centre in Australia.

In my editorial I discuss the mess sport is left in by the New Awards made under the Fair Work Act.

You can access this edition of *The Commentator* on the ANZSLA website at <http://www.anzsla.com/content/commentator>.

Gerry Glennen  
Editor

### **Volume 80**

**Author: ANZSLA**

**15 November 2010**

Complete version in PDF format for easy printing.

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**Author: Ian Hunt**

**9 November 2010**

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### **Summary of Sessions at ANZSLA Conference 2010**

**Author: David Garnsey**

**October 2010**

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**Book Review – The Law of Hockey (Professor John Barnes)**

**Author: James Paterson**

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***// Disclaimer***

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# The Commentator

## Editorial

Author: Gerry Glennen

15/11.2010

Volume 80 – 15 November 2010

## Editorial

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Welcome to the November 2010 edition.

In his President's column, Ian Hunt reviews the recent ANZSLA conference in Sydney, previews next year's conference in Christchurch and discusses the possibility of a National Sports Dispute Centre in Australia. I am really looking forward to Christchurch next year, never having been there, and I am certain that Ian and his Committee will provide a first class program.

The annual ANZSLA conference in Sydney was again an interesting and enjoyable experience for me. The venues were sensational and the world beating views across Sydney harbour could not be excelled. I have taken some photographs at the dinner and I hope that they bring back some memories. They can be accessed [here](#). I am also grateful to Avanti, the conference organisers, for many other photographs. There will be more from Avanti on the ANZSLA web site shortly.

As a keen fan of swimming (my main sport as a youngster) the highlight for me was the appearance of Ian Thorpe on one of our panels, but the rest of the program was interesting and informative.

Also on the conference, in this edition, David Garnsey provides us with a summary of some of the sessions. It is intended that in future years, we will be providing summaries of most, if not all, of the conference sessions.

Also in this edition, University of Melbourne student, James Paterson writes a review of what sounds like a most interesting book, "The Law of Hockey" by Canadian Professor John Barnes.

## Fair Work Act and Sport

### Introduction

As part of my work I have had to review the situation with workplace laws for our members.

The Rudd Labor Government introduced and the Federal Parliament passed the Fair Work Act 2009 to replace the Howard Government's Work Choices legislation. One of the aims was to make life simpler for both employers and employees in understanding their rights and obligations. Part of this simplification process was to abolish the several thousand Awards which covered workplaces and to replace those with a much smaller number of New Awards.

Unfortunately, for sports, New Awards have left most people in a state of confusion and apparently uncovered by an Award. It appears that whoever wrote the New Awards purporting to cover employment in sport had little or no knowledge of how the sports industry works.

Personnel involved in sport generally fall into the following categories:

- (a) People engaged in facility management; or
- (b) People engaged in administration, coaching or other activity at association/club level; or
- (c) People engaged in hospitality or gaming. (not relevant to the discussion in this paper)

Those personnel do so on the following basis:

- (a) Full-time employees; or
- (b) Part-time employees; or
- (c) Casual employees (entitled to 25% loading on pay but no leave); or
- (d) Volunteers who are reimbursed expenses as hobbyists under the ATO ruling (this includes such roles as referees and coaches except for those at the elite level where they earn substantial amounts outside the ATO rulings. These people would not be considered to be employees for the purposes of the Act); or
- (e) Volunteers who receive no payment or are only reimbursed direct out of pocket costs (this covers most people involved at association/club level and they also would not be considered to be employees)

## The Awards

There are three Awards which have direct application to the sports industry.

- The Sporting Organisations Award 2010;
- The Amusement, Events and Recreation Award 2010; and
- The Fitness Industry Award 2010.

The Sporting Organisations Award 2010 is restricted in cover to national and state sporting organisations. It covers staff in 2 categories – administrative and coaching. This award would seem to be the best fit for lower level sport as well, but would not do so without an amendment.

The other two Awards are a real mixture.

The Amusement, Events and Recreation Award 2010<sup>i</sup> covers the following:

- (i) leisure and recreation facilities and centres;
- (ii) sporting, exhibition, convention and amusement complexes;
- (iii) theme parks;
- (iv) heritage, tourism and cultural centres;
- (v) museums and galleries;
- (vi) animal parks and aquariums;
- (vii) agricultural and horticultural shows;
- (viii) carnivals and amusement parks;
- (ix) ten pin bowling venues;
- (x) go-kart racing venues; and
- (xi) amusement arcades, including video game and pinball parlours.

