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# Approach of International Governing Bodies to the Protection of Integrity Between 2003 - 2008

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Independent  
Review  
of Integrity  
in Tennis

07

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**Chapter 07**

1. The Independent Review Panel (the “Panel”) addresses below the historical approach of the International Governing Bodies of tennis (the “International Governing Bodies”) to match-fixing and related breaches of integrity before the creation of the TIU and the adoption of the TACP on 1 January 2009. The ATP investigation leading to the 2008 Sopot Report, and the 2008 Environmental Review commissioned by all the International Governing Bodies, are separately addressed in Chapter 8.
2. Pursuant to the Terms of Reference, the Panel addresses whether investigations and enforcement actions were carried out effectively and appropriately by the international governing bodies between 2003 and 2008. As set out in Chapter 1<sup>2</sup> it is not the Panel’s role in this Independent Review of Integrity in Tennis (the “Review”) to determine whether past actions did or did not satisfy any legality standard, and it should not be taken as doing so. Rather the Panel identifies below the relevant evidence it has received, including witness statements and contemporaneous documents, and sets out its present<sup>3</sup> opinion as to the effectiveness and appropriateness of relevant actions at the time, based on its appreciation of the available evidence of the contemporaneous facts and circumstances. Also, as set out in Chapter 1<sup>4</sup>, on occasion it is not possible or appropriate to seek to resolve apparent factual conflicts in the witness evidence.
3. In addition to the general historical approach of the ATP<sup>5</sup>, WTA<sup>6</sup>, Grand Slams<sup>7</sup> and ITF<sup>8</sup> to match-fixing and related breaches of integrity in the period, the Panel addresses separately below<sup>9</sup> the ATP’s response in 2007 to the discovery of betting accounts in the names of players and coaches, which was the subject of media criticism in early 2016<sup>10</sup> and with which the Panel has been asked specifically to deal.
4. In relation to the principal criticism in the media, the Panel has seen no evidence that the ATP acted selectively to investigate some players and not others, or not to investigate a very highly ranked player because that would be damaging to the ATP’s reputation or revenue. The Panel has identified, however, some instances in which the ATP’s investigations and decision making, in the Panel’s view, were inappropriate.

**Q 7.1** Are there other matters of factual investigation or evaluation in relation to the approach of the international governing bodies to match-fixing and related breaches of integrity between 2003 and 2008 that are relevant to the Independent Review of Tennis and that should be addressed in the body of the Final Report, and if so, which, and why?

**Q 7.2** Are there any aspects of the Independent Review Panel’s provisional conclusions in relation to the approach of the international governing bodies to match-fixing and related breaches of integrity between 2003 and 2008 that are incorrect; and if so, which, and why? of integrity by prevention of breaches that are incorrect, and if so which, and why?

<sup>1</sup> The ITF, the ATP, the WTA and at that time the Grand Slam Committee (later to become the Grand Slam Board) made up of the four Grand Slams.

<sup>2</sup> Chapter 1, Section C.

<sup>3</sup> Pending the consultation process between Interim and Final Reports.

<sup>4</sup> Chapter 1, Section C.

<sup>5</sup> Section A below.

<sup>6</sup> Section C(1) below.

<sup>7</sup> Section C(2) below.

<sup>8</sup> Section C(3) below.

<sup>9</sup> Section B below.

<sup>10</sup> Chapter 11, Section A. Heidi Blake & John Templon, ‘Tennis covered up for 95 gamblers, says family of suspended player’ (BuzzFeed News, 15 March 2016) available at: <https://www.buzzfeed.com/heidiblake/tennis-accused-of-covering-up-for-95-gamblers> [accessed 9 April 2018]; ‘Tennis match-fixing: More players should be investigated’ (BBC Sport, 15 March 2016), available at: <http://www.bbc.co.uk/sport/tennis/35808571> [accessed 9 April 2018]. The principal criticism made in this context was that the ATP had only pursued disciplinary cases against low ranked Italian players, when it ought also to have pursued such cases against 95 other players, some of whom were high ranked players, but it made a discriminatory decision not to do so, in order to protect its revenue and reputation, and then covered up its actions.

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**A GENERAL HISTORICAL APPROACH OF THE ATP TO MATCH-FIXING AND RELATED BREACHES OF INTEGRITY**

5. During the period 2003 to 2008, the ATP was the most active of the International Governing Bodies in addressing the problem of breaches of integrity. It was the first to identify the problem from 2003, the first to enter into memoranda of understanding with betting operators<sup>11</sup>, and the first to adopt specific rules from 2005<sup>12</sup>. This was in part because the problem was more apparent on the ATP Tour than it was elsewhere. The ATP is to be given credit for seeking to address the issue from the outset.

**(1) THE ATP RULES IN 2003**

6. In 2003, the ATP had only relatively limited rules in place to deal with match-fixing and related breaches of integrity.
7. The Code of Conduct in the 2003 ATP Rules contained a prohibition on a player taking a bribe to influence his efforts in a match<sup>13</sup>; a general prohibition on conduct contrary to the integrity of tennis<sup>14</sup>, which however appeared to be and seems to have been regarded as aimed principally at media comment<sup>15</sup>; and a prohibition on wagers by players, their coaches and immediate family members<sup>16</sup>. There was a hearing and appeal process, and the sanctions provided for in each instance were a fine up to US\$100,000 plus the value of the bribe or wager winnings and up to a three-year suspension.
8. In addition, the Code of Conduct contained an obligation to use best efforts<sup>17</sup>, punishable summarily by the chair umpire or event supervisor by a point penalty and a fine up to US\$10,000.
9. If breaches were repeated or individually very serious, they could amount to a “*player major offense*” of aggravated behaviour<sup>18</sup>, subject after a hearing and appeal process to sanctions of a fine up to the greater of US\$25,000 or the value of any prize money, and up to a one-year suspension.
10. The Code of Conduct in 2003 did not include a prohibition on deliberately losing for some other reason (which could only be dealt with under the obligation to use best efforts). Further, there was no prohibition on the passing of inside information<sup>19</sup>. There were also no investigatory mechanisms requiring players to provide information, phones, or electronic devices to the ATP.

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<sup>11</sup> Paragraph 12 below.

<sup>12</sup> Paragraphs 49-52 below.

<sup>13</sup> The ATP Official Rulebook, 2003, Player Code of Conduct, “Player Major Offenses/Procedures”, pages 82 and 83, provided that “No player shall offer, give, solicit or accept, or agree to offer give, solicit or accept, anything of value to or form any person with the intent to influence a player’s efforts or participation in any ATP or Challenger Series Tournaments...”.

<sup>14</sup> *ibid.*, page 83, provided that “it is an obligation for ATP players, their coaches and family members to refrain from engaging in conduct contrary to the integrity of the game of tennis”.

<sup>15</sup> *ibid.*, page 83, provided that “Conduct contrary to the integrity of the game of tennis shall include, but not be limited to comments to the news media...”.

<sup>16</sup> *ibid.*, page 84, provided that “No player, player’s coach or immediate family member of a player shall wager anything of value in connection any ATP or Challenger Series Tournament...”.

<sup>17</sup> The ATP Official Rulebook, 2003, Player Code of Conduct, “On-Site Offenses/Procedures”, page 71, provides that “A player shall use his best efforts during the match when competing in a Tournament”.

<sup>18</sup> *ibid.*, “Player Major Offenses/Procedures”, page 82, provided that “No player at any ATP or Challenger Series Tournament shall engage in Aggravated Behaviour which is defined as follows (a) one or more incidents of behaviour designated in this Code as constituting Aggravated Behaviour; (b) one incident of behaviour that is flagrant and particularly injurious to the success of a Tournament, or is singularly egregious; (c) a series of two or more violations of this Code within a twelve month period which singularly do not constitute Aggravate Behaviour, but when viewed together establish a pattern of conduct that is collectively egregious and is detrimental or injurious to ATP or Challenger Series Tournaments ...”. The ATP Official Rulebook, 2003, Player Code of Conduct, “On-Site Offenses/Procedures”, page 71, provided that “[i]n circumstances that are flagrant and particularly injurious to the success of a tournament, or are singularly egregious, a single violation of this section shall also constitute the Player Major Offense of Aggravated Behaviour”.

<sup>19</sup> The term “inside information” is variously defined in different rules, but broadly refers to information that a person has by virtue of his or her position in relation to the competition, which is not in the public domain.

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11. In 2003 the ATP's Executive Vice-President ("EVP") for Rules and Competition<sup>20</sup>, Richard Ings, began an assessment of the ATP's rules and procedures to address match-fixing and related breaches of integrity, following publication of details of corruption in international cricket<sup>21</sup>. That assessment and the ATP's experience during 2003 and 2004 set out in sub-section (2) below, led to the ultimate adoption of new ATP rules from 1 January 2005, addressed in sub-section (3) below. On 21 June 2005, Richard Ings produced his Report on Corruption Allegations in Men's Professional Tennis (the "2005 Ings Report"). The conclusions of the 2005 Ings Report as to the position in 2005 are dealt with in paragraphs 53 to 59 below. The 2005 Ings Report also contained a description of the events from 2002 to 2005<sup>22</sup>. His assessment was that tennis as an individual sport was vulnerable to match-fixing; *"no security apparatus was in place"*; the rules were out of date; there was no player education; there was *"no understanding of how gambling on tennis occurs, who conducts it, what the volumes are or what information is available from gambling operators"*; and that *"ranking and prize money rules... offered the unscrupulous little disincentive to under-perform"*<sup>23</sup>.

**(2) THE ATP'S EXPERIENCE IN 2003 AND 2004**

**Entry into memoranda of understanding with betting operators**

12. In the light of the potential problem faced by the sport<sup>24</sup>, the ATP entered in 2003 into a memorandum of understanding with the leading betting exchange Betfair in order to ensure that suspicious or unusual betting patterns would be reliably reported, and relevant information would be provided, to the ATP. The ATP subsequently entered into a further memorandum of understanding with ESSA.
13. The ATP also appointed a professional investigator, Iain Malone, to assist in undertaking betting-related investigations. During this time Richard Ings also met with, amongst others, Jeff Rees, then the General Manager of the Cricket Anti-Corruption and Security Unit<sup>25</sup>, in order to gain an understanding of the approach taken to tackling match-fixing in cricket.

**Specific cases investigated by the ATP in 2003 and 2004**

14. In 2003 and 2004, the ATP investigated a number of cases that illustrated how unusual or suspicious betting patterns might arise both as a result of breaches of integrity and for other reasons, and that brought home to the ATP how difficult it would be to take disciplinary action under the ATP rules in place. As no disciplinary action was brought, and no offenses may have been involved, the cases are anonymised below.

***Lack of best efforts possibly known to bettors***

15. Before the ATP had memoranda of understanding in place, it was alerted in advance to a suspicious betting pattern in relation to a first round ATP match<sup>26</sup>. The ultimate loser Player A moved from strong favourite to outsider, with at least one bettor displaying apparent confidence that Player A would lose.
16. The ATP Supervisor was asked to watch for any sign of underperformance and to report any indication of injury. In the first set, the supervisor warned Player A to use best efforts. There was no indication of any injury reported by the supervisor. Player A lost easily, and the supervisor fined him for lack of best efforts under the ATP Code of Conduct.

<sup>20</sup> Who also had the role of "Administrator of Rules and Competition" for the purposes of the enforcement of the then ATP Rules against players.

<sup>21</sup> Richard Ings, 'Report on Corruption Allegations in Men's Professional Tennis' (June 2005), ("2005 Ings Report"), page 10, paragraph 57, Appendix: Key Documents.

<sup>22</sup> In order to protect the confidentiality of individual players not charged with disciplinary offences, none mentioned in the 2005 Ings Report are named in this Chapter, and the 2005 Ings Report as published has been suitably redacted.

<sup>23</sup> 2005 Ings Report, page 10, paragraphs 59-61.

<sup>24</sup> Statement of Richard Ings (formerly ATP).

<sup>25</sup> 2005 Ings Report, page 11, paragraphs 62-69.

<sup>26</sup> *ibid.*, page 12, paragraphs 72-76.

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17. As there were no memoranda of understanding in place between the ATP and betting operators there were no practical investigatory steps open to the ATP. There was no evidence that Player A had been bribed to lose deliberately for betting purposes contrary to the then ATP rules, but he was adjudged not to have tried sufficiently to win, raising the possibility that a prior decision to lose for other reasons had become known to bettors. No further disciplinary action was taken in this case.

***Inside information that was possibly known to the bettors***

18. Pursuant to the new memorandum of understanding with Betfair, the ATP received several notifications of suspicious betting patterns in relation to an ATP match between Player B, the higher ranked player, and Player C. On the day of the match, bets were placed backing Player C to beat Player B. This was the ultimate outcome of the match. A number of betting operators suspended betting before the match started.
19. The ATP Supervisor, present on site, was asked to watch for any sign of underperformance and to report any indication of injury. There was no indication of any injury reported by the supervisor, although Player B subsequently stated that he was injured. The ATP Supervisor described Player's B performance as a "professional tank". No disciplinary action for failure to use best efforts was taken.
20. Betfair provided the ATP with intelligence surrounding three accounts that had been used to place bets on matches at the same tournament<sup>27</sup>. Through its investigation, the ATP established links among the three betting accounts:
- 20.1 An account in the name of a third party backed by the credit card of another player (Player D) had been used to back Player C to beat Player B, and to bet only a small amount on three other matches<sup>28</sup>. The third party was a close associate and assistant of Player B. The third party also operated a sports management firm and both Player B and Player D were listed as clients. This individual is referred to interchangeably by the ATP as the "third party" or the "manager".
- 20.2 An account in the name of an employee of that same sports management firm had also been used to back Player C to beat Player B, and to bet on one other match<sup>29</sup>.
- 20.3 An account in the name of Player B himself and backed by his credit card had not been used to place bets on Player B's own match, but had been used to place bets on other matches at the event<sup>30</sup>. One of those bets was to back Player C, to whom Player B had lost, to lose his next match at the same tournament. In 2000, Player B had been warned by the ATP not to gamble after reports brought to the ATP's attention. Player B had advised the ATP that those reports were false.
21. The ATP conducted an investigation, involving ATP regulatory, investigative and legal expertise. The investigation was carried out by Richard Ings the EVP of Rules; Iain Malone, the ATP's investigator and Mark Young, the ATP Vice President of Legal. Mr Ings told the Panel that "[t]he investigation included detailed interviews with Players B, C, D and the third party as well as analysis of betting accounts, review of identification documents used to establish accounts, IP addresses of computers used to place bets, and review of audio recordings of phone bets"<sup>31</sup>. The Panel understands that there is no written record of these interviews within the documents that now exist.
22. Mr Ings told the Panel that "[g]iven the seriousness of the matter, I sent a memorandum to the ATP CEO outlining the broad scope of the investigation. I considered it necessary that the ATP CEO be made aware of these matters as they progressed"<sup>32</sup>. The Panel notes from the contemporaneous documents that, the day following the interview with Player B, Richard Ings prepared a memorandum headed "betting update", addressed to Mark Miles, Chief Executive Officer of the ATP. In that memorandum Richard Ings described the betting that had occurred on the matches detailed above and stated:

<sup>27</sup> 2005 Ings Report, page 16, paragraphs 81-85.

<sup>28</sup> The bet on Player C to beat Player B was €1,477, whereas the other bets ranged between €10 and €20.

<sup>29</sup> The bet on Player C to beat Player B was €985 whereas the other bet was for €21.

<sup>30</sup> The account had won on two matches and lost on a third. The bet sizes placed included three of €3,000 or more and one of close to €7,000.

<sup>31</sup> Response of Richard Ings to Notification given under Paragraph 21 ToR.

<sup>32</sup> Response of Richard Ings to Notification given under Paragraph 21 ToR.

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- 22.1 The ATP had “*hard evidence*” of betting accounts in the names of Player B and Player D.
- 22.2 The ATP also had another, second-hand, allegation in respect of Player B concerning possible betting-related corruption.
- 22.3 The ATP had reports and allegations in relation to five other players concerning possible betting related corruption. These included unusual or suspicious betting patterns and allegations from other participants. Four of the five players were the players referred to in this section as Players A, E, F and G.
- 22.4 While the ATP’s investigation “*at this stage was focusing on Player B, Player D and [the sports management firm that represented them]*” it separately appeared “*that circumstantial evidence is pointing to more parties being involved in match fixing in addition to betting. There appears to be much overlap in the names that we are getting info on from various non-connected sources*”.
- 22.5 “*In order to further determine how large our problem is, a consideration should be given to allowing Iain Malone to interview the following people*”. (The memorandum then set out a list of nine names). “*Such interviews may uncover further evidence of gambling and/or match fixing including material that may be relevant to pursuing the Player B and Player D matters. I welcome your guidance on how far you want us to dig into these now numerous matters.*”
23. Richard Ings told the Panel that “*I stand by the details of the memo sent to the ATP CEO. The intelligence received from Betfair is a matter of fact. That raised serious questions about possible breaches of the ATP rules by multiple individuals*” and in his view “[*it*] was diligent and necessary to brief the ATP CEO of an ongoing Major Offence investigation”<sup>33</sup>, as he did in the memorandum.
24. Mark Miles was also provided a copy of the “*betting update*” memorandum together with an amended copy of that memorandum (referred to in paragraph 28 below), when he was interviewed as part of this Review. His assessment of the allegations and reports described in the documents was that it would be inappropriate to accept those sections of the memoranda as fact. If one were to have drilled down into each example, then the accuracy of Richard Ings’ comments might not have withstood scrutiny<sup>34</sup>. Mr Miles’ evidence was also that Richard Ings “*often reached conclusions before [Mark Miles] would have, due to [Richard Ings]’ propensity to jump to conclusions*”, although he “*carried out his role with good intentions and integrity*”.<sup>35</sup> In response, Mr Ings told the Panel that “*Mr Miles fails to recall that under the 2003 ATP rules, the EVP of Rules and Competition had absolute jurisdiction to make decisions on Player Major Offences. My memo to him was a courtesy*”<sup>36</sup>. Mr Ings explained that “*it would have been entirely inappropriate and poor governance for the EVP Rules and Competition to reach a first instance decision on a Major Offence in collaboration with the ATP CEO when it was the ATP CEO who must hear any appeal by the player of the EVP Rules and Competitions major offence decision*”. Mr Ings further stated that “*Mr Miles had no role under the 2003 ATP Rules in these first instance decisions. His input was not sought and any input Mr Miles may have been tempted to offer would have been rejected by me as improper governance*”.
25. Following the memorandum, a letter was sent to Player B stating that the ATP was conducting a “*Major Offence Investigation*” concerning evidence collected by the ATP that he had bet on matches contrary to the ATP Rule in effect at the time prohibiting wagering by players<sup>37</sup>. Player B was asked to provide a detailed response of the betting activity. Player D was written to on the same basis. Both players were given four days to respond with a written explanation of the betting activities in their names.

<sup>33</sup> Response of Richard Ings to Notification given under Paragraph 21 ToR.

<sup>34</sup> Statement of Mark Miles (formerly ATP).

<sup>35</sup> Statement of Mark Miles (formerly ATP).

<sup>36</sup> Response of Richard Ings to Notification given under Paragraph 21 ToR.

<sup>37</sup> The investigation into Player B was not into the result of the match between him and Player C, or into whether Player B had accepted a bribe deliberately to lose that match contrary to the then ATP Rules, or had failed to use best efforts contrary to the then ATP Rules.

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26. From the contemporaneous documents seen by the Panel Player B did not respond to the ATP's letter of investigation or provide a written explanation of the betting activity referred to in the ATP's letter. Nor is there a record of a written response from Player D. Richard Ings informed the Panel that both players were "*extensively interviewed as part of the investigation*"<sup>38</sup>
27. The Panel has seen a document that appears to set out an assessment by Richard Ings of the merits of charging Player D. This document is dated two days after the letter of investigation was sent to Player D. It sets out grounds for proceeding with a case against Player D and grounds against doing so:
  - 27.1 The core arguments for not proceeding with a case were that it had been claimed that an employee at Player D's sports management firm had set up the betting account without Player D's knowledge, had forged his signature in order to do so and, when interviewed, Player D appeared to have little or no knowledge of the betting process.
  - 27.2 The core arguments in favour of proceeding with a case were the possibility that Player D had knowledge of the Betfair account and that Player D had been unable to explain why the employee at the sports management firm had needed to go through the elaborate process of using his details to set up that account.
28. Following the passing of the deadline for Player B and Player D to respond to the letter of investigation, Richard Ings amended his "*betting update*" memorandum. In respect of the possible case against Player B and Player D the changes to note were that:
  - 28.1 In addition to Mark Miles, the amended "*betting update*" memorandum was also addressed to the Executive Committee.
  - 28.2 The reference to there being "*hard evidence*" against Player D was removed. Richard Ings' evidence to the Panel was that "*he was happy at this stage that Player D was not aware of the betting account being opened in the name of the Third Party but backed by Player D's credit card*"<sup>39</sup>.
  - 28.3 Some additional intelligence was added and the list of people potentially worth interviewing was expanded to 13.
29. Richard Ings told the Panel that "*I was satisfied at this stage that Player D was not aware of the betting account being opened in the name of the third party but backed by Player D's credit card*"<sup>40</sup>.
30. A draft decision letter in respect of Player B was also produced by Richard Ings. This document was created shortly after the deadline expired for Player B to respond to the letter of investigation. The draft decision letter recorded that:
  - 30.1 The ATP had provided Player B with 3 opportunities to offer an explanation of these betting activities. On those three separate occasions, including during his interview, Player B had declined to provide an explanation for the betting activities or deny his involvement in betting on tennis.
  - 30.2 On the preponderance of evidence the ATP had concluded that Player B, in conjunction with others, placed bets on at least three tennis matches.
  - 30.3 Player B was to be fined US\$100,000 and suspended from playing in ATP tournaments for three years.
  - 30.4 Player B had a right of appeal.
31. Richard Ings told the Panel that "[i]n regard to Player B, I laid out in detail the evidence collected to date. I consulted

<sup>38</sup> Response of Richard Ings to Notification given under paragraph 21 ToR.

<sup>39</sup> Response of Richard Ings to Notification given under paragraph 21 ToR.

<sup>40</sup> Response of Richard Ings to Notification given under paragraph 21 ToR.

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*ATP Legal Counsel (Mark Young) and the ATP investigator. Following that consultation, I took an informed view that insufficient evidence existed to find that Player B had breached the 2003 ATP Major Offense rules. Specifically, I was not satisfied that Player B had placed bets himself or directed others to place bets on his behalf at ATP matches*<sup>41</sup>.

32. When interviewed as part of this Review, Richard Ings was provided a copy of the draft decision letter referred to in paragraph 28 above. To place the draft decision letter into context he explained that he recalled having real concerns that Player B had breached corruption rules. He stated that as part of deciding whether to take disciplinary action, he wanted to see what a decision to sanction Player B would look like in writing, and so he drafted the draft decision letter<sup>42</sup>. The draft letter was never finalised and did not reflect his final assessment of the case against Player B. He took the decision that there was not enough available evidence to proceed against Player B.<sup>43</sup>
33. Mr Ings stated that his reasons for reaching his decision were accurately recorded in the 2005 Ings Report.<sup>44</sup> In particular:
  - 33.1 based on a review of the recordings of the initial bets placed on each of the three accounts, including Player B's account, it was believed that the voice placing the bets belonged to the manager;
  - 33.2 the manager admitted to placing the bets and claimed that Player B (as with Player D) had not been aware of the bets;
  - 33.3 Player B denied any knowledge of the bets being placed.<sup>45</sup>
34. As a result, the conclusion reached by Richard Ings was that all the bets on all three accounts had been placed by the manager and that there was insufficient evidence that the players were aware of the bets. Consequently, the 2005 Ings Report stated that the ATP concluded that there was no evidence of any breach of the ATP Rules as they then stood, and there was no disciplinary action against Player B, or indeed Player D<sup>46</sup>.
35. Other than the 2005 Ings Report, there is no record of any further communication relating to this matter with Player B, nor any internal document recording the decision taken by the ATP.
36. The Panel has seen a document created by Jeff Rees in 2008 in which he suggested that before the TIU was established, *"some suspect players had been persuaded to end their playing career"*<sup>47</sup>.
37. Richard Ings told the Panel *"from 2001 to 2005 I held the position of ATP EVP of Rules and Competition. In that role for those 5 years, I was responsible for all player major offence investigations and decisions. At no stage during my 5 years at the ATP did I observe or suspect that any player subject to a major offence investigation 'was persuaded to end their playing careers' to cease a major offence investigation I was conducting"*<sup>48</sup>.
38. The Panel has not seen any evidence of any player retiring at a time when he or she was suspected of committing an offence, other than Player B. Player B's last match took place two days before the deadline for him to respond to the ATP's investigation letter and one week prior to the draft decision referred to above. He made no formal retirement announcement.
39. Some material received by the Panel related to this retirement has been classified by the ATP as Restricted Confidential

<sup>41</sup> Response of Richard Ings to Notification given under paragraph 21 ToR.

<sup>42</sup> Statement of Richard Ings (formerly ATP).

<sup>43</sup> Statement of Richard Ings (formerly ATP).

<sup>44</sup> Statement of Richard Ings (formerly ATP).

<sup>45</sup> 2005 Ings Report, page 17, paragraphs 87-93.

<sup>46</sup> *ibid.*, page 18, paragraphs 95-97.

<sup>47</sup> Note of Jeff Rees in respect of Meeting on 20 October 2008, with the CCPR and Paul Scotney (BHA).

<sup>48</sup> Response of Richard Ings to Notification given under paragraph 21 ToR.

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Information, preventing the Panel using it to address further the circumstances of Player B's retirement.

40. Finally, with regard to the third party who had been involved in placing the bets, the 2005 Ings Report records that the ATP ceased to accredit him for access to non-public areas at tournaments<sup>49</sup>. The ATP had no jurisdiction to take disciplinary action against the third-party manager under the Rules as they stood in 2003.

***Possible abuse of the lucky loser system***

41. In the same year, Player E was reported by the press as stating that there were rumours of players betting on tennis<sup>50</sup>. Amongst other things, Player E was reported to have alleged that Player F had offered to lose a qualifying match to allow Player E to qualify at a Grand Slam, in return for payment, in circumstances where Player F would in any event qualify as a lucky loser<sup>51</sup>. Player E was further reported to have stated that on another occasion when he was "more or less injured", he had contacted and made an arrangement with a lucky loser, Player G, that Player E would not attend the tournament, allowing the lucky loser Player G to qualify, in return for the first-round prize money. When interviewed by the ATP, Player E stated that he had only been speaking hypothetically and was not reporting actual events.
42. Player E informed the ATP that it was not the case that Player F had offered him a bribe. Player F also denied doing so when interviewed. With the ATP not able to obtain the transcripts of the interview with Player F, and in the light of the fact that the allegation against Player F did not concern an ATP event, the ATP determined that there was no basis for it to proceed against any players for breach of the then ATP Rules prohibiting a player offering another player a bribe to lose a match or not to participate in a tournament<sup>52</sup>. Player E was however sanctioned for his media comments<sup>53</sup>.
43. The allegations caused the ATP's Richard Ings to further investigate the lucky loser system<sup>54</sup>, and he concluded that the then system was susceptible to corruption.

**Intelligence in relation to other matches in 2003 and 2004**

44. Intelligence came to the attention of the ATP, of varying quality, in relation to matches and in respect of various players and other participants in 2003 and 2004<sup>55</sup>. It became apparent that betting markets were increasingly being offered on Challenger level matches. The 2005 Ings Report recorded that at that time the ATP was receiving information about irregular betting practices on a near weekly basis. Richard Ings recorded that all such reports were subject to investigation using the means then available to the ATP<sup>56</sup>.
45. An example of such an investigation is set out in paragraphs 151 to 165 of the 2005 Ings Report. A substantial sum of money (£20,000) had been placed by a heavy tennis gambler on the underdog to beat the favourite in a second round Challenger match. An analysis of the betting was conducted by the ATP. At the time of the 2005 Ings Report, Richard Ings' view was that there was no evidence that the ATP Rules then in place had been breached, but the match remained of interest and inquiries were continuing<sup>57</sup>.

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<sup>49</sup> 2005 Ings Report, page 18, paragraph 97.

<sup>50</sup> *ibid.*, page 19, paragraphs 104-114.

<sup>51</sup> A "lucky loser" is a player who lost in the last round of qualification, but who nevertheless secures a place in the main draw when one becomes free due to a qualified player being unable to take it up for whatever reason. The first place to come free was until recently assigned to the highest ranked player to lose in the last round of qualification. Now the lucky loser will be randomly drawn from the highest-ranking players who did not qualify for the main draw. The number of highest ranking non-qualifiers from which the lucky loser is drawn will depend on the rules governing that event.

<sup>52</sup> *ibid.*, page 22, paragraph 111.

<sup>53</sup> Under the ATP Rule prohibiting "conduct contrary to the integrity of the game".

<sup>54</sup> 2005 Ings Report, page 22, paragraphs 115-125.

<sup>55</sup> That intelligence is described, suitably redacted, in the 2005 Ings Report, page 27, Section C, paragraphs 151 to 180. It is also in Appendix 2 to the 2005 Ings Report. Appendix 2 is not published because it cannot be suitably redacted. See also Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), pages 39-40, paragraphs 3.140-3.147 and Executive Summary paragraphs 3.140-3.147, Appendix: Key Documents.

<sup>56</sup> 2005 Ings Report, page 34, paragraphs 181.

<sup>57</sup> 2005 Ings Report, page 27, paragraph 154.

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46. Media reports during this time raised concerns as to match-fixing in tennis. One of those reports, which was recorded in the 2005 Ings Report<sup>58</sup>, revealed amongst other things that some players might bet on their own defeat where they did not think that they would “*be able to play 100 per cent.*” or they had “*an appointment during the next few days somewhere else*”; that some players who were injured and knew that they could not complete a match might make an arrangement with their opponent and bet on the outcome agreed; that it was considered easy to lose deliberately; that problems would be more likely to arise in small events with little prize money or ranking points available, away from the media spotlights and that professional gamblers follow betting trends.

**No disciplinary action was taken by the ATP in respect of events in 2003 and 2004**

47. In 2003 and 2004, Mr Ings told the Panel that “*I instigated Major Offence investigations under the then Wagering Rules<sup>59</sup> during the 2003 and 2004 periods. Mr Ings told the Panel that “[i]n each case, I found insufficient evidence that a Major Offence violation for the 2003 or 2004 ATP rules had occurred<sup>60</sup>.*”
48. During the same period, the ATP issued on-site fines to two players for failure to use best efforts. It should be noted however that not all Code Violations result in a fine being issued<sup>61</sup>. The ATP did not take any disciplinary action against any players for the major offense of failure to use best efforts in an aggravated manner.

**(3) THE INTRODUCTION OF THE ATP TACP IN 2005**

49. Against the background described above, and in particular the ATP’s experience that the previous rules had been insufficient to address issues that had arisen, the ATP introduced the ATP “Tennis Anti-Corruption Program” (“ATP TACP”)<sup>62</sup>, which came into operation on 1 January 2005.
50. The ATP TACP contained much more detailed provisions than before, and subsequently formed the starting point for the new tennis-wide uniform TACP introduced from 1 January 2009. As set out above, the ATP is to be given credit for seeking proactively to address the emerging issue.
51. In particular, the ATP TACP:
- 51.1 Expanded the persons covered from players<sup>63</sup>, coaches and family members to also cover other participants including managers, agents, guests and associates<sup>64</sup>. Since there might not be a contractual undertaking by such people to abide the rules, each player was obliged to instruct them to comply<sup>65</sup>, but only had actual responsibility in the event that they did not, if the player knew of or assisted in the breach<sup>66</sup>.

<sup>58</sup> *ibid.*, page 29, paragraphs 166 to 169.

<sup>59</sup> The ATP Official Rulebook, 2003, Code of Conduct, Article IV.A.

<sup>60</sup> Response of Richard Ings to Notification given under paragraph 21 ToR.

<sup>61</sup> Statement of Gayle Bradshaw (ATP).

<sup>62</sup> The ATP TACP was set out in the ATP Official Rulebook, 2005, Rule 7.05, “Tennis Anti-Corruption Program 2005”, pages 135 to 142 (“ATP TACP 2005”). Rule 7.05.A (f) provided that “The purpose of the Tennis Anti-Corruption Program (the “Program”) is to maintain the integrity of tennis and to protect against any efforts to impact improperly the results of any match”.

<sup>63</sup> ATP TACP 2005 Rule 7.05.B(f) provided that “Any player who enters or participates in any competition, event or activity organized, sanctioned or recognized by the ATP or who is an ATP member or who has an ATP ranking (a “Player”) shall be bound by and shall comply with all of the provisions of this Program”. Rule 7.05.B.(2) provided that “For purposes of this Program the term “Events” means all tennis matches and other tennis competitions, whether men’s or women’s, amateur or professional, including, without limitation, all ATP tournaments, Challenger Series tournaments, and Futures and Satellite Series Circuit tournaments”.

<sup>64</sup> ATP TACP 2005, Rule 7.05.B(3) provided that “Any coach, trainer, manager, agent, family member, tournament guest or other affiliate or associate of any players (“Player Support Personnel”) shall also be bound by and shall comply with all the provisions of this Program”.

<sup>65</sup> *ibid.*, Rule 7.05.B(4) provided that “It is the sole responsibility of each Player and each Player Support Personnel to acquaint himself or herself with all of the provisions of this Program. Further, each Player shall inform his Player Support Personnel of all of the provisions of this Program and shall instruct his Player Support Personnel to comply therewith”.

<sup>66</sup> *ibid.*, Rule 7.05.D(f) provided that “Each Player shall be held responsible for any Prohibited Conduct by any of his Player Support Personnel if such Player had knowledge of, or otherwise assisted, encouraged, aided, abetted, covered up or was otherwise complicit in, such Prohibited Conduct. In such event, the ATP shall have the right to impose sanctions on the Player to the same extent as if the Player himself had engaged in the Prohibited Conduct”.

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- 51.2 Maintained the obligation not to wager as the first of what were now described as “*Corruption Offenses*”<sup>67</sup>, but now extended the obligation to the wider group of participants<sup>68</sup>.
- 51.3 Expanded the previous obligation not to accept a bribe made with the intent of influencing a player’s efforts or participation in an event, into a series of obligations<sup>69</sup> on the now wider group of participants. In summary the obligations were not “*to contrive the outcome or any other aspect of*” an event (which therefore included a match, or part of it); not to persuade a player “*to not use his best efforts*”; not to accept a reward with the intention of influencing best efforts; not to offer a reward with the intention of influencing best efforts; not to accept a reward for the provision of inside information; and not to offer a reward for the provision of inside information. An obligation not to buy a wildcard<sup>70</sup> was added soon afterwards in 2006<sup>71</sup>.
- 51.4 Did not include, at least as it was subsequently construed and possibly originally intended, an express obligation simply not to lose deliberately at all (rather than to do so for reward for betting or other corrupt purposes). Although the obligation not to “*contrive the outcome*” of a match could clearly have been construed as extending to this, it does not appear to have been so construed by the ATP<sup>72</sup>, and it does not appear to have been so intended at the outset when the expression was included. Rather, deliberately losing for other reasons remained to be dealt with under the obligation to use best efforts, which was located as before elsewhere in the Code of Conduct.
- 51.5 Did not contain an obligation not to pass on inside information at all (rather than not to do so for reward, which was covered)<sup>73</sup>.
- 51.6 Did not contain an obligation to report corrupt approaches<sup>74</sup>.

**67** *ibid.*, Rule 7.05.C provided that “Commission of any offense set forth in Article C or D of this Program or any other violation of the provisions of this Program shall constitute a “Corruption Offense” for all purposes of this Program”.

**68** *ibid.*, Rule 7.05.C(1) provided that “a) No Player nor any of his Player Support Personnel shall, directly or indirectly, wager or attempt to wager money or anything else of value or enter into any form of financial speculation (collectively, “Wager”) on the outcome or any other aspect of any Event;

b) No Player nor any of his Player Support Personnel shall, directly or indirectly, solicit, induce, entice, persuade, encourage or facilitate any other person to Wager on the outcome or any other aspect of any Event”.

**69** *ibid.*, Rule 7.05.C(2) Provided that

“a) No Player nor any of his Player Support Personnel shall, directly or indirectly, contrive or attempt to contrive, or be a party to any effort to contrive or attempt to contrive, the outcome or any other aspect of any Event;

b) Without limiting the requirements set forth above under “Best Efforts”, no Player nor any of his Player Support Personnel shall, directly or indirectly, solicit, induce, entice, persuade, encourage or facilitate any Player to not use his best efforts in any Event;

c) No Player nor any of his Player Support Personnel shall, directly or indirectly, solicit, request, receive, accept or agree to receive or accept any Consideration, either (i) with the intention of influencing the Player’s efforts in any Event, or (ii) that could otherwise bring the Player or the game of tennis into disrepute;

d) No Player nor any of his Player Support Personnel shall, directly or indirectly, offer, promise, provide or agree to provide any Consideration to any Other Player, whether the Other Player is an opponent of such Player or otherwise, either (i) with the intention of influencing the Other Player’s efforts in any Event, or (ii) that could otherwise bring the Player, the Other Player or the game of tennis into disrepute;

e) No Player nor any of his Player Support Personnel shall, directly or indirectly, solicit, request, receive, accept or agree to receive or accept any money, benefit or other consideration (whether financial or otherwise) (collectively, “Consideration”), for the provision of any information concerning the weather, players, court conditions, status, outcome or any other aspect of any Event (other than the provision of information to a reputable media organization not affiliated with Wagering for disclosure to the general public);

f) No Player nor any of his Player Support Personnel shall, directly or indirectly, offer, promise, provide or agree to provide any Consideration to any other Player (an “Other Player”), whether the Other Player is an opponent of such Player or otherwise, for the provision of any information concerning the weather, players, court conditions, status, outcome or any other aspect of any Event...”