The first two would appear to cover all sporting facilities. It is odd then that there was a need to single out ten pin bowling venues and go-cart racing venues, which would seem to be covered by “leisure and recreation facilities and centres” and also “sporting ..... complexes”.

The Fitness Industry Award 2010<sup>ii</sup> covers the following:

- (a) fitness centres;
- (b) fitness services or classes;
- (c) group fitness organisations;
- (d) weight loss/control centres;
- (e) aquatic centres;
- (f) aquatic services or classes;
- (g) indoor sports centres;
- (h) golf driving ranges;
- (i) dance centres;
- (j) martial arts centres; and
- (k) recreational camps.

Again there is an odd singling out of golf driving ranges and martial arts centres. Aquatic centres and indoor sports centres are also covered by the Amusement, Events and Recreation Award 2010.

Indoor sports facilities such as stadiums for basketball, table tennis, badminton and indoor cricket and soccer are covered by both Awards! Both Awards say that if you are covered by that Award, you are not covered by the other.

So the position of the singled out facilities, ten pin bowling venues and go-cart racing venues in the Fitness Industry Award 2010 and golf driving ranges and martial arts centres in the Amusement, Events and Recreation Award 2010 is reasonably clear. Even though they fit in the coverage of both Awards, they are probably only covered by those Awards which single them out. Aquatic centres and indoor facilities are probably in the same category and are covered by the Fitness Award 2010.

But what about sporting facilities with both indoor and outdoor facilities? Where the indoor and outdoor facilities are separately managed, they probably fall under separate Awards. However, if there is a single management, the employees fall under both. So which one binds the employer?

What is even more confusing is that these two Awards would appear only to cover those employees employed in running the facility but not those employees of users of the facilities. So a swimming club with employees to administer or coach in the club's activities would not be covered.

Again, however, what about a sporting organisation which both manages and uses a facility for its activities? This happens in some indoor facilities such as basketball stadiums and some outdoor facilities such as golf courses.

### **Sporting Clubs and Associations**

As we have seen, it appears that apart from National and State Organisations, no award specifically covers local sporting clubs and associations. This leaves them in the position that they either have to try and find other Awards which might cover individual employees depending on what they do, or may even have to revert to one or more of the old awards.

Most of these organisations are small and so do not have the resources either to try and match their employees to Awards or to pay a professional to do that for them.

A better alternative would be to have an agreement with all staff. This agreement could incorporate many of the provisions of one or more of the Awards. However, even with such an agreement there are problems with some employees.

The biggest difficulty with sporting organisations is the requirement under awards to pay overtime and penalty rates. Traditionally, this has usually been overcome by an agreement with staff that overtime and penalty rates will be replaced by time in lieu.

The New Awards envisage such agreements and specifically allow them. The agreements will stand up as long as such agreements “result in the employee being better off overall than the employee would have been if no individual flexibility agreement had been agreed to”<sup>iii</sup>.

Such agreements have been accepted as passing the “no disadvantage test” under previous industrial legislation and it is hoped that they will pass the similar test under the New Awards.

If accepted, most problems for employers would be solved. However, there remains one class of employees where such an agreement would not solve the problem. They are part-time and casual employees who are specifically employed to work regular shifts on weekends or public holidays. If the employer was to grant time in lieu, a casual would need to be employed to replace them on that shift. So either penalty rates are paid or double payment is made for both the employee taking time in lieu and the replacement worker who would also be entitled to penalties. It is difficult to see any solution to this. To find something other than time in lieu which would leave the employee no worse off is almost impossible.

## Conclusion

There is no easy fix for the general sporting industry to continue to employ people in the manner in which they have done in the past. The industry has been let down by the industry representatives involved in these New Awards. Whilst agreements can be put in place to cover most staff, there still remains a gap with casual or part time employees involved in weekend work. It would seem that this may well be a project that an organisation like ANZSLA could take on to either have the New Awards tidied up or put out a template agreement suitable for sporting organisations.

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<sup>i</sup> Clause 4.2(a)

<sup>ii</sup> Clause 4.2

<sup>iii</sup> Fitness Industry Award Clause 7.3 (b)

# The Commentator

President's Column

Author: Ian Hunt

9/11/2010

The ANZSLA Commentator

Volume 80 – 15 November 2010

## Presidents Column

Welcome to this second edition of the Commentator for 2010.

It seems only a very short time ago that we were enjoying the experience of the 20<sup>th</sup> Annual ANZSLA Conference in Sydney, with the topic *Sport and the Media – in the spotlight*.

I am sure that Gerry in his editorial, and in his capacity as official social scribe, will have something to say about the conference and no doubt one or two photographs as well.

The conference was again well attended, and there were many highlights within the conference programme and in the social events that were organised.

The conference lived up to its theme and really managed to put the media into the spotlight. Congratulations to Miriam Stiel and her CoC for a job well done in the organisation and presentation of the conference as well as, running things behind the scenes, ANZSLA's executive manager Sharon Scriven.

It is probably unfair to single out presentations, but I particularly enjoyed Hayden Opie's presentation *Reflections on the Birth and History of ANZSLA* which was an excellent summary of ANZSLA's early beginnings and the work done by so many people to launch the organisation in a way that leaves it now, 20 years later, as a substantial and credible organisation, well respected in the sports law area in Australia and New Zealand, and overseas.

I am also very pleased to be able to say that Hayden's remarks about the late Dennis Callinan, a long term ANZSLA member sadly no longer with us, had already been anticipated by the Board who before the 2011 Annual Conference will have taken steps to institute an award of the type Hayden envisaged, for services for community service in the field of sports law. There were many other notable presentations and moment as well – a particular favourite of mine occurred when the inimitable David Garnsey provided swimming great Ian Thorpe with an opportunity for a witty retort. His response to David's question regarding the advent of technology in sport – gently enquiring as to whether David was aware that the yellow line signifying the world record time was not actually visible to swimmers in the pool – was a classic. I think David and Ian must have worked up that little exchange beforehand!

On the social front, the Gala Dinner at the Quay restaurant was an absolute highlight, and a very worthy location for a celebration of ANZSLA's 20<sup>th</sup> Annual Conference. The other social functions were equally well chosen, culminating with the Bledisloe Cup which was a real thriller, setting the night up nicely for those who chose to "party on". I note a similar thriller with a different result in Hong Kong last week – well done to the Wallabies.

The organisation of these conferences takes a lot of effort and work on part of the CoC, but also requires the assistance of sponsors and it is appropriate that I pay recognition to them here: NSW Communities, JLT, Allens Arthur Robinson, Kennedys, CCH, Australasian Leisure Management, Fragomen, and Kemenys.

Finally, and in keeping with Hayden's remarks, it was a great honour and pleasure to be able to present Barry Paterson QC with the 2010 Contribution to Sport award, and to recognise the founding members of ANZSLA, both in attendance and not: Ian Fullagar, Tony Oxnevad, Malcolm Speed, Rod Gilham, and Steven Wright.

All in all, a most successful conference to celebrate ANZSLA's 20 year milestone.

Looking ahead, and staying with the Conference theme, the infamous ANZSLA bus was handed over to me as Chair of the 2011 CoC for ANZSLA's 21<sup>st</sup> Annual Conference which will be held in Christchurch from 12-14 October 2011.

The Board has approved the role of organising the Conference to a large and very enthusiastic CoC which is approaching the task with enthusiasm and skill.

Presently, the CoC is in the process of assessing the speaker and presenter options it has, and it hopes to be able to attract a number of overseas speakers who it anticipates will be in New Zealand for the Rugby World Cup, as well as ANZSLA members. The intention is that an initial draft programme, with key note speakers confirmed as far as possible, will be issued, if not prior to Christmas, shortly thereafter. This, together with conference registration information, will be important to stir interest in the conference to ensure that those looking to attend take steps to arrange flights early before what will be a very busy period in New Zealand.

The Conference dates follow the last of the scheduled quarter final matches on the preceding weekend of 8 and 9 October, but will allow sufficient time for those attending who wish to watch the second two quarter final matches (in Auckland) on Saturday and Sunday, 15 and 16 October.