**70** Places in the main draw of an event may be reserved for “wildcards”. Wildcards are awarded to players at the discretion of the tournament organisers. Players awarded wildcards do not have to be sufficiently highly ranked, nor do they have to have played in the qualifying competition.

**71** The ATP Official Rulebook, 2006, Rule 7.05, “Tennis Anti-Corruption Program” (“ATP TACP 2006”) Rule 7.05 C(2)(g) provided that “No Player nor any of his Player Support Personnel shall, directly or indirectly, offer compensation to the Tournament in exchange for a Wild Card”.

**72** In just the same way as the equivalent provision in the uniform TACP was not so construed later by the TIU: Chapter 10, Part 1, Section B(2).

**73** Again, in just the same way that there was no such provision in the later tennis-wide uniform TACP: Chapter 10, Part 1, Section B(2).

**74** Which was, in contrast introduced in the later tennis-wide uniform TACP: Chapter 10, Part 1, Section B(2).

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- 51.7 Contained a number of provisions heading off potential arguments as to why conduct might not be a breach, and afforded a specific defence where a participant was subject to a threat<sup>75</sup>. In particular, attempts and preparatory acts were covered.
- 51.8 Established the role of an independent Anti-Corruption Hearing Officer or “AHO”<sup>76</sup>, and contained provisions on the powers of the ATP to investigate<sup>77</sup>, including in particular an obligation on participants to assist an investigation and an obligation to provide information and records following a formal “*demand*”. Participants were entitled to an immediate appeal to an AHO against any demand for information or records, which later proved to lead to a delay in obtaining records<sup>78</sup>. The rules specified that there would be no interim suspension<sup>79</sup>.

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**75** ATP TACP 2005 Rule 7.05 D(2) to (5) provided that “(2) It is not necessary that the Player charged with a Corruption Offense under Article C.1 or C.2 (or the Player affiliated with the Player Support Personnel charged with such a Corruption Offense) have been a participant in the Event in question;

(3) Neither the nature or outcome of any Wager, nor the outcome of the match upon which such Wager was made, is relevant to the determination of a Corruption Offense under Article C.1;

(4) With respect to any offer, promise, solicitation, request or agreement to provide or accept Consideration, the actual provision or acceptance of such Consideration is not relevant to the determination of an offense under Article C.2. For such a Corruption Offense to be committed, it is sufficient that the offer, promise, solicitation, request or agreement was made. Furthermore, whether or not a Player’s efforts or performance were (or could be expected to be) affected by such Consideration is not relevant to the determination of a Corruption Offense under Article C.2;

(5) A valid defense may be made to a charge in respect of any Prohibited Conduct if the person alleged to have committed the Prohibited Conduct (a) promptly reports such Prohibited Conduct to the ARC and (b) demonstrates that such Prohibited Conduct was the result of any honest and reasonable belief that there was a significant threat to the life or safety of such person or any member of such person’s family”.

**76** ATP TACP 2005 Rule 7.05.E(1) provided that:

“a) the ATP shall appoint a Hearing Officer (“AHO”), who shall be responsible for (i) reviewing matters submitted to him or her by the ARC, (ii) determining whether Corruption Offenses have been committed, (iii) fixing the sanctions for any Corruption Offense found to have been committed, and (iv) the overall operation and administration of this Program. The AHO shall carry out the functions assigned to him or her under this Program.

b) The AHO shall (i) be appointed by the CEO, (ii) serve a term of two (2) years, which may thereafter be renewed in the discretion of the CEO, and (iv) be otherwise independent from the ATP. If the AHO becomes unable to serve the remainder of his or her term, a new AHO may be appointed for a full term pursuant to his Article E.1.b.

c) All references in this Program to the AHO shall be deemed to encompass any designee of the AHO”.

**77** ATP TACP 2005 Rule 7.05.E(2) provided that:

“a) The ARC shall have the power to conduct an investigation of any alleged Corruption Offense. Such investigations may be conducted in conjunction with, and/or information obtained in such investigations may be shared with, other relevant authorities. The ARC shall have discretion, where he deems appropriate, to stay his own investigation pending the outcome of investigations being conducted by other relevant authorities;

b) Subject to Article E.2.d below, all Players and Player Support Personnel must cooperate fully with investigations conducted by the ARC. No Player nor any of his Player Support Personnel shall assist, encourage, aid, abet, cover up or otherwise be complicit in any Prohibited Conduct by any other person or entity, or tamper with or destroy any evidence or other information related to any Prohibited Conduct or allegation or investigation thereof. Any violation of this Article E.2.b without acceptable justification shall constitute “Conduct Contrary to the Integrity of the Game” and/or “Aggravated Behaviour,” and shall render the Player or Player Support Personnel liable to the sanctions applicable under the ATP rules and regulations for such Player Major Offenses;

c) If the ARC reasonably believes that a Player or any of his Player Support Personnel may have committed a Corruption Offense, the ARC may make a written demand to such Player or Player Support Personnel (a “Demand”) to furnish to the ARC any information that is reasonably related to the alleged Corruption Offense and that is permitted to be obtained under applicable law, including, without limitation, (i) copies of, or access to, all records relating to the alleged Corruption Offense (including, without limitation, telephone records, Internet service records, computers, hard drives and other information storage equipment), and (ii) a written statement setting forth the facts and circumstances with respect to the alleged Corruption Offense from such Player or Player Support Personnel and any other person alleged to have participated or otherwise been involved with the alleged Corruption Offense. Subject to the right to object to the scope of such Demand pursuant to Article E.2.d below, the Player or Player Support Personnel shall furnish such information within seven (7) business days of the making of such Demand (or other timetable as may be set by the ARC);

d) If such Player or Player Support Personnel objects to the Demand, the Player or Player Support Personnel shall have the right to appeal the Demand to the AHO. In such event, the ARC shall send the entire dossier of evidence to the AHO and the AHO shall promptly review such evidence and any other facts or circumstances that may be presented to the AHO. The AHO may (but shall not be obligated to) conduct a hearing or other proceeding as the AHO deems appropriate with respect to the Demand, which hearing or proceeding may be in person or by telephone conference (as determined by the AHO in its sole discretion). In addition, the AHO may (but shall not be obligated to) give the ARC or the Player or Player Support Personnel (or his or her legal representative) an opportunity, subject to a strict timetable set by the AHO, to make any written submissions that such parties may wish to make. If, following the AHO’s review of the evidence and any such hearing, proceeding or written submissions, the AHO determines that the Demand is (i) fair and reasonably tailored to obtain evidence relevant to the alleged Corruption Offense and (ii) consistent with applicable law, then the AHO shall direct the Player or Player Support Personnel to produce the information specified in such Demand to both the ARC and the AHO. In the event a Player or Player Support Personnel fails to produce such information, the AHO may rule a Player Ineligible, or deny Player Support Personnel credentials and access to ATP Events, pending compliance with the Demand;

e) Where, as the result of his investigation, the ARC reasonably believes that a Corruption Offense has been committed, the ARC shall refer the matter and send the entire dossier of evidence to the AHO, and the matter shall proceed to a hearing before the AHO (a “Hearing”) in accordance with Article F”.

**78** Chapter 8 in relation to the Sopot Investigation into the match between Vassallo Arguello and Davydenko.

**79** ATP TACP 2005, Rule 7.05 E(3) provided that “No Provisional Suspension. For the avoidance of doubt, and until (a) a Player has admitted or the AHO has issued a Decision (as defined below) that such Player has committed a Corruption Offense or (b) a Player has failed to furnish information as and when directed by the AHO pursuant to Article E.2.d, such Player shall not be deemed to have committed such an offense and shall not be deemed ineligible”.

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51.9 Established a procedure for disciplinary proceedings<sup>80</sup>, which involved a first instance hearing before an AHO, followed by an appeal to the Court of Arbitration for Sport, which under CAS rules would be *de novo*. The burden of proof was on the ATP and the standard was the preponderance of evidence<sup>81</sup>. The limitation period was eight years<sup>82</sup>, and the governing law was the law of Delaware<sup>83</sup>.

51.10 Increased the possible sanction for players from up to three years' ineligibility to up to permanent ineligibility in some instances<sup>84</sup> and provided for the fine to be up to US\$100,000 plus prize money or money otherwise received. The sanction for player support personnel was confined to withdrawal of credentials, which could be permanent.

52. The prohibition in the ATP Code of Conduct 2005 on failure to use best efforts<sup>85</sup> remained the same: It was punishable summarily by the chair umpire or event supervisor by a point penalty and a fine up to US\$10,000, but if repeated or individually very serious, it was capable of amounting to a player major offense of aggravated behaviour<sup>86</sup>, subject, after a hearing and appeal process, to sanctions of a fine up to US\$25,000 plus the value of prize money and up to a one-year suspension.

**(4) THE 2005 INGS REPORT**

**The contents of the 2005 Ings Report**

53. On 21 June 2005, Richard Ings finalised his 'Report on Corruption Allegations in Men's Professional Tennis' setting out the history and causes of alleged corruption and making recommendations as to further changes, beyond those already introduced in the ATP TACP, that would improve matters. The 2005 Ings Report constitutes the first detailed appraisal of the position, and in the view of the Panel raised many of the issues that continue to confront tennis today.

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<sup>80</sup> *ibid.*, Rule 7.05.F.

<sup>81</sup> *ibid.*, Rule 7.05.F(3).

<sup>82</sup> *ibid.*, Rule 7.05.I(1).

<sup>83</sup> *ibid.*, Rule 7.05.I(3).

<sup>84</sup> ATP TACP 2005, Rule 7.05.G provided that:

"1) The penalty for any Corruption Offense shall be determined by the AHO in accordance with Article F, and may include:

a) With respect to any Player, (i) a fine of up to \$100,000 plus an amount equal to the value of any winnings or other amounts received by such Player or his Player Support Personnel in connection with any Wager or receipt of Consideration, (ii) ineligibility ("Ineligibility") for participation in any competition or match at any ATP tournament, competition or other event or activity authorized or organized by the ATP ("ATP Events") for a period of up to three (3) years, and (iii) with respect to any violation of clauses (a)-(d) of Article C.2, permanent Ineligibility;

b) With respect to any Player Support Personnel, (i) suspension of credentials and access to any ATP Event for a period of not less than one (1) year, and (ii) with respect to any violation of clauses (a)-(d) of Article C.2, permanent revocation of such credentials and access;

c) No Player who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in any tournament, competition, event or other activity (other than authorized anti-gambling or anti-corruption education or rehabilitation programs) authorized or organized by the ATP. Without limiting the generality of the foregoing, such Player shall not be given accreditation for, or otherwise granted access to, any competition or event to which access is controlled by the ATP, nor shall the Player be credited with any ATP Entry System Points or ATP Race Points for any competition played during the period of Ineligibility;

2) In addition, Corruption Offenses that also violate nonsporting laws and regulations may be reported to the competent administrative, professional or judicial authorities;

3) If any Player or Player Support Personnel commits an offense under this program during a period of Ineligibility, it shall be treated as a separate Corruption Offense under this Program;

4) The ATP may, in its discretion, recognize any decision by any other sporting authority with respect to the subject matter of this Program, and may impose sanctions of the type described in Article F.1.a or F.1.b on any Player or Player Support Personnel, as applicable, for Prohibited Conduct identified by any such authority".

<sup>85</sup> The ATP Official Rulebook, 2005, Player Code of Conduct. Rule 7.03.J(4)(h)(i) provided that "A Player shall use his best efforts during the match when competing in a tournament".

<sup>86</sup> The ATP Official Rulebook, 2005, Code of Conduct. Rule 7.04.A(1)(a) provided that "No player at any ATP or Challenger Series Tournament shall engage in Aggravated Behaviour which is defined as follows (i) one or more incidents of behaviour designated in this Code as constituting Aggravated Behaviour; (ii) one incident of behaviour that is flagrant and particularly injurious to the success of a Tournament, or is singularly egregious; (iii) a series of two or more violations of this Code within a twelve month period which singularly do not constitute Aggravate Behaviour, but when viewed together establish a pattern of conduct that is collectively egregious and is detrimental or injurious to ATP or Challenger Series Tournaments ...". The best efforts provision, Rule 7.03.B(1)(d), specifies that "In circumstances that are flagrant and particularly injurious to the success of a tournament, or are singularly egregious, a single violation of this section shall also constitute the Player Major Offense of Aggravated Behaviour".

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54. Section A of the 2005 Ings Report addressed in particular the following matters:
- 54.1 Under the heading “*What is corruption and how does it threaten tennis?*”<sup>87</sup>, the 2005 Ings Report approached corruption in tennis on the footing that it included not only when “*a player or their support team seeks to derive a personal benefit through either deliberate underperformance or the use or distribution of inside information*”, but also when “*a player decides to deliberately underperform*” and “*enters a match with an intention to lose*”<sup>88</sup>. The 2005 Ings Report also described the “*corruption cycle*” that could flow from players gambling on tennis and having relationships with those involved in gambling.
- 54.2 Under the heading “*How much money is gambled on men’s professional tennis?*”<sup>89</sup> the 2005 Ings Report estimated the 2004 level at US\$50 billion, and predicted that level would increase in subsequent years.
- 54.3 Under the heading “*Encountering a climate of silence and apathy*”<sup>90</sup>, the 2005 Ings Report expressed concern that “*while the inquiry received the total support of the CEO and open assistance from ATP tournaments, by contrast some players, their support teams and their elected representatives were not so forthcoming*”. The 2005 Ings Report also observed that players did not want to inform on their fellow players, and commented on the need to protect the confidentiality of players who were under suspicion for violating rules.
- 54.4 Under the heading “*Corporate governance*”<sup>91</sup>, the 2005 Ings Report stated that “*protecting the game from alleged corruption requires resolute commitment and zero tolerance from players and their elected leadership. Some player members are not displaying these qualities, in the opinion of this inquiry, at this time*”.
55. Section B of the 2005 Ings Report<sup>92</sup> described the background to anti-corruption inquiries, and in particular the initiation in late 2002 of an assessment of the ATP’s rules and procedures to address match-fixing and related breaches of integrity.<sup>93</sup>
56. Section C of the 2005 Ings Report<sup>94</sup> set out the course of anti-corruption investigations through 2003 and 2004, also described above<sup>95</sup>. Section C concluded<sup>96</sup> that the ATP was “*currently examining unusual betting patterns surrounding approximately 30 first round men’s professional tennis matches*”, and attached as its Appendix 2 a “*full list of matches with unusual betting patterns*”, which referred to 37 matches<sup>97</sup>. The Report stated that “*to date this inquiry has not determined that any individual competing or associated with any of these matches has violated any ATP Rules*”<sup>98</sup>.

<sup>87</sup> 2005 Ings Report, page 5, paragraphs 13-33.

<sup>88</sup> *ibid.*, page 5, paragraphs 16-19.

<sup>16</sup> From a tennis context, at a minimum, corruption is any action by a player or their support team that seeks to derive a personal benefit through either deliberate underperformance or the use or distribution of inside information.

<sup>17</sup> Deliberate underperformance by players is a form of corruption. Tournaments that put up prize money and the public that purchases tickets believe that all players will compete in every match to the best of their physical ability. When players enter matches with an intention to lose, a deception is committed on the tournaments and public.

<sup>18</sup> When gambling on sport enters the equation, such deliberate underperformance can have more serious consequences.

<sup>19</sup> When a player decides to deliberately underperform, a market for that inside information is generated amongst gamblers. Gamblers aware of an intention by a player to deliberately underperform have access to an arbitrage betting opportunity in a manner similar to insider trading on the stock market. The result is a betting coup and windfall profits for the individuals in possession of that inside information”.

<sup>89</sup> *ibid.*, page 7, paragraphs 34-41.

<sup>90</sup> *ibid.*, page 8, paragraphs 42-46.

<sup>91</sup> 2005 Ings Report, page 9, paragraphs 47-55.

<sup>92</sup> *Ibid.*, page 10, paragraphs 56-69.

<sup>93</sup> Paragraph 6 above.

<sup>94</sup> 2005 Ings Report, page 12, paragraphs 70-183.

<sup>95</sup> Paragraphs 15 to 48 above.

<sup>96</sup> 2005 Ings Report, page 34, paragraphs 181-183.

<sup>97</sup> The 37 matches in Appendix 2 comprised of one match from 2002, 18 from 2003, 13 matches from 2004 and five matches from 2005. Appendix 2 is not published because it cannot be suitably redacted.

<sup>98</sup> 2005 Ings Report, page 34, paragraph 183.

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57. Section D of the 2005 Ings Report addressed in particular the following matters:

- 57.1 Under the heading “*The seeds of corruption: deliberate under-performance*”<sup>99</sup>, the 2005 Ings Report concluded that the origins of tennis’ integrity problems lie in deliberate under-performance for reasons unconnected with gambling, which is not sufficiently addressed by the sport’s best efforts rule, and which has in part been caused by the change in the approach to ranking from a system where performance in every match counts, to one where only performance in a defined number of events a year counts<sup>100</sup>.
- 57.2 Under the heading “*The potential emergence of match fixing*”<sup>101</sup>, the 2005 Ings Report went on to examine how and why a player may “*enter the match with an intention to lose*”, and what consequences may flow from that intention, including for the “*unscrupulous*” player, the opportunity to bet on himself to lose, or to solicit a bribe to lose<sup>102</sup>.
- 57.3 Under the heading “*Why corruption allegations have developed in tennis*”<sup>103</sup>, the Report identified a number of reasons that had been advanced as contributing to the problem: inadequacy of prize money at lower levels; the shortness of careers; participation in matches where “*nothing is at stake*”; a culture of acceptance of players gambling; a culture of silence and non-reporting; a lack of education as to the seriousness of the threat posed to

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**99** *ibid.*, paragraphs 186-196:

“186. Deliberate underperformance by male professional tennis players has been present in tennis for over 20 years. It is so common in fact that players have a euphemism for it in the well-known term “tanking”.

187. Through the 80s and 90s, tanking took the form of players deliberately underperforming in order to conclude their obligations to a tournament. Perhaps the player was tired and wanted to take a week off. Perhaps the player had an exhibition to attend which offered superior rewards than the tournament. Or perhaps the player sought only to collect a guarantee for competing and had no interest in serious competition.