At Board level, and at the 19<sup>th</sup> Annual General Meeting in Sydney, the Board recognised the contributions of retiring director, Mel Mallam. Director of finance, Andy Gibson was re-elected, and Paul David and Michal Ross were also elected as ordinary directors. A vacant position exists on the board, for a co-opted director. The Board is presently considering who might be approached to fill this role.

Two other developments, one ongoing and the other now in full operation, are worthy of mention. The first is that the topic of a National Sports Dispute Centre has resurfaced in Australia, with interest being shown in such an institution by ASADA, the ASC, and various of the Australian states. The opportunity was taken at the conference for discussions among a number of parties, with particular assistance and input having been provided by Barry Paterson of the Sports Tribunal of New Zealand, Paul David, Andy Gibson, and others.

It would seem that the view that ANZSLA has long held, namely that there is a place for such a dispute resolution institution in Australia, is now gaining traction with the major government and state organisations. It is to be hoped that sport in Australia will take a similar view, and such of the federal/state issues as may exist can be successfully negotiated through. ANZSLA, through the Board members and other members, is very keen to play an encouraging and supportive role in this area and this topic is will be a significant aspect of the Board's strategic review, to be conducted in Christchurch in February 2011.

The second element I referred to is the launch of the new ANZSLA website. I hope that members have used it, have logged in with their new password details, and are taking advantage of the greater functionality and much more attractive web presence the ANZSLA brand presents through the new website. A special thanks to Venetia Stewart and Sharon Scriven for guiding this project through to a very successful conclusion.

**Ian Hunt**

9 November 2010

## The Commentator

### Summary of Sessions at ANZSLA Conference 2010

Author: David Garnsey

October 2010

## Summary of Sessions at ANZSLA Conference 2010

David Garnsey

(October 2010)

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### ANZSLA CONFERENCE 2010 – JOURNALISTS PANEL

Malcolm Conn – The Australian

Nicole Jeffery – The Australian

Josh Massoud – Daily Telegraph

Brent Read – The Australian

Rebecca Wilson – Daily Telegraph/Sunday Telegraph

The journalists identified the three biggest stories of 2010 as:

- Winter Olympics
- Melbourne Storm salary cap scandal
- Cricket match-fixing

The unwritten rule is that journalists will not intrude on the personal lives of athletes unless that is impacting on their performance. That said, they believe that athletes do need to acknowledge that they are “role models” and should not accept the benefits that they enjoy if they are not prepared to bear that responsibility.

Athletes should also be very wary of acting discourteously towards the media: “How you treat the media on the way up is how they will treat you on the way down”.

The reality for journalists is that they often have limited access to athletes, are usually left to glean only small pieces of information and are often at the mercy of officials.

Corruption is a “massive risk” to sport and allowing betting on “exotic” options is definitely a problem that must be addressed. That is difficult for sports, however, in circumstances where betting agencies are filling the void left by traditional advertisers.

The increase in “live” television has made life harder for print journalists, who cannot exist simply by writing about what people have seen several hours earlier. The internet is also driving attention spans to “nanoseconds”.

Lower tier sports must talk more to journalists if they want more coverage, not expect the media to come to them.

Women’s issues do not receive enough coverage because female journalists are still in the minority and “dinosaurs” are still in charge of news rooms.

“Rogue journalists” are impossible to police, particularly in an age where anyone with a computer can be a “publisher”.

Depending on the way that it is handled, the service an “atrocious” can do for a sport should not be underestimated.

## ANZSLA CONFERENCE 2010 – CHIEF EXECUTIVE OFFICERS PANEL

David Gallop – CEO, National Rugby League (DG)

Steve Tew – CEO, New Zealand Rugby Union (ST)

Wayne Carroll – High Performance General Manager, Basketball Australia (WC)

DG stated that, despite the Melbourne Storm salary cap issues, Rugby League was in “good shape” with new crowd and television rating records and strength in both the Competition and the impact on the Community, most notably the All Stars Match.

ST described the NZRU’s year as “solid”. The NZRU is currently negotiating a new broadcast deal and a Collective Bargaining Agreement and must address the decrease in Super 14 crowds and the cost of Players.