188. Whatever the individual’s reason, tanking was and is relatively common in men’s professional tennis. This inquiry has heard from players that have admitted to losing in scheduled pre-planned rounds of singles and doubles for personal reasons.

189. Actual observed cases exist of players turning up to compete with their bags packed and cars waiting to speed them to the airport at the matches conclusion.

190. While the sport of tennis has rules about ‘Best Efforts’, such is the subtlety of tennis that detecting deliberate underperformance is difficult..

194. It is believed that the incidence of underperformance increased with rule changes to the ranking system in the early 1990’s. The ranking system at one time was based on performance in every match. Any early round failure to perform resulted in a negative impact on a players ranking. Such a ranking system was a positive inducement on players to perform.

195. In the early 1990’s the ATP changed the ranking system to be based on an average of a Best Of system. Basically only the best X tournament performances counted towards the ranking. Performance or underperformance in other tournaments had no impact on a players ranking.

196. An inadvertent and unplanned consequence of the move to a Best Of system was to remove ranking penalties for players that under perform in early rounds. While it is true that players that lose in early rounds earn less prize money than players that win, we will see that in certain circumstances at certain tournaments, even this difference in prize money is insufficient to dissuade players from deliberately underperforming”.

**100** *ibid.*

**101** 2005 Ings Report, page 35, paragraphs 197-206.

**102** *ibid.*, paragraphs 199-206:

“199. A player is entered into a tournament in which he has little motivation to compete. Perhaps he is tired after playing several tournaments. Perhaps he has a well-paid exhibition scheduled for later in the week that he wishes to rest for. Perhaps the player is carrying a small injury that he would prefer to rest. The reasons are many but the result is the same. The player enters the match with an intention to lose.

200. Why wouldn’t the player not desiring to compete simply withdraw? In an effort to mandate commitment from players to tournaments, the ATP rules provide for significant financial penalties to withdraw. The closer to the tournament start date that the player withdraws, the larger the fine. Rather than incur a financial penalty, the player avoids the fine by simply taking to the court all be it with an intention to lose.

201. To avoid being fined for Best Efforts, the player must compete to a degree but lose a few key points at necessary moments to engineer the desired outcome.

202. The player can financially profit in any number of ways. Firstly he obtains prize money that he would not have obtained if he had pulled out. He obtains a free hotel room for the remainder of the week as a main draw competitor. He also avoids a fine for a withdrawal.

203. If unscrupulous the player can also lodge a bet on himself to lose profiting from the known outcome or solicit a bribe from his opponent in exchange for deliberately losing.

204. Finally the player can seek a “release” from the ATP following his loss to compete in a possibly lucrative Special Event that same week. During the 2004 7-week Bundesliga season, a total of 177 such releases were granted to players that had competed and lost at an ATP or ATP Challenger event. It is estimated that over 250 releases are granted each year.

205. In conclusion the player can profit significantly for a single day’s “work” versus incurring the alternative financial loss that would result from a withdrawal.

206. The opportunities for the unscrupulous to manipulate the tennis system to their own financial benefit are significant”.

**103** *ibid.*, page 36, paragraphs 207-215.

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tennis by gambling; the absence of confidential whistleblowing arrangements; and the ease with which a match can be deliberately lost<sup>104</sup>. The 2005 Ings Report stated that while none of these reasons justified the “*betrayal of the game of tennis*”, they needed to be examined as part of the process of finding solutions<sup>105</sup>. The 2005 Ings Report also highlighted as important causes: greed and opportunity; lack of security and unrestricted access to players; a greater preparedness to gamble or act corruptly in respect of lower level tournaments; and the fact that the absence of a ranking penalty coupled with a penalty for withdrawal makes matches susceptible to under-performance<sup>106</sup>.

57.4 Under the heading “*Tournaments and Matches of Greater Vulnerability*”<sup>107</sup>, the 2005 Ings Report identified matches that are more likely to give rise to problems as being those where no ranking point is at stake and there would be a withdrawal penalty; first round matches; ATP matches in a week when the player also wishes to attend a money event; matches where a pre-arranged outcome suits both players, such as where a player who will be a lucky loser is playing a qualification match.

57.5 Under the heading “*The scale of the problem*”<sup>108</sup>, the 2005 Ings Report concluded that gambling by players and support teams was “*common place*”, that it was “*clear... that players do engage in deliberate underperformance*”, and that it was “*clear... that persons with an interest in gambling are attempting to gain inside knowledge of such player intentions*”. The Report went on to state that the “*scale of the corruption problem is harder to quantify at this time*”, but the “*repercussions of the suspicions and innuendo about corruption are unmistakable*”, and there was sufficient understanding “*of how, when and where corruption could take place*” to justify “*recommendations for reform*”.

57.6 Under the heading “*How has the ATP responded to corruption allegations?*”<sup>109</sup>, the Report concluded that “*the ATP*

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**104** *ibid.*, page 36, paragraph 207:

“207. In the course of this inquiry, players and their support teams that were prepared to speak on the issue have outlined why they think that a culture of gambling and corruption has developed in men’s professional tennis. Whilst the explanations and excuses have varied in emphasis they embrace some or all of the following:

- Lower ranked tennis players and their support personnel are unable to earn a living wage from the game. Gambling using inside information is used as a means to supplement low-income levels.
- Tennis players and their support personnel have relatively short and uncertain careers, often without contracts and some seek to supplement their official earnings with money from gambling or corruption.
- Tennis players compete in many matches each year where “nothing is at stake” in terms of ranking or pride.
- Players and their support teams indicate that gambling on men’s tennis is “common practice” in the locker room. There is a culture of acceptance with even the player leadership turning a blind eye to such conduct.
- Whistle blowing and informing on malpractice would result in players being ostracized in the locker room. Remaining silent in the face of gambling or corruption by player peers was encouraged.
- There is no education on the issue of gambling and corruption for players. Players were just not aware of it being a serious threat issue to tennis. “It is just a harmless bet”.
- There is no structure in place to receive confidential allegations about corruption.
- It was just too easy”.

**105** *ibid.*, page 37, paragraph 208.

**106** 2005 Ings Report, page 37, paragraphs 210-215:

“210. Greed and opportunity are the main factors that are common in all the cases of corruption.

211. The environment in which gambling and alleged corruption has developed in men’s professional tennis must also be considered in developing barriers to such misconduct.

212. The report has already described the prevailing climate of silence, and apathy that exists amongst some player members, their support personnel, some of their elected representatives on this issue. Such a climate creates a player culture that is not conducive to dealing with the problem. Players did not want to inform on each other and there was no system to receive or process reports of improper approaches or behaviour. This environment was aggravated in many cases by an absence of security or control.

213. Until recently, security in the broadest sense was not on the agenda. Consequently, access to players for corrupt purposes at hotels, tournaments, and even locker rooms was near effortless. The unrestricted mixing of players, support personnel, journalists and others at many of these venues, whilst understandable, provided an ideal opportunity for corrupt approaches and meetings.

214. The nature of the match or tournament appears to be an important factor in determining the willingness or reluctance of some players and their support personnel to engage in deliberate underperformance, gambling and/or corruption.

215. If no ranking penalty exists and there were financial penalties for withdrawing then such matches would appear more susceptible to deliberate underperformance”.

**107** *ibid.*, page 38, paragraphs 216-217.

**108** *ibid.*, page 38, paragraphs 218-224.

**109** *ibid.*, page 39, paragraphs 225-230.

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*under the leadership of its CEO has demonstrated... unmitigated support of anti-corruption measures”, resulting in “support [being] given to the design of a comprehensive Anti-Corruption Program... enacted as rule from January 2005 [which] provide[d] best practice measures to detect, investigate and punish acts of corruption by members of the tennis family”.*

57.7 Under the heading “*The role of the ATP Board*”<sup>110</sup>, the 2005 Ings Report concluded that while in general the ATP Board had played a supporting role in the fight against corruption in tennis, player Board representatives might benefit from clarification of the interrelationship between their roles in protecting the interests of players and protecting the integrity of the sport.

58. Section E of the 2005 Ings Report set out 20 Recommendations, broken down under six headings:

58.1 Under the heading “*Education and awareness*”<sup>111</sup>, the 2005 Ings Report recommended “*ongoing mandatory education of members of the tennis family of the risks and reality of gambling and corruption*”, which emphasises the resolve of the ATP to punish those in breach, is “*professionally produced, interactive, and presented in multiple languages*”, includes video content to be shown in mandatory sessions, addresses the need to report improper approaches, and covers players from juniors up to professional, officials and other members of the tennis family<sup>112</sup>.

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<sup>110</sup> *ibid.*, page 40, paragraphs 231-236.

<sup>111</sup> *ibid.*, page 41, paragraphs 238-243.

<sup>112</sup> 2005 Ings Report, page 41, paragraphs 238-251:

“Education and awareness

238. Ignorance of the risk and reality of gambling and corruption in men’s professional tennis has contributed to the problem. The inquiry has spoken to seemingly educated individuals who had no idea that gambling could result in corruption in tennis. Ongoing mandatory education of members of the tennis family of the risks and reality of gambling and corruption is an urgent requirement.

Recommendation no 1

239. The ATP should develop and implement a detailed training and awareness program focused on increasing the understanding of the risks of gambling and corruption to tennis and detailing the methods used by corruptors to ply their trade. It should also emphasise an apolitical resolve on the part of the ATP and its members to confront the threat of corruption and punish those that breach corruption rules.

Recommendation no 2

240. An educational program will only be effective if it is professionally produced, interactive and presented in multiple languages. Material should be produced that can be used in many member countries.

Recommendation no 3

241. The core of the training material should be professionally made videotape aimed at deterring gambling and corruption. The ATP in conjunction with the ITF should commission a professionally made video to be shown to mandatory player training sessions. Such a video would be strengthened by the inclusion of disgraced athletes in other sports that can relay their experiences to deter others.

Recommendation no 4

242. As well as raising awareness of the problem, the program should encourage the reporting of improper approaches and demonstrate without ambiguity the resolve of the ATP to confront the problem. The video should be reinforced and supported by posters and other supporting material.

Recommendation no 5

243. The training and awareness program should target all international players, player support team members, umpires and other relevant members of the tennis family. It should include all ranked players from juniors to seasoned professionals”.

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58.2 Under the heading “*Security and control*”<sup>113</sup>, the 2005 Ings Report recommended appointment of a “*security manager*” to prevent and investigate corruption, who would be independent within the ATP and accountable to the CEO; adoption of a standardised accreditation system to limit access to player areas, including the exclusion of all but players and ATP staff from the locker room; and prohibition of gambling interests from owning ATP tournaments<sup>114</sup>.

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**113** 2005 Ings Report, page 41, paragraphs 244-251:

“Security and control

244. Potential corruptors have gained access to players and others with ease. The absence of even the most basic background checks at many tournaments has allowed undesirable people to mix freely with players and has provided a breeding ground for improper approaches and possible corruption and an avenue for player support teams to profit from their knowledge of inside injury information. The report sets out below a package of measures designed to incorporate best practice and promote a common sense approach to security and control.

Recommendation no 6

245. The ATP should appoint a full time Security Manager with the following job description:

- Providing advice and action in relation to the security of players, officials and venues.
- Preventing and detecting improper approaches to players on tour.
- Collating intelligence about improper approaches and conducting investigations into allegations of corruption.

246. The Security Manager should have experience in the field of police investigations, security and anti-corruption. A background in police, military or security services would be a minimum requirement.

247. The Security Manager should enjoy independence within the ATP and should be accountable to the CEO only and not to individuals that act on behalf of the same persons that may be subject to investigation.

Recommendation no 7

248. The ATP should implement standards of access formalized through a common accreditation platform. The ease by which persons with an interest in gambling gain accreditations to tournaments must be stopped. If this practice is allowed to continue the efforts to prevent corruption will undoubtedly fail.

249. While consultation is required with tournament members on finding a common sense workable solution, the recommendation is that credentialed access to ATP tournaments be by use of a common accreditation platform (system). Only those with a genuine business reason for credentials would be authorized to have credentials including players, agents, trainers, coaches, staff and media. The system would maintain full photographic record of those with credentials and those that authorized their credential and would cross reference a watch list of undesirable persons before any credential is approved. Player guests would be provided with tickets in place of accreditations. Persons with known links to gambling should be refused accreditations at all times.

250. Player support personnel, with their open access to locker rooms, present an integrity threat to tennis by their knowledge of inside injury information on other players. The player locker room should have access restricted to competing players and ATP trainers only. Private trainers, private coaches and other support team members should be barred from accessing the locker room, to minimize the opportunity for inside injury information to be traded by unscrupulous interests. It is noted by the inquiry the long standing WTA Tour practice that player coaches, and player trainers do not have access to the ladies competitor locker room and that such a practice is well accepted by all parties.

Recommendation no 8

251. Entities with significant interests in gambling should be barred from ownership of ATP sanctioned tournaments. It is a conflict of interest and a threat to the integrity of tennis to have gambling interests owning and operating ATP tournaments”.

**114** 2005 Ings Report, page 41, paragraphs 244-251.

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- 58.3 Under the heading “*Make every match count*”<sup>115</sup>, the 2005 Ings Report recommended that because “*a root cause of corruption is deliberate underperformance...the ATP must urgently overhaul its rules to return to a system of reward for performance*”, which would include first round losses having a negative impact on ranking; redistribution of prize money; updating the Challenger circuit calendar and rules; improving coach remuneration and employing ATP coaches; selecting lucky losers by random draw instead of by reference to ranking; abolishing the grant of special exempts to play in a money event if a player has lost in an ATP event in the same week; and replacement of withdrawal penalty fines with a ranking penalty<sup>116</sup>.
- 58.4 Under the heading “*ATP staff (umpires, trainers and tour managers)*”<sup>117</sup>, the 2005 Ings Report recommended improving the remuneration and incentives of officials<sup>118</sup>.
- 58.5 Under the heading “*Role of the ATP Board*”<sup>119</sup>, the 2005 Ings Report recommended a “*Code for Directors*”.

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**115** 2005 Ings Report, page 43, paragraphs 252-259:

“Make every match count

252. A root cause of corruption is deliberate underperformance. The ATP must urgently overhaul its rules to return to a system of reward for performance.

Recommendation no 9

253. The ATP should overhaul its ranking system to ensure that a loss in any first round match results in a negative ranking impact for the losing players. Loss of ranking is seen as the major deterrent to deliberate underperformance by players.

Recommendation no 10

254. Prize money at ATP tournaments and Challengers should be redistributed or boosted to reduce the threat of corruption. The ATP should consider distributing the current total prize money pool among fewer players and in so doing ensure that those players can earn a living wage that need not be supplemented by gambling or corruption.

Recommendation no 11

255. The Challenger circuit calendar and rules need updating. With large scale betting now taking place on these small events, boosting prize money levels and scheduling them in the weeks of ATP events will reduce the risk of corruption. “Off-season” challenger events should be upgraded to ATP events, with the existing limitations on top 50 participation kept in place, with a boost in prize money and security acting to deter would be corruptors.

Recommendation no 12

256. The ATP should seek to improve the levels of remuneration received by player coaches in an effort to reduce the seduction of gambling to this core component of the tennis family. The ATP could consider employing a team of traveling coaches on the ATP payroll to assist players with the development of their game at tournaments.

Recommendation no 13

257. The Lucky Loser system is a major target of corruption and requires overhauling. It is recommended that the Lucky Loser selection be based on a random draw versus the current method of highest ranked. A random draw will remove the opportunity to manipulate the result of final round qualifying matches for mutual advantage.

Recommendation no 14

258. The granting of releases to players that lose to compete in Special Events in the same week as an ATP event should be abolished. Having multiple opportunities to compete in a week is a root cause of underperformance and corruption. Players should commit to their choice of a single event per week and not be released to play in other events in the event of a loss.

Recommendation no 15

259. The imposition of monetary fines for late withdrawals should be replaced by a non-monetary ranking penalty. A system is required that creates an incentive for players to complete their commitments but not a loophole that allows players to recover a financial penalty through unscrupulous means. A ranking penalty for a late withdrawal is just such a non-recoverable penalty”.

**116** *ibid.*

**117** 2005 Ings Report, page 44, paragraphs 260-261:

“Atp staff (umpires, trainers and tour managers)

260. As demonstrated by the Hoyzer example in German football, umpires have a direct ability to influence the outcomes of matches. Trainers and Tour Managers possess intimate knowledge of player injuries which is priceless inside information for would be gamblers. Both groups can be the targets of corruptors.

Recommendation no 16

261. Umpires, trainer and Tour Managers working on the ATP Tour average annual incomes between 30,000 and 50,000 Euro. This low level of remuneration makes such staff possible targets for corruption. It is recommended that the ATP address the issue of umpire, trainer and Tour Manager incentives through structured rewards and job satisfaction initiatives to reduce the risk of corruption”.

**118** *ibid.*

**119** *ibid.*, page 44, paragraphs 262-266.

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58.6 Under the heading “*Reporting of Corruption*”<sup>120</sup>, the 2005 Ings Report recommended the introduction of a rule requiring players and tournaments to report suspicions of corruption, and a whistleblowing facility<sup>121</sup>.

59. Lastly, the 2005 Ings Report concluded that “*Men’s professional tennis is at a crossroads of credibility that can only be resolved with a resolute commitment from the players, their support teams and their elected leadership to eradicate underperformance, corruption and corrupt individuals from the game. The report encourages the ATP to build on recent developments and implement the program of change set out in the recommendations in this report*”<sup>122</sup>.

**Provision of the 2005 Ings Report to the ATP CEO**

60. The 2005 Ings Report was provided by Richard Ings to Mark Miles at the end of June 2005, shortly before Richard Ings left the ATP to take up a position at Anti-Doping Australia, and shortly before Mark Miles himself also left the ATP.

61. Whilst the 2005 Ings Report states that it is submitted to the CEO of the ATP, Richard Ings has confirmed that he did not tell anyone about it while he was working on it<sup>123</sup>. Mark Miles’ evidence is that he does not recall reading it or providing feedback on it<sup>124</sup>. Further, he notes that before the 2005 Ings Report was finalised (in June 2005) he had already decided that he would be leaving the ATP and that, shortly after the 2005 Ings Report was finalised, it was apparent that he was to be replaced as CEO by Etienne de Villiers<sup>125</sup>. Mark Miles had therefore already begun to step back from his role as CEO (although his role did not officially end until the end of the calendar year)<sup>126</sup>.

62. No action was taken by the ATP specifically in reaction to the contents of the 2005 Ings Report.

63. Etienne de Villiers’ evidence was that on assuming the role of CEO, he was made aware of the 2005 Ings Report but that he entrusted integrity issues to Gayle Bradshaw, in whom he had confidence. His view is that the ATP was well advanced in its efforts to address corruption issues in men’s professional tennis. He was also impressed that the ATP had or was entering into memoranda of understanding with leading online betting operators, that the ATP had implemented the ATP TACP at the beginning of the year and that the ATP was the first governing body in professional tennis, and one of the first professional sports governing bodies, to establish a standalone anti-corruption program. Further, the ATP’s main integrity concern at that time was anti-doping. As such, whilst match-fixing was recognised as an issue, it was not considered to be as threatening or prevalent as doping<sup>127</sup>. Mr de Villiers stated that the recommendations made in the 2005 Ings Report were therefore not the main focus at the time that he joined the ATP.

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**120** *ibid.*, page 45, paragraphs 267-269:

“267. A culture exists amongst players and their support personnel that act to protect the corrupt behaviour of others. If any serious progress is to be made in fighting corruption in tennis this culture needs to be addressed.

Recommendation no 20

268. The ATP rules should contain a positive requirement on players and tournaments to report suspicions of corruption to the Security Manager. A system should be developed that provides players, their support teams and other members of the tennis family with a means to anonymously submit their suspicions about gambling and corruption to the Security Officer.

269. The ATP must introduce an online system where individuals can report their suspicions about corruption in an anonymous manner if so desired. The system needs to be promoted to players and support team members”.

**121** 2005 Ings Report, page 45, paragraphs 267-269.

**122** 2005 Ings Report, page 45, paragraph 270.

**123** Statement of Richard Ings (formerly ATP).

**124** Statement of Mark Miles (formerly ATP).

**125** Etienne de Villiers became CEO and President of the ATP in October 2005, Statement of Etienne de Villiers (formerly ATP).

**126** Statement of Mark Miles (formerly ATP).

**127** Statement of Etienne de Villiers (formerly ATP).

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64. Gayle Bradshaw's evidence was that he was emailed a draft copy of the 2005 Ings Report at a time when he was not principally responsible for anti-corruption work<sup>128</sup>, and he was not aware that he would be taking over the role from Richard Ings. When Richard Ings left, Mr Bradshaw "*assumed responsibility for the ATP's day-to-day work on anti-corruption matters*"<sup>129</sup>. *Gayle Bradshaw confirmed that, whilst he was eager to hit the ground running, he was occupied in dealing with a number of anti-doping and officiating cases. Anti-corruption issues did not hit home to him until he started to receive alerts from betting companies under the ATP's memoranda of understanding*<sup>130</sup>.
65. Gayle Bradshaw's evidence was that when he looked at the 2005 Ings Report recommendations in early 2016, he felt that the majority of the recommendations seemed to be common sense, and that the ATP had, over time, in effect implemented 18 out of the 20 recommendations contained in the 2005 Ings Report, in whole or in part. That had not been in direct response to the 2005 Ings Report itself, but had occurred as the ATP developed its rules and procedures, although the recommendations may have been in the back of Gayle Bradshaw's mind and thus may have played a part in the implementation of the following developments<sup>131</sup>:
- 65.1 An education programme in relation to integrity had been developed (this is delivered through the ATP Player University), which included video footage from a person formerly involved in corruption and encouraged reporting (Recommendations 1 to 5)<sup>132</sup>.
- 65.2 While a Security Manager (Recommendations 6 and 19) had not been appointed, Iain Malone continued to be retained on an *ad hoc* basis to for investigations and independent investigators were retained as necessary. Further, Gayle Bradshaw's evidence is that, prior to Sopot, he had been in discussion with Iain Malone about the possibility of creating an ATP integrity department; they were in early discussions when the Sopot incident occurred and thereafter all the governing bodies came together to form a unified integrity unit<sup>133</sup>.
- 65.3 Steps had been taken to improve accreditation (Recommendation 7). For example, Gayle Bradshaw's evidence is that restrictions were implemented in respect of player areas. All player entourage / guests were also required to sign a form acknowledging the ATP anti-corruption programme prior to receiving credentials<sup>134</sup>.
- 65.4 While steps had not been taken to bar entities with gambling interests from ownership of ATP sanctioned tournaments (Recommendation 8), tournaments were subject to strict requirements. Further, all transfer of tournament ownership must receive ATP Board approval<sup>135</sup>.
- 65.5 The ATP took the view that the knock on effects of changes to the ranking point system, to revert to all events counting towards a player's ranking, precluded implementation of Richard Ings' suggestion that all matches should be made to count in this way (Recommendation 9). In particular it was felt that it would make players play too often in the pursuit of ranking points, it would lead to specialists on one surface not playing on another for fear of harming their ranking, it would lead to players ceasing to play once they had achieved a desired ranking, and it would lead players to ignore the ATP 250s. The ATP did however have eight mandatory events for players above a particular ranking, and a player who failed to play in these mandatory events would be given zero ranking points for that event if he failed to play in it. Also, the ATP increased the minimum number of events that would count for ranking purposes from 14 in 1990 to 18 by 2016<sup>136</sup>.

**128** Statement of Gayle Bradshaw (ATP).

**129** Statement of Gayle Bradshaw (ATP).

**130** Statement of Gayle Bradshaw (ATP).

**131** Statement of Gayle Bradshaw (ATP).

**132** Statement of Gayle Bradshaw (ATP).

**133** Statement of Gayle Bradshaw (ATP).

**134** Statement of Gayle Bradshaw (ATP).

**135** Statement of Gayle Bradshaw (ATP).

**136** Statement of Gayle Bradshaw (ATP).

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- 65.6 Prize money had been increased to some extent (Recommendation 10)<sup>137</sup>.
- 65.7 The Challenger circuit calendar is constructed so that it places jobs in weeks/regions where jobs are needed (Recommendation 11)<sup>138</sup>.
- 65.8 Coach remuneration was outside the ambit of the ATP's control (Recommendation 12) and has therefore not been changed<sup>139</sup>.
- 65.9 The lucky loser system had been altered (Recommendation 13)<sup>140</sup>. The Panel notes that the lucky loser rules were altered in 2015 so that the certainty of a particular player receiving a place was removed<sup>141</sup>.
- 65.10 The special exempt system has not been changed or adapted (Recommendation 14)<sup>142</sup>.
- 65.11 The financial penalty for withdrawal had been partially implemented (Recommendation 15). Gayle Bradshaw's evidence is that the ATP now has automatic ranking penalties for withdrawals from the 1000 and 500 events<sup>143</sup>.
- 65.12 Officials' remuneration had increased (Recommendation 16), although Gayle Bradshaw's evidence is that perhaps not to the extent suggested in the 2005 Ings Report<sup>144</sup>.
- 65.13 The ATP did accept that anti-corruption and security measures were a necessary and long term requirement to be funded by the ATP and (Recommendation 17)<sup>145</sup>.
- 65.14 ATP board members have a fiduciary duty to the ATP (Recommendation 18)<sup>146</sup>.
- 65.15 Reporting obligations had been introduced, and a 'hot line' had been set up (Recommendation 20)<sup>147</sup>.
66. These changes were implemented by the ATP as it developed its rules and procedures, rather than as a reaction to or consequence of the 2005 Ings Report<sup>148</sup>.

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**137** Statement of Gayle Bradshaw (ATP).

**138** Statement of Gayle Bradshaw (ATP).

**139** Statement of Gayle Bradshaw (ATP).

**140** Statement of Gayle Bradshaw (ATP).

**141** ATP Official Rulebook, 2018, Section VII, Part 7.20(1), available at: <http://www.atpworldtour.com/en/corporate/rulebook> [accessed 9 April 2018].

**142** Statement of Gayle Bradshaw (ATP).

**143** Statement of Gayle Bradshaw (ATP).

**144** Statement of Gayle Bradshaw (ATP).

**145** Statement of Gayle Bradshaw (ATP).

**146** Statement of Gayle Bradshaw (ATP).

**147** Statement of Gayle Bradshaw (ATP).

**148** Statement of Gayle Bradshaw (ATP).

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**(5) DISCIPLINARY PROCEEDINGS UNDER THE ATP TACP BETWEEN 2005 AND 2008**

**ATP TACP proceedings brought between 2005 and 2008**

67. Between 2005 and 2008 the ATP brought eight disciplinary proceedings under the new ATP TACP, each for breach of the prohibition on wagering. These are addressed in Section B below<sup>149</sup>.
68. Apart from those specific instances, the ATP did not bring any other disciplinary proceedings under the new ATP TACP.
69. Between 2005 and 2008, the ATP issued on-site fines to seven players for failure to use best efforts. It should be noted however that not all Code Violations resulted in a fine being issued<sup>150</sup>.
70. In respect of failure to use best efforts, Gayle Bradshaw's evidence was that during Richard Ings' tenure, they discussed whether there should be any changes to the best efforts rule. Gayle Bradshaw's view, at the time, was that it was difficult to spot best efforts issues consistently and that it was therefore not realistic to use the best efforts rule regularly<sup>151</sup>. Nevertheless, his view was also that the Code of Conduct provided for sufficiently strong sanctions to be handed down for a failure to use best efforts. Gayle Bradshaw informed the Independent Review Panel that umpires have the option of giving a "soft warning" first and if the player continued not to use best efforts then the umpire could issue a formal warning. If the failure was "blatant" then the official could/should issue a code violation without any soft or formal warning<sup>152</sup>.
71. So far as the Panel is aware, the ATP did not bring any disciplinary proceedings for the player major offence of failure to use best efforts in an aggravated manner.

**ATP TACP investigations that did not lead to proceedings**

72. Between 2005 and 2008, the ATP commenced a number of investigations that did not lead to disciplinary proceedings. In particular, in August 2007 the ATP's independent experts undertook an extensive investigation into the match between Vassallo Arguello and Davydenko in Sopot that month. This is dealt with in Chapter 8<sup>153</sup>.
73. Between 2005 and 2008, the ATP continued to receive reports of suspicious or unusual betting patterns at ATP matches under the memorandum of understanding that the ATP had with Betfair (in place since 2003) and, through its memorandum of understanding with ESSA, other betting operators<sup>154</sup>.
74. The Panel has seen a spreadsheet entitled "ATP Match List Historical"<sup>155</sup> which contains a list of matches as being the subject of suspicious or unusual betting patterns during the period 2003 to 2008. From the contemporaneous records, the Panel has been able to identify that all of the matches on this list had been flagged to the ATP.
75. Separately, after the investigation into the Sopot match commenced in August 2007, an individual who worked for a betting operator sent the ATP a list<sup>156</sup> of 137 past matches that he had identified as being the subject of suspicious or unusual betting patterns, of which 111 related to ATP matches, 17 related to matches at Grand Slams and nine related to WTA matches. While that list included 62 ATP matches that had been identified to or by the ATP at the time they took place<sup>157</sup>, they also included 49 ATP matches that do not appear to have been identified to or by the ATP at the relevant

<sup>149</sup> Paragraph 146 below in relation to the ATP's eight successful 2007 disciplinary cases involving players betting on tennis.

<sup>150</sup> Statement of Gayle Bradshaw (ATP).

<sup>151</sup> Statement of Gayle Bradshaw (ATP).

<sup>152</sup> Statement of Gayle Bradshaw (ATP).

<sup>153</sup> Chapter 8, Section A(2).

<sup>154</sup> Statement of Gayle Bradshaw (ATP).

<sup>155</sup> The "ATP Match List Historical" is not published because it cannot be suitably redacted.

<sup>156</sup> List entitled "Suspect Tennis Matches". This list is not published because it cannot be suitably redacted.

<sup>157</sup> The Panel has approached prior knowledge on the part of the ATP as where either (a) details of the same match appearing in the "ATP Match List Historical" or in the "Suspect Tennis Matches" list or (b) other documents disclosed to the Panel have revealed contemporaneous knowledge of those matches on the part of the ATP.

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76. In 2008, after the publication of the Environmental Review<sup>158</sup>, the ATP's independent investigators looking into the Sopot match also brought a number of matches and other matters to the attention of the ATP<sup>159</sup>. Again, while those matches included some matches previously reported to the ATP at the time they took place, they also included other matches and the independent investigators provided much more detail. The ATP's response to the subsequent notification of past matches (as opposed to the contemporaneous reporting of matches) is dealt with in Chapter 9<sup>160</sup>.
77. Cumulatively, the Panel has found references to suspicious or unusual betting patterns at 167 ATP matches up until the end of 2008, of which 126 come from the period, from 2005 to 2008 when the new ATP TACP was in place. This data has been collated by the Panel from the contemporaneous documents provided to it, into a composite list of alerts<sup>161</sup>.
78. As addressed in Chapter 3, it should be noted that suspicious and unusual betting patterns may arise for a variety of reasons and are not necessarily in themselves sufficient evidence of any breach of integrity. So too the statistics derived from suspicious or unusual betting patterns must be treated with caution.
79. The ATP did not further investigate any of the unusual betting pattern matches in Appendix 2 of the 2005 Ings Report. Richard Ings' evidence is that he had looked into each of the matches listed in Appendix 2 and whilst some could be explained, others could not<sup>162</sup>. In any event, Richard Ings concluded that he had not found sufficient available evidence of any of the relevant applicable rules having been breached to allow the ATP to be confident enough to take disciplinary action<sup>163</sup>. That said, however, the 2005 Ings Report had left open the possibility of action being taken in respect of these matches in the future, and stated that inquiries were ongoing<sup>164</sup>. However, in the circumstances explained in paragraphs 62 to 66 above, no action was taken by the ATP as a consequence of the 2005 Ings Report.
80. Gayle Bradshaw has provided the Panel with evidence of the ATP's approach between 2005 and 2008 approach when it received a report of an unusual betting pattern<sup>165</sup>. In particular:
  - 80.1 When a suspicious or unusual betting pattern was reported to it, the ATP would initiate an investigation, either through Gayle Bradshaw or where necessary Iain Malone. The ATP did not open a formal file, but stored the relevant emails and documents in a computer folder within the ATP computer files. These materials have been provided to the Panel.
  - 80.2 The ATP's first step was to contact the supervisor at the relevant match. If the match was yet to be completed, the supervisor would be asked to watch it. If the match had been completed, the supervisor was asked to speak to the chair umpire and the physio to identify any relevant factors. The player's record would be examined. Inquiries would be made of the betting operator, and an attempt made to find out if the accounts looked like they might be connected to the player or member of support personnel. In a limited number of cases, where suspicion remained, Iain Malone would interview the player or member of support personnel<sup>166</sup>.

<sup>158</sup> Chapter 8, Section B.

<sup>159</sup> Chapter 8: the Sopot Investigators' document entitled "Tennis Investigations – General Logistical Issues", and a Mark Phillips PowerPoint entitled "Summary of Betting and Telecoms Analysis". These are published in suitably redacted form. A number of matches in these documents are also identified in the lists referred to above (though many are unique to the list they appear on).

<sup>160</sup> Chapter 9, Section A(3) in relation to the ATP decision at the end of 2008 that it could not proceed against Martin Vassallo Arguello or any other player based on texts and contact information found on his phone during the Sopot investigation; and Chapter 9, Section E in relation to the ATP decision to hand over responsibility for past cases and intelligence in relation to other players and matches derived from the Sopot investigation, to the new tennis wide TIU which the May 2008 Environmental Report had concluded should be formed and which came into operation at the beginning of 2009.

<sup>161</sup> The Panel's composite list of alerts is not published because it cannot be suitably redacted.

<sup>162</sup> Statement of Richard Ings (formerly ATP).

<sup>163</sup> Statement of Richard Ings (formerly ATP).

<sup>164</sup> 2005 Ings Report, page 34, paragraphs 181-183.

<sup>165</sup> Statement of Gayle Bradshaw (ATP).

<sup>166</sup> Following the commencement of the Sopot investigation Gayle Bradshaw also shared a number of the alerts received with the Sopot investigators.

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- 80.3 The ATP considered<sup>167</sup> that it could only make a written demand for information from players or support personnel if the responsible official had concluded that he “*reasonably believed*”<sup>168</sup> that the player or member of support personnel “*may*” have committed a Corruption Offense or that the unusual betting pattern “*may*” have stemmed from a player or member of support personnel. Mr Bradshaw’s evidence is that “*this test was construed quite strictly*”<sup>169</sup>. However, the ATP told the Panel that the “*ATP’s rules for investigation of corruption offenses are not subject to being ‘construed’... The procedural protections afforded to players under the TACP were the direct result of the player participation in the creation of the TACP through Player Representatives on ATP’s Board of Directors. These procedures were protective of players’ rights, including (i) no affirmative duty for players or other personnel to report knowledge of corruption offenses to ATP officials, (ii) no provisional suspension for players being investigated, (iii) a player could produce documents and respond in writing – rather than by interview – to any Demand made by the ATP, (iv) an ATP Demand was limited in scope to information that was ‘permitted to be obtained under applicable law’, (v) a player could object and appeal to the AHO regarding any Demand received from ATP and (vi) a player could further object and appeal to the CAS any AHO decision regarding any Demand. As demonstrated during ATP’s investigation of Mr Davydenko’s wife and brother, the procedural protections in the 2005 TACP ultimately proved unworkable and led to the substantial overhaul of corruption investigations through the adoption of the uniform TACP and the creation of the Tennis Integrity Unit*”<sup>170</sup>.
- 80.4 The ATP did not construe the prohibition in the ATP TACP on “*contriving the outcome*” of a match as extending to the situation where a player deliberately lost for reasons other than betting or other corrupt purposes. The ATP considered that it could only bring disciplinary proceedings under the ATP TACP in respect of a suspicious or unusual betting pattern if the responsible official had concluded that he “*reasonably believed*”<sup>171</sup> that the betting pattern in fact stemmed from a player or a member of support personnel (a) wagering<sup>172</sup> or inducing others to wager<sup>173</sup>; (b) contriving the outcome<sup>174</sup> in the sense of deliberately losing a match or part of it for betting or other corrupt purposes; (c) inducing another player not to use his best efforts<sup>175</sup>, or paying or taking a bribe not to use best efforts<sup>176</sup> or (d) paying or taking a bribe in return for inside information<sup>177</sup>. The ATP told the Panel that the second sentence of this paragraph “*suggests that a suspicious of unusual betting pattern alone could justify a disciplinary proceeding. That was not the case under the TACP (nor is that the case under the current corruption rules)*”<sup>178</sup>.
- 80.5 The ATP did not consider that the report of a suspicious or unusual betting pattern alone was sufficient<sup>179</sup>, absent more, for a reasonable belief to be reached that it was due to a player or member of support personnel doing one of those things. The ATP felt that the betting pattern could be due to players’ actions that were not caught under the ATP TACP, such as a player deliberately losing for other reasons. Or it could be due to still other circumstances, such as inside information (for example as to injury) becoming discovered in other ways, or odds being inappropriately set.
- 80.6 The ATP would close an investigation without commencing disciplinary proceedings unless the responsible official

<sup>167</sup> Statement of Gayle Bradshaw (ATP).