WC noted that 2010/2011 would be an important transition year for Basketball with a new Competition to consolidate, now being run by BA itself. The Wheelchair Men have been crowned World Champions and it is hoped that the Opals will defend their World title. The challenge of convincing Players to compete here remains.

**Media Rights** – DG: will be new deal for all forms of media by mid-next year and NRL is very optimistic about outcome; ST: the expansion of the Super 14 in 2011 will increase exposure but there remains a tension between Super 14 and the provincial competition; WC: BA has negotiated a new deal with 1HD and the aim is to build to a position where all games are covered.

**Competition** - ST: only real competition in NZ is Netball but it has no serious international presence; DG: Rugby League is growing in western Sydney and will defeat the challenge there of the AFL, which is angering its own Clubs by manipulating its draft and salary cap; WC: NBA and Europe are challenges because most of Australia’s top Players are there so it is difficult to link Players with fans.

**Expansion and Economics** – DG: cannot put time-frame on NRL expansion to Perth but it makes sense strategically, is a new time-zone and has a booming economy; ST: one year before the World Cup, prospects of a successful tournament are good. A misunderstanding of the effect of the GFC may explain the low tickets sales for the Bledisloe Cup Match in Hong Kong. The lure of money over the All Black jersey has been countered by the principle that if you want to be an All Black, you must stay in New Zealand.

**Gambling** – DG: gambling is not directly analogous to doping as an issue because it has been around for longer. It is a concern but the NRL is now operating in a more formalised regulated environment than before.

**Agents** – DG: some do a great job while others are concerned only to take their 6% at the time the Contract is negotiated. It is the most unregulated part of the Game; ST: as a group, they are largely unregulated; WC: a challenge for Basketball.

**Media Coverage** – DG: do not want anti-siphoning and, at very least, want a number of events taken off the list so that 5 games per week can be sold directly to the market; ST: Rugby Union is always front page news in New Zealand but that means that everything is critiqued.

**The Future:** WC: want to soon be re-established in Brisbane and have another team in Melbourne; DG: focus is on “turning where we are into dollars”. Also working on the international profile of the Game because the Australian jersey “means a lot”.

## **Book Review – The Law of Hockey (Professor John Barnes)**

Author: James Paterson

October 2010

## **Book Review – The Law of Hockey (Professor John Barnes)<sup>1</sup>** **James Paterson**

Student, University of Melbourne

(October 2010)

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The typical Australian sports fan's knowledge of ice hockey can probably be summed as thus: they consider it to be a fast moving sport – field hockey on ice if you will – with bearded, toothless men delivering big hits, and boxing-on quite frequently. The slightly more refined fan has probably heard of the iconic Wayne Gretzky, is aware that the sport is played at both a professional and Olympic level with a long standing and fierce rivalry between Canada and the US - they are perhaps even aware of the 'Miracle on Ice' at the 1980 Winter Olympics where the US defeated the then feared Russian machine at the peak of the cold war.

The reality is that from a participation standpoint, ice hockey is very much a niche sport in Australia – thanks mainly to the unfavourable climatic conditions – and a dearth of free-to-air television coverage has not assisted in raising its public profile. For the most part, Australian fans receive only a few minutes of highlight footage of the Stanley Cup finals each year during the evening news.

This situation is quite the opposite in Canada, with its Parliament "recogniz[ing] and declar[ing] ice hockey the national winter sport of Canada ...",<sup>2</sup> demonstrating both the public's passion for the sport, and also an indication of the involvement of government in the regulation of the sport. Professor John Barnes' book "The Law of Hockey" helps explore the wide variety of legal issues which arise in the predominately North American pastime.

Barnes, a Canadian barrister, scholar and university professor, provides a wealth of historical and legal material dating back to the origins of the modern version of the sport. While there are conflicting press records of that original game in 1875, one account notes a problematic influence of masculinity over the game, which descended at times into brawls. As Barnes notes – and demonstrates through comprehensive detail throughout the book – "the lawyers have been doing well ever since."