<sup>168</sup> ATP TACP 2005, Rule 7.05 E(2)(c).

<sup>169</sup> Statement of Gayle Bradshaw (ATP).

<sup>170</sup> Response of the ATP to Notification given under paragraph 21 ToR.

<sup>171</sup> ATP TACP 2005, Rule 7.05 E(2)(e).

<sup>172</sup> ATP TACP 2005, Rule 7.05 C(1)(a).

<sup>173</sup> ATP TACP 2005, Rule 7.05 C(1)(b).

<sup>174</sup> ATP TACP 2005, Rule 7.05 C(2)(a).

<sup>175</sup> ATP TACP 2005, Rule 7.05 E(2)(b).

<sup>176</sup> ATP TACP 2005, Rule 7.05 C(2)(c).

<sup>177</sup> ATP TACP 2005, Rule 7.05 C(2)(e).

<sup>178</sup> Response of the ATP to Notification given under Paragraph 21 ToR.

<sup>179</sup> Statement of Gayle Bradshaw (ATP).

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concluded that he “*reasonably believed*”<sup>180</sup> that a corruption offense “*has been committed*”. The ATP considered that this was a high standard, and it was never regarded as having been met. The ATP looked for “*hard evidence*” and, other than the 8 cases referred to in section B below, the ATP never had sufficient evidence to go forward with any disciplinary proceedings for match-fixing or an attempt to match-fix<sup>181</sup>.

81. Between 2005 and 2008, the ATP commenced a number of investigations that did not lead to disciplinary proceedings<sup>182</sup>. The ATP reported that this was because either<sup>183</sup>:

81.1 The ATP concluded that there was a plausible explanation for a player’s poor performance, such as injury or illness, or that the surface was not his preferred surface.

81.2 The ATP concluded that there was no evidence, and in the light of the limitations in investigatory powers and capabilities no evidence could be obtained, of a player deliberately losing for betting or other corrupt purposes.

82. In addition to unusual or suspicious betting pattern cases, the ATP also initiated the following investigations between 2005 and 2008 into potential breaches of the ATP TACP, and it reported that it reached the following decisions in relation to them:

82.1 In May 2006 the ATP investigated four cases<sup>184</sup> where it was alleged that wildcards had been sold to players. The ATP dealt with the matters by way of formal warnings rather than disciplinary proceedings.

82.2 In July 2007, following Wimbledon, the ATP investigated the fact that a player was writing articles for a betting operator, in which the player was giving tips for specific matches. The ATP considered that this on the face of it constituted a breach of the ATP TACP prohibition on encouraging any person to wager on matches<sup>185</sup>. On investigation, it emerged that the player had in 2005 been given approval by the ATP to write for the betting operator, with the proceeds going to his charity. In the circumstances, the ATP in October 2007 made it clear that it did not now approve the relationship, and the player agreed to bring it to an end immediately.

**(6) RULE CHANGES MADE BY THE ATP BETWEEN 2005 AND 2008**

83. The ATP made the following changes to the ATP TACP between 2005 and 2008:

83.1 In the 2006 ATP Rulebook, the ATP added a provision prohibiting the sale of wild-cards<sup>186</sup>.

83.2 In the 2008 ATP Rulebook, the ATP added a reporting obligation on both Players and Player Support Personnel. The obligation was to report both approaches to the individual<sup>187</sup>, and awareness of breach by any other individual<sup>188</sup>. In addition, the ATP required them to report prior incidents.

84. In 2007 the ATP introduced a reporting “*hot line*”<sup>189</sup>.

<sup>180</sup> ATP TACP 2005, 7.05.E(2)(e).

<sup>181</sup> Statement of Gayle Bradshaw (ATP).

<sup>182</sup> In particular, in August 2007 the ATP’s independent experts undertook an extensive investigation into the match between Vassallo Arguello and Davydenko in Sopot that month, although the approach for that investigation did not conform to the general approach of the ATP summarised above.

<sup>183</sup> Statement of Gayle Bradshaw (ATP).

<sup>184</sup> An ATP event was investigated for selling wildcards to two players in 2006. The ATP dealt with the matter by requiring the tournament to pay the amounts received for the wildcards to a charity, and formally warning the two players. Two ATP Challenger events were investigated for selling wildcards to players, also in 2006. A player was formally warned for attempting to buy a wildcard at an ATP Challenger event in 2005.

<sup>185</sup> The ATP Official Rulebook, 2007, ‘The Tennis Anti-Corruption Program’ (‘ATP TACP 2007’). Rule 7.05.C(1) provided that “...b) No Player nor any of his Player Support Personnel shall, directly or indirectly, solicit, induce, entice, persuade, encourage or facilitate any other person to Wager on the outcome or any other aspect of any Event”.

<sup>186</sup> ATP TACP 2006, Rule 7.05.C(2)(g).

<sup>187</sup> The ATP Official Rulebook, 2008, ‘The Tennis Anti-Corruption Program’ (‘ATP TACP 2008’). Rules 7.05.C(3)(a)(I) and 7.05 C(3)(b)(I).

<sup>188</sup> ATP TACP 2008, Rules 7.05.C(3)(a)(II) and 7.05 C(3)(b)(II).

<sup>189</sup> Statement of Gayle Bradshaw (ATP).

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**(7) EVALUATION OF THE GENERAL APPROACH OF THE ATP TO MATCH-FIXING AND OTHER BREACHES OF INTEGRITY BEFORE 2008**

85. The Panel has considered against the facts above whether the general approach of the ATP to match-fixing and other breaches of integrity before 2008 was appropriate. The Panel considers the ATP's approach in 2007 to the discovery of betting accounts in the names of players and coaches in Section B below<sup>190</sup>, and the ATP's approach following the Sopot investigation and Environmental Review in Chapter 8<sup>191</sup>.

**The approach of the ATP in 2003 to 2004**

***The ATP was at the forefront of the effort to address the problem***

86. In 2003 and 2004, the ATP was at the forefront of tackling match-fixing and related breaches of integrity in tennis:

86.1 The ATP was the first tennis body to address the problem arising out of increased betting on the sport, and it was the first to enter into memoranda of understanding with betting operators to address it. Moreover, it is clear that the ATP meaningfully engaged with those operators in response to betting alerts that were raised with it, and sought to investigate with a view to disciplinary action being taken within the constraints imposed by the then rules.

86.2 Richard Ings was proactive in developing the ATP's approach to combatting match-fixing. He met with other sports to establish best practices. With the support of CEO Mark Miles, he set about developing revised ATP rules in order to address the difficulties that the ATP was experiencing under the then rules. He also subsequently produced a report addressing the issue.

86.3 The ATP was also the first tennis body to engage specialist investigative support, with Iain Malone employed to provide *ad hoc* assistance to Richard Ings.

***While there were significant problems in taking disciplinary action under the rules at the time, some matters warranted further investigation***

87. The ATP faced significant problems in taking disciplinary action during 2003 and 2004 under the rules then in force because, amongst other things, under those rules:

87.1 the wagering offence was confined to players and coaches and could therefore be easily circumvented; and

87.2 the ATP did not enjoy effective investigatory powers.

88. The Panel presently<sup>192</sup> takes the view that at least some of the matches identified by Richard Ings in his 2003 "*betting update*" memoranda, particularly those where the same players were repeatedly involved, warranted further investigation than they appear to have received. The memoranda suggested that possibly corrupt players were actively participating in professional tennis. The Panel has seen no contemporaneous documents showing the ATP's consideration of, or responses to, the 2003 memoranda. The reasons given for the ATP's reaction to the 2003 memoranda were that (1) officials at the ATP, specifically the ATP's CEO Mark Miles, believed that Richard Ings had a tendency to jump to conclusions, and (2) that what Richard Ings had identified was insufficient to warrant going forward under the then rules. It is unfortunate that the reaction to Richard Ings' enthusiasm was not to encourage further investigation. While some of the intelligence he identified might well have proven to be without substance, and it might well have been difficult

<sup>190</sup> Section B, paragraphs 118-167 below.

<sup>191</sup> Chapter 8, Section C.

<sup>192</sup> Pending the consultation process between Interim and Final Reports.

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to advance a successful disciplinary case in the circumstances of the rules and facts, it presently seems to the Panel that further investigatory steps might have resulted in useful evidence being established. In respect of the Panel's view, Mr Ings reiterated to the Panel that "[t]he purpose of my memorandum to the ATP CEO in 2003 and 2004 was to alert senior ATP management of threats to the integrity of the sport. I stand by each memorandum. My actions were based on decades plus experience in applying the player code of conduct rules in professional tennis. Mr Miles is the one inexperienced in these types of matters." Mr Ings further stated that "[t]he Ings Report was drafted in 2005 to outline in forensic detail the threats to the integrity of men's tennis gambling and match fixing. The Ings Report was the detailed extension of memo's drafted in earlier years on the topic of integrity risk to men's professional tennis. History has shown that the preceding memorandum and the detailed Ings Report correctly foretold the risk to professional tennis of inaction in the area of gambling and match fixing"<sup>193</sup>.

**Based on the facts available to the Panel, it is not clear why no further action was taken in respect of Player B and Player D**

89. In relation to the ATP investigation conducted into Players B and D, it is not possible for the Panel to reach a factual conclusion on the evidence available to it as to the manner in which the investigation concluded, or as to how Player B came to retire.
90. The conclusion set out in the 2005 Ings Report was that there had been insufficient evidence to take disciplinary action under the then rules. Mr Ings told the Panel that "[t]he 2005 Ings Report provides a detailed contemporaneous account of all aspects of the investigation into Player B, Player D, and the third party. I reached an informed conclusion following a thorough investigation that insufficient evidence existed to find either Player B or Player D breached the 2003 ATP Rules. In reaching that conclusion I considered the input of ATP Legal Counsel [Mark Young] and the ATP investigator". Mr Ings reiterated that "I stand by the decisions I reached"<sup>194</sup>.
91. Based on the contemporaneous documents that the Panel has seen, when Player B did not provide a detailed response to the letter sent by the ATP<sup>195</sup>, it would have been open to, and on the face of it appropriate for, the ATP to have at least taken further investigatory steps. The reasons for this include:
  - 91.1 The evidence was clear that Player B's betting account and credit card had been used to bet.
  - 91.2 Whilst the third party may have claimed responsibility, and the audio recordings indicated that he had made the initial telephone bet, it was open to the ATP to consider whether Player B had in any event authorised or known of the betting. The third party had nothing to lose by seeking to protect the player, given that the manager was in any event liable to having his accreditation access removed by virtue of the fact that he had himself bet.
  - 91.3 An explanation could have been demanded from the third party as to why he had gone to the lengths of setting up a betting account in Player B's name when he had an account of his own. An explanation could have also been sought as to the financial motivation of the third party given that the bet had been placed using funds from Player B's credit card. Any winnings would ordinarily have been credited to that same card and not to the third party.
  - 91.4 The third party, together with Player D, had bet on Player B to lose against Player A.
  - 91.5 The ATP Supervisor described Player B as having "professionally tanked" the match. It was open to the ATP to investigate this further to ascertain whether Player B had deliberately lost the match and as to whether those connected with him placed their bets based on that inside information.
  - 91.6 The ATP had intelligence that Player B might have been involved in another incident of possible betting related corruption. That matter could have been investigated further.

<sup>193</sup> Response of Richard Ings to Notification given under paragraph 21 ToR.

<sup>194</sup> Response of Richard Ings to Notification given under paragraph 21 ToR.

<sup>195</sup> As described in paragraph 21 above.

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- 91.7 Player B would have had the right to appeal any finding against him. On an appeal the ATP would have had the opportunity to cross-examine<sup>196</sup> any oral evidence given by Player B and the third party.
92. Richard Ings advised the Panel<sup>197</sup> that each of the questions set out by the Panel above formed part of the investigation. Player B, Player D and the third party were asked the questions above and other relevant questions.
93. Mr Ings told the Panel that<sup>198</sup>:
- 93.1 *"The third party opened an account in the [Player D's name] backed by the credit card of Player D. The third party used deception to open an account in [Player D's name]. This included forging the signature of Player D to fraudulently use Player D's credit card to back the account".*
- 93.2 *"The third party also opened the account in the name of Player B and fraudulently placed bets on that account".*
- 93.3 *The third party placed bets on both [Player B's and Player D's] accounts using an IP address established as the offices of the third party. It was the third party who placed the telephone bets as established by identifying the actual audio of the bets being placed".*
- 93.4 Mr Ings *"could not establish that Player B or Player D placed bets on ATP tennis matches. All bets were placed by the third party, and Mr Ings could not establish that Player B or Player D directed the third party to place bets on their behalf".*
- 93.5 As a result, Mr Ings *"reached an informed conclusion that insufficient evidence existed to make a finding of a Major Offense under the 2003 ATP rules".*
- 93.6 Mr Ings told the Panel that *"[t]he key learning from these matters was that the 2003/2004 ATP rules did not allow the sourcing of financial and telephone records from players. This information is today considered vital to sports integrity investigations. It was not available in 2003 and 2004".*
94. So far as Player D is concerned, the reference to the ATP having *"hard evidence"* against Player D had been removed from Mr Ings' amended *"betting update"* memorandum following his written assessment of the pros and cons of pursuing a case against Player D, supporting the explanation given by Richard Ings in 2005 as to why no disciplinary action was taken against Player D.
95. The Panel's view is that the ATP would be unlikely, even with further investigation, to have reached the conclusion that it had enough evidence to take disciplinary action against Player D. In particular:
- 95.1 The betting account in the name of Player D had been opened using a forged signature. The link to Player D was limited to the fact that his credit card had been used.
- 95.2 There had been no betting on a relevant match concerning Player D or any suggestion of Player D tanking.
- 95.3 There was no intelligence of Player D having been involved in other betting related corruption.

<sup>196</sup> The ATP Official Rulebook, 2003, Player Code of Conduct, "Player Major Offenses/Procedures", page 84.

<sup>197</sup> Response of Richard Ings to Notification given under paragraph 21 ToR.

<sup>198</sup> Response of Richard Ings to Notification given under paragraph 21 ToR.

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96. The Panel's present assessment is that it would, however, also have been open to the ATP to test the account given by the third party in relation to Player D. In this regard, the ATP's own internal document identified grounds for challenging the explanation given by Player D and the third party. For example, the internal document stated that Player D was still unable to explain why the third party (whom he thought had money) needed to go through the elaborate process of using his details to set up an account with Betfair.
97. Richard Ings told the Panel<sup>199</sup> that "[t]he third party was not covered by the 2003 ATP Rules. The ATP had no jurisdiction over the third party and certainly no ability to compel the third party to participate in the investigation." Richard Ings stated that "once again this highlighted the shortcomings of the 2003 and 2004 ATP Rules. The ATP took the only action available to it under the 2003 ATP rules which was to 'warn off' the third party from access to ATP tournaments". Mr Ings stated that "this incident prompted a total rewrite of the ATP Rules in 2005 to include the sports first detailed Anti-Corruption Program"<sup>200</sup>.
98. As described in paragraph 37 above, Richard Ings told the Panel<sup>201</sup> that at no stage during his five years at the ATP did he observe or suspect that any player subject to a Major Offense investigation was persuaded to end his or her career to cease a major offense investigation that he was conducting and that the retirement of Player B had no impact on the final decision he reached in regard to this matter.
99. In the light of the facts, first, that Player B retired from professional tennis at a time when he had been informed that he was being investigated for betting-related breaches of integrity, and second, that Jeff Rees suggested in 2008 that "some suspect players had been persuaded to end their playing career", the Panel is concerned that it is unable to use information provided to it, in respect of which confidentiality has been asserted, to address the circumstances of Player B's retirement.

**The adoption of the ATP TACP**

100. The ATP is to be given credit for the adoption of the ATP TACP, which it did ahead of the other tennis bodies and ahead of most of other sports. In doing so, the ATP went a long way towards putting in place a viable system based on what was known at the time, which constituted a significant improvement over the prior rules. With the benefit of hindsight, the Panel sees improvements that could have been made to those rules, some of which were indeed addressed by the ATP or in the uniform TACP subsequently adopted. However, at the time, the ATP TACP was close to what Richard Ings described as best practice.

**The ATP's reaction to the 2005 Ings Report**

101. Richard Ings, the person at the ATP responsible for integrity, produced the 2005 Ings Report explaining in some detail the position as he perceived it, and some possible recommendations. This reflected a level of awareness that was not present outside the ATP. The Independent Review Panel, however, considers that greater attention should have been given by the ATP to the 2005 Ings Report.
102. The available evidence presently suggests a number of reasons why the ATP ended up affording too little attention to the 2005 Ings Report. First, the 2005 Ings Report was provided by Richard Ings effectively on his departure, and so he was not present at the ATP to push forward the agenda contained in it. Second, it was provided to Mark Miles, who was in the process of leaving the ATP and had already started to take a lesser role. Third, when Etienne de Villiers replaced Mark Miles, the 2005 Ings Report had not been addressed to him, and he started with a focus on tackling doping issues then arising in the sport. Fourth, Richard Ings' departure resulted in Gayle Bradshaw having to take on a role with which he was not especially familiar, and when he too was focused on doping issues.

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<sup>199</sup> Response of Richard Ings to Notification given under paragraph 21 ToR.

<sup>200</sup> Response of Richard Ings to Notification given under paragraph 21 ToR.

<sup>201</sup> Response of Richard Ings to Notification given under paragraph 21 ToR.

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103. The available evidence presently suggests that a further reason why the ATP reacted in the way it did to the 2005 Ings Report may have been that there was a degree of scepticism about the circumstances of and motivation behind Richard Ings' production of the Report. First, as set out above, there was a view that while Richard Ings carried out his role with good intentions and integrity, he had a propensity on occasion to jump to conclusions<sup>202</sup>, and it may be that it was thought that the 2005 Ings Report was more of the same. Second, Richard Ings had produced the 2005 Ings Report on his own initiative, rather than having been instructed to do it. The Panel does not understand the 2005 Ings Report to have been commissioned by the CEO of the ATP (despite it being addressed to the CEO), and its production had not been consulted upon. Third, these two factors were compounded by the fact that Richard Ings delivered his 2005 Ings Report very shortly before he left. There may have been a feeling that the 2005 Ings Report had been delivered, out of the blue, just as its author departed, leaving work for everyone else.
104. However, in the Panel's view, these reasons do not reasonably justify the ATP's failure to respond to the 2005 Ings Report. While the changes in staff at the ATP and the importance of tackling doping in the sport are relevant in understanding the workload that the ATP faced, the matters set out by Richard Ings were of real importance and warranted meaningful consideration. The warning signs as to the scale of the task faced by tennis were clearly set out. Betting was taking place increasingly at lower levels of the sport and betting alerts were said to be almost a weekly occurrence. It presently seems to the Panel that those at the ATP with responsibility for the protection of the integrity of the sport ought to have set aside their adverse reaction to the circumstances or motivation behind the production of the 2005 Ings Report, and addressed its contents.
105. So far as the recommendations were concerned, it may be that some of them might at the time have been difficult to achieve, but the extent to which those suggestions presaged the conclusions in the Environmental Review and of this Panel is striking. They ought at the least to have been specifically considered. As Gayle Bradshaw reports<sup>203</sup>, however, the ATP did implement at least in part most of the changes that were dealt with in Richard Ings' recommendations.
106. However, the available evidence is that the ATP did not make these changes in response to the 2005 Ings Report, but rather as a result of the ATP's ongoing assessment of the issues that the sport faced and as "*the ATP developed its rules and procedures*"<sup>204</sup>. As a consequence, a number of changes came later than they should have. As explained above, the Panel credits the ATP for taking certain steps to address integrity issues before 2008, including revising its rules and entering into memoranda of understanding with betting operators to facilitate receipt of betting alerts. Nonetheless, it is the Panel's view that the ATP missed an early opportunity to improve its approach to combatting breaches of integrity.

**The general approach of the ATP in 2005 to 2008**

107. In respect of the ATP's general approach to cases in the period 2005 to 2008 (referred to above, and excluding the specific matters addressed in Section B and in Chapter 8), the present<sup>205</sup> view of the Panel is as follows.
108. Even under the new ATP TACP, the ATP continued to face considerable constraints in terms of its investigatory powers and capabilities, particularly in respect of the standards to be met for any demand for information or for the commencement of disciplinary proceedings.
109. The Panel has not seen any evidence demonstrating that of the approximately 126 matches that were the subject of a suspicious or unusual betting pattern reported to the ATP in the period 2005-2008, any could have been proved to have involved a player contriving the result of a match or part of it for corrupt reasons, or a player passing inside information for reward.

<sup>202</sup> Paragraph 24 above and Statement of Mark Miles (formerly ATP).

<sup>203</sup> Paragraph 65 above.

<sup>204</sup> Statement of Gayle Bradshaw (ATP).

<sup>205</sup> Pending the consultation process between Interim and Final Reports.

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110. The Panel however takes the present view that the ATP's approach was inappropriate in the following respects:
- 110.1 First, the ATP adopted, in the view of the Panel, an unnecessarily restrictive interpretation of the new ATP TACP's prohibition on contriving the result of a match or part of it<sup>206</sup>. The ATP interpreted this prohibition as covering only contriving a match for betting or other corrupt purposes. The words did not in the view of the Panel require that the ATP set such a high burden of proof. The 2005 Ings Report had made clear the significance of deliberate under-performance for other reasons, and the interpretation placed on the rule, coupled with inadequate application of the best efforts rule, precluded effective action to combat that behaviour.
- 110.2 Second, the ATP had insufficient resources and capabilities to deal properly with the task before it. The resourcing pressures were recognised by the ATP, but the apparent solution appears to have been confined to bolting-on additional support on a case by case basis. In particular, Iain Malone continued to provide investigatory support and when the Sopot match occurred in 2008 an external team of experts were appointed to investigate that match. Whilst this approach is understandable, it would have been prudent for the ATP to have put greater resources in place at an earlier stage (as it was indeed considering doing as set out at paragraph 65.1 above).
- 110.3 Third, at least some of the matches warranted further investigation than they appear to have received.
111. The ATP ought at least to have investigated further matches where specific players were repeatedly involved. The list of alerts collated by the Panel indicates that there were a significant number of players involved in such matches. For example; one player was involved in seven matches, two players were involved in six matches each, one player was involved in five matches, four players were involved in four matches each, eight players were involved in three matches each and 16 players were involved in two matches each. In total, there were 97 matches involving one of a group of 32 players who had been involved in other matches that were the subject of unusual or suspicious betting patterns in the period 2005 to 2008.
112. The Panel can see that on many occasions the ATP may have had insufficient evidence to show that a breach of integrity was the cause for the unusual or suspicious betting pattern, and the Panel can also see that it is possible that players might be the subject of repeat alerts without themselves committing a breach of integrity. However, it seems to the Panel that one would have expected to have seen instances where a more intensive investigation was made of players whose matches generated repeated unusual or suspicious betting patterns.
113. In the view of the Panel the ATP ought also in particular to have done more to investigate matches where the betting involved linked accounts. Whilst some of the betting patterns may have had a readily identifiable innocent explanation, there were others that prima facie indicated that, at the least, the bettors had prior knowledge of the outcome upon which they were betting.
114. It is suggested in the BuzzFeed News/BBC 17 January 2016 story entitled "*The Tennis Racket*"<sup>207</sup> that over "*the past decade*" (in other words 2006 to 2016), the International Governing Bodies had been "*repeatedly warned about a core group of 16 players – all of whom have ranked in the top 50*"<sup>208</sup> – *but none have faced any sanctions*". That group of 16 was said to include "*winners of singles and doubles titles at Grand Slam tournaments*". So far as the ATP is concerned, during the period 2005 to 2008, the composite list of alerts collated by the Panel<sup>209</sup> (which includes matches not reported to the ATP at the time) indicates:

<sup>206</sup> The ATP TACP prohibition, Rule VII(C)(2)(a), was in the following terms: "No Player nor any of his Player Support Personnel shall, directly or indirectly, contrive or attempt to contrive, or be a party to any effort to contrive or attempt to contrive, the outcome or any other aspect of any Event".

<sup>207</sup> Chapter 11, Section A.

<sup>208</sup> The Panel has interpreted the phrase "have ranked in the top 50" as referring to players that have been ranked in the top 50 of the ATP Rankings (Singles) at any point in their career, rather than having ranked in the top 50 of the ATP Rankings (Singles) at the time at which the match/matches in which they were involved was/were flagged as being the subject of an unusual or suspicious betting pattern.

<sup>209</sup> The Panel's composite list of alerts is not published because it cannot be suitably redacted.

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- 114.1 There were three winners of singles or doubles titles at Grand Slams who were the losers<sup>210</sup> in ATP matches on the Panel's composite list of alerts during 2005 to 2008.
- 114.2 There were 33 players who were ranked in the top 50 who were losers in ATP matches on the Panel's composite list of alerts during 2005 to 2008.
- 114.3 Of those 33 players, there were 20 players who were losers in more than one ATP match on the Panel's composite list of alerts during 2005 to 2008. Of those 20 players, one was listed seven times, one was listed six times, two were listed four times, six were listed three times and ten were listed twice.
- 114.4 No player was sanctioned by the ATP during this period.
115. This must be seen in the light of the fact that, as explained in Chapter 3<sup>211</sup>, an alert in respect of a player does not necessarily mean that there was a provable breach of integrity by the player. The same is true of repeated alerts.
116. In summary, and as noted above, the ATP deserves credit for taking significant steps to address integrity issues before 2008, including revising its rules and entering into memoranda of understanding with betting operators to facilitate receipt of betting alerts. The Panel also bears in mind the views of present and former ATP representatives and in particular Etienne de Villiers' evidence<sup>212</sup> that *"he believes that ATP was truly committed to protecting the players, the tournaments, the fans and the sport by eradicating corruption and doping, both of which could destroy the game. At no time was there complacency or compromise. With these two matters there was a firmly established value of 'zero tolerance'"*.
117. In the Panel's view, however, the ATP did not, at times, respond effectively and appropriately to the alerts it received about suspected betting and corrupt activities, in particular in relation to repeated alerts in respect of individual players. While the Panel has seen no evidence demonstrating that the ATP sought to cover up integrity issues in tennis, some of the examples detailed above suggest to the Panel that at times before 2008 the ATP lacked, sufficient resource and aptitude, to address the integrity issues facing tennis. The ATP informed the Panel that *"it lacked the aptitude to address the issues facing tennis and stated that this was why the ATP sought assistance from investigators for the British Horseracing Authority (one of the few other governing bodies of sport with experience addressing similar issues)"*<sup>213</sup>.

**210** The alerts during the period 2005 to 2008 are limited in their detail. The Panel has therefore chosen to focus its analysis on the losing player in each relevant match. This proceeds on the assumption that the unusual or suspicious betting pattern has arisen in the context of the losing player having 'thrown' the relevant match. It is important to note that this methodology therefore does not identify the winning players in those matches who may have been the subject of unusual or suspicious betting patterns – for example those winning players engaging in 'set and break' or spot fixes. This assumption also rules out the identification of the winning player in instances where both players may have been involved in a fix (for example in a scenario where the players have agreed that they will each win one of the first two (of three) sets each and then play out the third set competitively).

**211** Chapter 3, Section F.

**212** Response of Etienne De Villiers' to Notification given under paragraph 21 ToR.

**213** Response of the ATP to Notification given under paragraph 21 ToR.

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**B THE ATP'S RESPONSE IN 2007 TO THE DISCOVERY OF BETTING ACCOUNTS IN THE NAMES OF THE PLAYERS AND COACHES**

118. The Panel has specifically examined the ATP's response in 2007 to its discovery that betting accounts were held in the names of a number of tennis players and coaches, the handling of which was criticised in the media in early 2016<sup>214</sup> and with which the Panel has been asked specifically to deal.

**(1) THE PROVISION TO THE ATP OF NAMES OF BETTING ACCOUNTS**

119. After the signing of the memorandum of understanding between ATP and ESSA, in 2007, Gayle Bradshaw provided ESSA with the entire list of ranked men's professional tennis players and asked ESSA to compare ATP's entire ranked player list against ESSA's available information. The ATP told the Panel that "*due to the complicated and time-consuming nature of this request, ESSA never provided a response to ATP's entire ranked player list, and thereafter, ATP began to provide specific requests to ESSA based on specific intelligence obtained by ATP about certain players*"<sup>215</sup>. This specific intelligence<sup>216</sup> led Gayle Bradshaw to initiating investigations into players, who were ultimately disciplinarily charged under the ATP TACP<sup>217</sup>, for gambling on tennis.

120. As part of those investigations Gayle Bradshaw asked ESSA to check with its members whether there were betting accounts in the names of those players, and whether any such account had been used to bet on tennis.

121. The first of these requests, made in April 2007, concerned Alessio Di Mauro. As described above, the ATP's request regarding Alessio Di Mauro was based on intelligence the ATP had received concerning the player's involvement with betting. A response was received from ESSA confirming that he had a betting account and had placed bets on tennis. He was subsequently the subject of successful disciplinary proceedings<sup>218</sup>.

122. Following this, the ATP received intelligence that another Italian player, Federico Luzzi<sup>219</sup>, was involved in betting. Based on the intelligence regarding Federico Luzzi, Gayle Bradshaw made enquiries of ESSA. ESSA's response to ATP regarding Federico Luzzi also contained the names of additional men's professional tennis players: Potito Starace, Daniele Bracciali and Giorgio Galimberti, all of whom were subsequently the subject of successful disciplinary proceedings<sup>220</sup>.

123. Following this, as a result of a leak to a newspaper of one of his specific requests for information from betting operators, Gayle Bradshaw decided to make a more general request in respect of a large number of names of players and coaches, within which names of particular interest would not be evident, should there be another leak. Subsequently spreadsheets containing 213 player names and 190 coach names for examination were produced<sup>221</sup>. The list of 213 player names included the names of highly ranked players (including players who at the relevant time were ranked in

<sup>214</sup> Chapter 11, Section A. Heidi Blake & John Templon, 'Tennis covered up for 95 gamblers, says family of suspended player' (BuzzFeed News, 15 March 2016) available at: <https://www.buzzfeed.com/heidiblake/tennis-accused-of-covering-up-for-95-gamblers> [accessed 9 April 2018]; 'Tennis match-fixing: 'More players should be investigated'' (BBC Sport, 15 March 2016), available at: <http://www.bbc.co.uk/sport/tennis/35808571> [accessed 9 April 2018]. The principal criticism made in this context was that the ATP had only pursued disciplinary cases against low ranked Italian players, when it ought also to have pursued such cases against 95 other players, some of whom were high ranked players, but it made a discriminatory decision not to do so, in order to protect its revenue and reputation, and then covered up its actions.

<sup>215</sup> Response of the ATP to Notification given under paragraph 21 ToR.

<sup>216</sup> As described further in paragraph 153 below.

<sup>217</sup> Paragraph 146 below.

<sup>218</sup> As to which, see paragraph 146 below. Because successful disciplinary proceedings were brought, and his name is in the public domain, his name is publishable now. Section B(3) below.

<sup>219</sup> Federico Luzzi died shortly after the disciplinary proceedings.

<sup>220</sup> As to which, paragraph 146 below. Because successful disciplinary proceedings were brought, and these names are in the public domain, these players' names are publishable now.

<sup>221</sup> The Panel does not regard it as appropriate to publish those names. The lists contained names the vast majority of which the ATP had no suspicions about. They were in any event purely interrogatory, and the vast majority of those names did not match any accounts. Furthermore the lists are contained in documents which were lodged with the United States District Court (Middle District of Florida) in the federal court proceedings *Luzzi et al v ATP*, Case 3:09-cv-1155-J-32MCR (as to which see paragraph 147 below) and the federal court placed them under seal so as to preserve confidentiality.

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the top 20). Those names were not included on the list because there were any suspicions in relation to them, but rather as part of Gayle Bradshaw's approach of identifying a sufficiently large number of players to avoid specific suspected players being identified.

124. The request was directed to ESSA, which in turn circulated the request to its members. In response individual betting operators informed the ATP of accounts they had located that bore the names of players or coaches inquired about. A total of 44 names of players (of the 213 listed by the ATP) and 19 names of coaches (of the 190 listed) were identified. As a result of these further requests and subsequent investigations, the ATP prosecuted three additional players: Mathieu Montcourt, Frantisek Cermak and Michael Mertinak.

**(2) THE ATP'S APPROACH TO THE INVESTIGATION**

**Approach taken in respect of players**

125. Gayle Bradshaw gave evidence to the Panel that the ATP applied two threshold criteria in its examination of the information it had received in respect of players<sup>222</sup>:

125.1 First, the ATP asked the betting operator whether the account had actually been used to bet on professional tennis, as that was what was prohibited by the ATP TACP at the time<sup>223</sup>, as opposed to on other sports.

125.2 Second, the ATP took steps to ascertain whether the account was actually held by a tennis player, as opposed to simply bearing the same or a similar name to that of a tennis player or having been opened by a member of the public using the name of a player.

126. The two criteria were perceived as appropriate in terms of what would have to be established in such proceedings: if an account had not been used to bet on tennis, then there was no basis for a charge under the rules. If an account had bet on tennis, a charge could only be brought if the account actually belonged to a player or coach.

***First threshold criterion: ascertaining whether account was used to bet on tennis***

127. In each instance the ATP asked the betting operator that had identified an account as bearing the name of a player or coach whether the account had been used to place bets on tennis, and if it had, to provide full account details with an itemised list of betting activity.
128. In response, one of the betting operators, which had identified 14 accounts bearing the names of players, confirmed that none of the accounts that it identified had been used to place bets on tennis. Others responded that some of the accounts had, and some had not, been used to bet on tennis.
129. Where the ATP was informed that the account had not been used to place bets on tennis no further action was taken by the ATP.

130. Where the ATP was informed that the account had been used to place bets on tennis, the ATP went on to the second threshold criterion.

***Second threshold criterion: ascertaining whether account belonged to player***

131. For those accounts that had been used to place bets on tennis, the ATP sought clarification in respect of comments that had been made by the betting operators in respect of the accounts. For example, where an operator had commented

<sup>222</sup> Statement of Gayle Bradshaw (ATP).

<sup>223</sup> Paragraph 51.2 above. ATP TACP 2005, Rule 7.05.C.(1)(b) provided that "No Player nor any of his Player Support Personnel shall, directly or indirectly, solicit, induce, entice, persuade, encourage or facilitate any other person to Wager on the outcome or any other aspect of any Event". Rule 7.05.B.(2) provided that "For purposes of this Program the term "Events" means all tennis matches and other tennis competitions, whether men's or women's, amateur or professional, including, without limitation, all ATP tournaments, Challenger Series tournaments, and Futures tournaments".

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that an account had been closed due to fraud, Gayle Bradshaw asked for an explanation as to what the operator meant by this comment, because it did not make clear whether the fraud was in the use of the name, or something else.

132. The ATP asked the betting operators questions aimed at establishing whether the account in fact belonged to a player. Gayle Bradshaw wrote to ESSA in November 2007 in respect of 13 particular accounts apparently in the names of players, that appeared to have been used to bet on tennis.
133. The information requested by the ATP included the address, phone number, date of birth and banking details that were registered with the betting operator. ESSA provided the addresses and the dates of birth of the user registered to each account. ESSA did not provide the banking details, stating that financial data could only be provided to the police. ESSA did confirm whether such bank details existed in respect of each account. Whilst a number of the accounts had received funds deposited from a bank account or credit card, others had no such details. For example, some accounts had been established with a free bet promotion, with no further funds having been deposited.
134. The information provided to the betting operators by those opening accounts could then be cross-checked against the information about players already held by the ATP. The result of this process was that:
  - 134.1 In six cases the dates of birth and address details provided by ESSA matched those held on record by the ATP.
  - 134.2 In one case the date of birth and address details held by the ATP were different from those provided by ESSA.
  - 134.3 In four cases the address details were different, although the dates of birth matched.
  - 134.4 In two cases the ATP was not able to carry out a cross-check due to the fact that ESSA did not hold date of birth or address details.
135. In January 2008 Gayle Bradshaw followed up with ESSA in respect of eleven of the 13 accounts that had been identified in his November request. No further steps were taken in relation to the two other accounts due to the fact that:
  - 135.1 ESSA had confirmed that one of the accounts had been closed due to fraud. The explanation given by ESSA was that the account was linked to multiple accounts, suggesting that the same person had opened several accounts using different names, including a player's name. ESSA further confirmed that they had not received identification documents for this account.
  - 135.2 ESSA also confirmed that the other account had no in fact been used to bet on tennis. It therefore ought to have fallen away under the first criterion.
136. The eleven accounts were broken down into eight groups, with comments made by Gayle Bradshaw in respect of each group. ESSA responded to Gayle Bradshaw's request the next day. The table below sets out the comments raised by Gayle Bradshaw and the response from ESSA.