"The Law of Hockey" provides a comprehensive review of Canadian case law and statute across the gamut of potential legal issues - indeed, the book would suffice as a terrific generalist text on the "Laws of Canada". Given the sport's dominant professional league has a significant presence in the US (where 24 of the 30 teams are based), the book also reviews relevant US statute and case law, particularly when considering issues relating to ownership and movement of teams, as well as broadcasting, competition, and employment issues. Thanks to the recent influx of players of European origin into the NHL, and the increasing international influence of Russian, Czech Republic and various nordic hockey leagues, the book also contains some consideration of key European Union treaty articles, as well as review of key cases such as the *Bosman* international player transfer matter.

Legal issues faced by the initial hockey associations at the turn of the 20<sup>th</sup> century included disputes relating to eligibility, player's contracts and business operations, as well as instances of criminal prosecution of players for assault and even manslaughter. "The Law of Hockey" addresses these issues, providing as much a historical record of the beginnings of the game and those seminal events as it does the origin of the current laws. Barnes devotes chapters to each of those legal issues, providing a roadmap for the reader to then arrive at the current legal standards, be it based on case law or statutes, or elements of both.

The movement into the 21<sup>st</sup> century has seen these legal issues broaden, and commentary within Barnes' book suggests this is due to the industrialization of sport and its expanded role as entertainment. As a result, legal issues surrounding marketing, sponsorship, advertising and broadcasting have come to the fore, and Barnes also addresses these items in detail in the book. With the increased flow of money into the game and its participants, the opportunity cost for athletes when removed from the ice through injury or non-selection is now large. As a result, there have been an increasing number of civil actions brought by athletes against teams, leagues, venues and even directly against other athletes, issues Barnes addresses within "The Laws of Hockey".

The book's first chapter considers the impact of this increased commercialisation of the game – and the manner in which it has alienated some of the sport's fans – by tracing the Stanley Cup's origins as a challenge trophy for Canadian amateur teams, through to its current status as the annual prize for the professional National Hockey League's (NHL's) champion team. In doing so, Barnes recounts a fascinating legal action brought by a group of amateur players in a local mid-week competition against the NHL. These amateur "Wednesday Nighters" sought to be awarded the Stanley Cup during the NHL's abandoned season in 2005 (based on the criteria on which the trophy had first been awarded back in the 1890s) and eventually received confirmation from the Ontario Superior Court of Justice that the NHL had no exclusive claim to the trophy.

Keen observers of some of Australia's seminal sports law related decisions will find the "The Law Of Hockey" draws upon our experiences. The book's review of competition and labour law issues includes consideration of the establishment of Super League and World Series Cricket, while the review of employment matters includes consideration of *Buckley v Tutty*, as well as references to AFL identities such as *Buckenara*, *Harding* and *Foschini*. Given the shared Commonwealth origins of Canada and Australia it is perhaps not surprising, however, it is an indication of the comprehensive nature of the book.

The issue which will perhaps invoke the most interest from Australian sport aficionados is Barnes' review of on-ice injuries created by 'bodychecks' or through fights supposedly sanctioned by an unwritten 'code' of the game. Readers will be able to draw some parallels with – and distinctions between – the actions of Hockey Canada and the NHL, versus recent steps taken by Australian professional football codes in reducing on-field violence and an increasing emphasis in eradicating contact to the head. "The Law of Hockey" includes a detailed review of Hockey's 'code' of fighting where, to an extent, the game's participants condone fist fights where it acts as retribution for previous on-ice hits, or in some circumstances simply when challenged by another player. Barnes considers that "the criminal prosecution of players for on-ice conduct is in fact the distinctive Canadian contribution to the law of sports." With a wealth of case law examples, Barnes demonstrates that "the ice surface offers no immunity from criminal law", and navigates the reader through issues surrounding the extent of an athlete's implied consent to violence through simply skating on to the ice to compete.

While "The Law of Hockey" includes comprehensive review of relevant statute and case law, Barnes also includes considered opinion on a number of hot topics. In addition to canvassing numerous opinions from a variety of journal articles, Barnes also provides his own views on the difficulty of changing a lingering on-ice 'bad-boy' or 'enforcer' image while the league continues to derive significant revenue from that image. Barnes also provides criticism of the World Anti-Doping Agency's and the Canadian Centre for Ethics in Sport's joint approach to the 'war on drugs' in sport, considering the approach is more an exercise in marketing and medal retention (through a misplaced emphasis in trying to ensure athletes don't get caught using disapproved science) rather than focusing on enforcing safety standards. This section of the book also includes an interesting consideration of a Canadian athlete's rights under the *Canadian Charter of Rights and Freedoms* – an interesting point of difference when compared with Australia – which is also considered when reviewing other issues related to athlete expectations of privacy and team and league disciplinary matters.

Barnes also notes that the key amateur and professional hockey organisations are private voluntary associations, and demonstrates the scope of disciplinary action and which may taken by tribunals established by those organisations. While for the most part those tribunals are established on similar "natural justice" principles to Australian based sporting tribunals, it is interesting to see these issues mixed with the application of the *Canadian Sport Dispute Resolution Code* (an alternative dispute resolution framework established by the Canadian parliament's *Physical Activity and Sport Act*).

The issues covered in the book, and the citations backing up the research are very current – for example when discussing the intersection between the commercialisation of the game and the player’s right of privacy under Canadian laws, Barnes refers to a “Tiger clause” (aka a morals clause) in endorsement contracts concerning misconduct of the athlete. Barnes also covers other topical issues, such as the bankruptcy of the NHL’s Phoenix Coyotes and the league’s involvement in the team continuing trading and then being sold to new owners, as well as the New York Rangers’ anti-trust suit against the NHL concerning the league’s intended common content platform for each team’s internet rights.

Despite the comprehensive and engaging information provided by Barnes, [*I / the reader*] found the alphabet soup of acronyms used when referring to the professional and amateur organisations a little confusing due to the vast numbers of local, national and international teams, leagues and governing bodies involved in the sport (e.g. a sample of these include the International Ice Hockey Federation (IIHF), Hockey Canada, also known as the Canadian Hockey Association (CHA), the national “Major Junior” competition the Canadian Hockey League (CHL), the current NHL professional competition, the competing Russian Continental Hockey League (KHL), the old World Hockey Association (WHA) – as well as the International Olympic Committee (IOC) – the list goes on ...). While this may not be the experience for more seasoned hockey fans, it would be considered an improvement for future international editions of the book to include a quick reference glossary to keep track of those acronyms. This would also enable the reader to review individual chapters with greater ease. In addition to that glossary, it would also be useful for future editions to include reference pages providing organisational charts displaying the governing bodies and other key entities for each of the international, professional and amateur versions of the game. However, these issues are more geared at the international reader who is less attune with the North American market and the historical origins of the game.

“The Law of Hockey” is an engaging and a comprehensive review of the Canadian national winter sport, which at times reads as much as a historical account of the game, as it does a legal text book. Whether the reader has a passion for North American based sports or not, the comprehensive nature in which Barnes covers the on-ice and off-ice issues makes it a worthy addition to the sports lawyer’s bookshelf.

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<sup>1</sup> "The Law of Hockey", John Barnes, LexisNexis Canada Inc., March 2010, Canada.

<sup>2</sup> *National Sports of Canada Act*, S.C., 1994, c. 16, s. 2.

## **AUTHOR GUIDELINES**

### ***"The Commentator"***

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#### **Editorial Policy**

- To focus on publishing quality sports law or sports administration material dealing with current topics of interest to professionals, academics and sports administrators.
- Articles to be of a high standard demonstrating thought and intellectual rigor in the manner in which current issues are addressed by the author.
- To publish four editions of *The Commentator* per annum.
- The material is to consist of professionally orientated *Commentator* style articles approximately 1,000 to 3,000 words in length.

#### **Submission of Articles**

- Articles must be accompanied by a *Submission of Article for Publication* form which can be downloaded from the website and sent via email to: *The Commentator* - Editor – Gerry Glennen at [anzsla@anzsla.com](mailto:anzsla@anzsla.com) and copied to [gglennen@optusnet.com.au](mailto:gglennen@optusnet.com.au).
- Articles should be submitted by the following set contribution deadlines for each of the four editions: 21 February; 23 June; 24 October and 8 December.
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- MS Word format
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**Gerry Glennen**  
**Editor**

Email: [anzsla@anzsla.com](mailto:anzsla@anzsla.com) and [gglennen@optusnet.com.au](mailto:gglennen@optusnet.com.au)

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