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Gayle Bradshaw comments	Response from ESSA
<p>Account 1, Account 2, Account 3 It seems like there is no way to verify that these players are the actual account holders. Can we confirm that or is there is a way that they can confirm, that would be helpful.</p>	<p>These users are very likely <u>not</u> the tennis players in question.</p>
<p>Account 4 Address does not match our address for him. Info said he pays via Visa, can I have that information and maybe I can verify through that. Any other info they have that could help identify account holder.</p>	<p>This is <u>definitely</u> the tennis player. Same face in his ATP profile and ID card.</p>
<p>Account 5 Address matches ours. Can I get Visa info. / anything else?</p>	<p>email address: [redacted]</p>
<p>Account 6 Address does not match. Need Visa info. / anything else</p>	<p>email address: [redacted]</p>
<p>Account 7 Address matches Can I get Visa info and banking details.</p>	<p>email address: [redacted]</p>
<p>Account 8 Address does not match Need Visa info. / anything else</p>	<p>email address: [redacted]</p>
<p>Account 9 and Account 10 Address is same for both and is very suspect. Both say they pay through Firstgate, can I get as much info on this as possible. I have serious concerns that these accounts are not the players’.</p>	<p>email address: [redacted], email address: [redacted] Player 9, Player 10, and Player 11 all paid in with the same Firstgate account. Same as [redacted] and [redacted]. I am certain that none of these accounts belong to the players.</p>
<p>Account 11 Any info on how pay-in / pay-out was done? Any information that could help verify identity of account holder.</p>	<p>email address: [redacted] See my comment above please.</p>

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137. It appears that Accounts 1, 2 and 3 had been grouped together because ESSA had previously stated in respect of these accounts that there were no banking details, the user had opened the account using only a free bet code for €3.63, and there were no ID documents to verify the user's identity. It also appears however that the address details provided by ESSA in respect of Accounts 1 and 3 matched those held by the ATP. It is unclear whether ESSA knew that when it reached its conclusion that the accounts were very likely not held by the players in question.
138. Based on the information provided by ESSA, Gayle Bradshaw took the following steps:
- 138.1 He concluded the investigation in respect of Accounts 1, 2, 3, 9, 10 and 11 following ESSA's assessment that these accounts likely did not belong to the players whose names the accounts bore.
- 138.2 He commenced preparation of disciplinary proceedings against the player associated with Account 4 following ESSA's confirmation that the account definitely belonged to the player. The identity of this player was Michael Mertinak<sup>224</sup>.
- 138.3 He made further inquiries in respect of Accounts 5, 6, 7 and 8.
139. Gayle Bradshaw sought to verify the email addresses held by the ATP against the email addresses provided by ESSA:
- 139.1 The email addresses for Accounts 5, 7 and 8 matched.
- 139.2 Preparation of disciplinary proceedings was commenced against the players associated with Accounts 5 and 8. The identities of these players were Mathieu Montcourt<sup>225</sup> and Frantisek Cermak<sup>226</sup>.
- 139.3 Disciplinary proceedings were not pursued against the player associated with Account 7 as that player was no longer playing tennis.
- 139.4 The email address for Account 6 did not match. Gayle Bradshaw made a further request for information from ESSA in respect of this account but the only information it was able to provide was the date on which the account had been opened. Gayle Bradshaw then sent an email to the email address for Account 6 to see if he would receive a response. No response was received.
140. Gayle Bradshaw therefore commenced proceedings against each player in respect of whom he concluded he had a reasonable belief that a corruption offence had been committed<sup>227</sup>. Where he was not so satisfied, no further steps were taken. He did not contact players whose names were on accounts that had not been ascertained to be theirs, to ask them whether the accounts were in fact theirs. Nor did the ATP embark on any further investigations of whether the accounts were in fact theirs.

**Approach taken in respect of highly ranked players**

141. As stated in paragraph 123 above, the ATP had included the names of some highly ranked players in the list of 213 player names provided to betting operators, not because there were any suspicions in relation to them, but rather as part of the approach of identifying a sufficiently large number of players to avoid specific suspected players being identified. When in response to the receipt of the list, betting operators identified a number of accounts that were in the names of players on the list, some of the names were those of highly ranked players.

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<sup>224</sup> Successful disciplinary proceedings were brought against the player, and his name is in the public domain. His name is therefore publishable now.

<sup>225</sup> Mathieu Montcourt died shortly after the CAS arbitration proceedings on appeal from the disciplinary proceedings.

<sup>226</sup> Successful disciplinary proceedings were brought against these players, and their names are in the public domain. The names are therefore publishable now.

<sup>227</sup> ATP TACP 2008, Rule 7.05.E.(2)(c) provided that "If the EVP-Rules & Competition reasonably believes that a Player or any of his Support Personnel may have committed a Corruption Offense, the EVP-Rules and Competition may make a written demand to such Player or Support Personnel (a "Demand") to furnish to the EVP-Rules and Competition any information that is reasonably related to the Corruption Offense and that is permitted to be obtained under applicable law...".

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142. The ATP applied the same two threshold criteria described above to these accounts in the name of highly ranked players as it applied to all other accounts:

142.1 In relation to the first threshold criterion, the betting operators confirmed that a number of the accounts that were in the names of highly ranked players had not been used to bet on tennis. Consistent with the ATP's overall approach, no further action was taken in relation to these accounts.

142.2 Applying the second threshold criterion to the remaining accounts that were in the names of highly ranked players the ATP concluded, based on the information provided by the betting operators, that it was unlikely that they did in fact belong to players.

**Approach taken in respect of coaches**

143. So far as coach names were concerned, there were eight names that were reported by the betting operators as being names on betting accounts.

144. Of those, one account did not satisfy the criterion of having been used to bet on tennis as it was reported that it had not been used at all.

145. As to each of the remaining seven accounts, ESSA's response did not identify one way or another whether the accounts had been used for betting on tennis. The steps then taken in respect of the coaches were more limited than those taken in respect of the players. Questions were raised with ESSA but the issue was not pursued further.

**(3) DISCIPLINARY PROCEEDINGS BROUGHT AGAINST EIGHT PLAYERS**

146. The eight disciplinary proceedings brought by the ATP were all successful before the AHO<sup>228</sup>. Appeals were lodged with the Court of Arbitration for Sport in three instances, and two of those proceeded. The ATP broadly won both appeals, although there were some alterations to sanctions:

146.1 Alessio Di Mauro was sanctioned with a nine-month suspension and a fine of US\$60,000 for placing 134 bets on tennis (a further 192 bets on a different account were not the subject of detailed evidence at the original hearing), all after the introduction of the ATP TACP<sup>229</sup>. He appealed to CAS, which reduced his sanction to seven months and a US\$25,000 fine<sup>230</sup>. The CAS Decision records that the AHO had criticised the steps taken by the ATP to bring the rule against betting on tennis to the attention of players, and that the ATP took issue with that criticism citing the numerous publications (Player News, PlayerZone, Players' Weekly and the ATP's website) in which information regarding the rules had been published. CAS confined itself to commenting that the ATP might consider publishing the rules in other languages in addition to English. CAS also noted the "slight inconsistency" in prohibiting players from betting at tennis, while tolerating sponsorship of and advertising at events by online betting companies, but stressed that it was no excuse not to know and abide by the rules. CAS was concerned that the sanctions in the cases described below had not been set out in the ATP's pleadings, and that they were significantly lower than those in Di Mauro's case. CAS was also concerned that the length of the sanction would have a disproportionate effect on the player's ability to build back up his ranking.

<sup>228</sup> Derrick Whyte, 'Doubles specialists banned for betting on matches' (The Independent, 21 July 2008, available at: <http://www.independent.co.uk/sport/tennis/doubles-specialists-banned-for-betting-on-matches-873787.html> [accessed 9 April 2018]; 'ATP's betting warning' (Sky Sports, 27 December 2007), available at: <http://www.skysports.com/tennis/news/12110/3007767/atps-betting-warning> [accessed 9 April 2018]; 'Italian player banned for betting' (BBC Sport, 10 November 2007),

<http://news.bbc.co.uk/sport1/hi/tennis/7088488.stm> [accessed 9 April 2018]; Charlie Caroe, 'ATP bans Starace and Bracciali over betting' (The Telegraph, 22 December 2007), available at: <http://www.telegraph.co.uk/sport/tennis/atptour/2329216/ATP-bans-Starace-and-Bracciali-over-betting.html> [accessed 9 April 2018] [accessed 9 April 2018].

<sup>229</sup> Clive White, 'Alessio di Mauro banned by ATP' (The Telegraph, 11 November 2007), available at: <http://www.telegraph.co.uk/sport/tennis/atptour/2325479/Alessio-di-Mauro-banned-by-ATP.html> [accessed 9 April 2018].

<sup>230</sup> CAS 2007/A/1427 (M v ATP Tour Inc).

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- 146.2 Daniele Bracciali was sanctioned with a three-month suspension, and a fine of US\$20,000 for placing 63 bets on tennis, mostly before the introduction of the ATP TACP. He did not appeal.
- 146.3 Frantisek Cermak was sanctioned with a 10-week suspension and a fine of US\$15,000 for placing 51 bets on tennis, all after the introduction of the ATP TACP. He did not appeal.
- 146.4 Giorgio Galimberti was sanctioned with a 100-day suspension and a fine of US\$35,000 for placing 395 bets on tennis, before and after the introduction of the ATP TACP. He did not appeal.
- 146.5 Federico Luzzi was sanctioned with a 200-day suspension and a fine of US\$50,000 for placing 260 bets on tennis, some before but mostly after the introduction of the ATP TACP. An appeal to CAS was commenced, but did not proceed<sup>231</sup>.
- 146.6 Michal Mertinak was sanctioned with a two-week suspension and a fine of US\$3,000 for placing two bets on tennis, after the introduction of the ATP TACP<sup>232</sup>. He did not appeal.
- 146.7 Mathieu Montcourt<sup>233</sup> was sanctioned with an eight-week suspension and a fine of US\$12,000 for placing 48 bets on tennis, all after the introduction of the ATP TACP. He appealed to CAS, which reduced his sanction to five weeks, leaving the fine of US\$12,000 unaltered<sup>234</sup>.
- 146.8 Potito Starace was sanctioned with a six-week suspension and a fine of US\$30,000 for placing five bets on tennis after the introduction of the ATP TACP. He did not appeal.

**(4) THE UNSUCCESSFUL ACTION BROUGHT AGAINST THE ATP IN THE UNITED STATES DISTRICT COURT**

147. In July 2009, an action<sup>235</sup> was commenced in the federal courts of the United States against the ATP by the estate of Federico Luzzi, Daniele Bracciali, Alessio DiMauro, Giorgio Galimberti and Potito Starace.
148. In the action, the plaintiffs challenged the disciplinary proceedings and sanctions against them, alleging that they were not bound by the prohibition on wagering in the ATP Rules, that the arbitration proceedings by which they had been sanctioned were not binding, and that the ATP's choice to bring disciplinary proceedings against the players, and not others, had been selective and therefore a breach of the ATP's fiduciary duty.
149. The action was dismissed without any determination of the selective enforcement allegations. On 1 March 2011, the federal court ordered summary judgment<sup>236</sup> in favour of the ATP, on the basis that because the disciplinary arbitration process met all the requirements of the governing Delaware law, the players were obliged to assert any claim of the sort now made in the action, during or at the time of the arbitration proceedings. On 2 March, pursuant to that order, judgment was entered in favour of the ATP.
150. During the course of the federal court proceedings, the parties entered into a confidentiality agreement and stipulated order under which documents could be designated as confidential. The federal court adopted the terms of the agreement, and permitted the parties to file documents under seal. Those documents included the documents relied upon by the

<sup>231</sup> When the player sadly died.

<sup>232</sup> Reuters Staff, 'Two more players sanctioned for gambling' (Reuters, 21 July 2008), available at: <https://www.reuters.com/article/idINIndia-34611820080721> [accessed 9 April 2018].

<sup>233</sup> Mathieu Montcourt sadly died shortly after the CAS arbitration proceedings.

<sup>234</sup> CAS 2008/A/1630 (Mathieu Montcourt v ATP).

<sup>235</sup> Federico Luzzi (by and through Francesca Luzzi, in her capacity as the Personal Representative of the Estate of Federico Luzzi) Giorgio Galimberti, Alessio DiMauro, Potito Starace and Daniele Bracciali v ATP Tour Inc., United States District Court (Middle District of Florida, Jacksonville Division), Case 3:09-cv-1155-J-32MCR.

<sup>236</sup> Order on Summary Judgment, Luzzi v. ATP Tour, Inc., No. 3:09-cv-1155-J-32MCR, ECF No. 137 (M.D. Fla Mar. 1, 2011).

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players in support of their case that they had been the victims of selective enforcement of the ATP's anti-wagering rules. The documents related to whether other players might have been involved in wagering. Subsequently, ESPN, supported by the players, asked the federal court to unseal the documents. On 12 July 2011 the federal court denied the motion<sup>237</sup>, not least because the sealed documents had not formed the basis for its grant of summary judgment, and the privacy interests of players named in the documents outweighed any other interest in unsealing the documents.

**(5) EVALUTATION OF THE ATP'S RESPONSE TO THE INFORMATION ON BETTING ACCOUNTS**

151. The Panel has considered against the facts above whether the ATP's response to the information on betting accounts was appropriate.

**The way in which the information was initially gathered**

152. In the present<sup>238</sup> view of the Panel, in relation to the initial gathering of the information:

152.1 The ATP took proactive steps, utilising the terms of the memoranda of understanding with betting operators, to ascertain whether specific players had betting accounts. These steps were based on intelligence and were appropriate.

152.2 The extension of the request to cover further specific Italian players was appropriate given that ESSA had by that stage identified several Italian players as having betting accounts, and intelligence suggested there might be link.

152.3 The extension of the request to cover a wider group of 213 players was understandable in the light of the desire to counteract any potential leak and was appropriate. It was similarly appropriate to extend the search to the list of coaches.

152.4 The broadening of the request of course meant that the ATP had to investigate adequately any information received in relation to other names.

**The way in which the information was investigated**

153. In the present<sup>239</sup> view of the Panel, in relation to the ATP's approach to the investigation of the information:

153.1 The two-threshold criteria set were appropriate. Without evidence of bets on tennis and the account actually being held by the player or coach, a breach could not be proved under the ATP TACP.

153.2 Where both criteria were met the ATP brought a case against the player in question. Charges were accordingly brought against the five players in respect of whom the ATP had made specific requests, based on intelligence, and three further players who satisfied the criteria although they were not included in the original names of interest. The ATP acted consistently in so doing.

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**237** Order on Motion to Unseal, Luzzi v. ATP Tour, Inc., No. 3:09-cv-1155-J-32MCR, ECF No. 168 (M.D. Fla. July 12, 2011).

**238** Pending the consultation process between Interim and Final Reports.

**239** Pending the consultation process between Interim and Final Reports.

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153.3 The only instance in which both criteria were met and the ATP did not take action was in respect of a player who had already retired by the time the relevant information came to the ATP's attention. This was not a highly ranked player. In the circumstances, the decision not to pursue this player could be seen as appropriate in that the continuing applicability of the ATP TACP to an already retired player would be open to challenge, and arguably little would be achieved by pursuing a player who had already left the sport. Nonetheless, it would appear that there should have been some more consideration given to whether proceedings could or should have been brought in those circumstances.

153.4 The ATP's decision not to proceed when an account had been reported not to have been used to place bets on tennis was appropriate. The information from the betting operator as to the use to which the account had been put was likely to be dispositive. There was nothing inconsistent in not proceeding in respect of such accounts. Some of these accounts were in the name of highly ranked players.

153.5 In some instances where an account had been identified in the name of a player but had been reported as not having been used to bet on tennis, the ATP asked the relevant betting operator to monitor the account to see if it was used to place bets on tennis in the future. This approach was appropriate.

153.6 As to the ATP's decision not to proceed when it could not be shown that an account was actually held by the player or coach, that decision was appropriate in instances where the available evidence clearly pointed to the account not being so held. In particular, it was appropriate for the ATP to rely upon the assessment of ESSA that Accounts 4, 9, 10 and 11 did not belong to the players in question. Some of those players were highly ranked.

154. In the present view of the Panel, the ATP should have pursued further inquiries into those instances where there remained some doubt as to whether the account was in fact held by the player, as addressed below. None of the accounts in question was in the name of a highly ranked player.

155. The Panel's present view is that further steps should have been taken in respect of Accounts 1 and 3. Whilst ESSA had expressed a view that it was not likely that these accounts belonged to the relevant players, the fact that the addresses for those accounts matched the addresses held by the ATP raised the possibility that ESSA had been mistaken in its assessment. Consistent with the approach taken to other players, the ATP should have asked ESSA to confirm the email addresses that it held on file for each of those accounts.

156. Further steps should have been taken in relation to Account 6. Whilst the address provided by the betting operator did not match the address held by the ATP<sup>240</sup>, funds had been placed into this account by credit card. As such the deposit would presumably have had to pass the betting operator's usual fraud checks, which ought to point to identity. It appears that Gayle Bradshaw continued to have some doubt in respect of this account, in that he sent an email to the email address that had been provided by ESSA. It should also be noted that the betting data provided by ESSA indicated that this was an account that had been used to bet on more than 1,800 matches, more than all of the other accounts combined. Furthermore, this account had placed four bets on the player name associated with Account 6 himself. While it is entirely possible that the account was in fact held by someone other than the player name, it presently seems to the Panel that this should have been pursued further.

157. In particular, it presently seems to the Panel that where there was reasonable doubt as to whether an account was actually the player's, the ATP ought at the least to have written to, or spoken with, the player in question, asking if the account belonged to him. The ATP told the Panel that "*the Panel suggests action which ATP was not authorised to take. At that time, the exclusive method for ATP to obtain information from a player was the written demand process in Section E.2.c of the ATP TACP*<sup>241</sup>".

<sup>240</sup> The fact that an address did not match was not determinative. In the case of Michal Mertinak the physical address had not matched but the betting account had still been shown to belong to the player.

<sup>241</sup> Response of the ATP to Notification given under paragraph 21 ToR.

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158. It appears to the Panel that:

158.1 The ATP was reluctant to ask for more information from players because under the ATP TACP a formal request for information by way of a demand could only be issued if the relevant official (Gayle Bradshaw) had formed a reasonable belief that a corruption offence may have been committed, and he could not form that view on the basis of so little information.

158.2 To the extent that this was the case, the Panel accepts that this was an understandable view. It does however presently seem to the Panel to have been overcautious. It seems to the Panel that a reasonable view that an offence may have been committed could be formed based on the existence of an account in the name of a player that has been used to bet on tennis.

158.3 Further, the Panel's present view is that the existence of the test for a formal demand did not preclude the ATP from informally requesting information.

159. While the ATP properly proceeded against all player names demonstrated to satisfy both criteria, including some not originally of interest, the ATP, in the view of the Panel, set too low a standard for stopping further investigation in the instances described above.

160. The Panel does not however consider that the ATP acted as it did in order selectively to investigate some players and not others, or not to investigate a highly ranked player because that would be damaging to the ATP's reputation or revenue.

**Did the ATP discriminate unfairly in its decision as to whom to prosecute arising out of the information on betting accounts obtained by the ATP in 2007?**

161. Whilst further investigatory steps might have been taken in respect of certain players whose names featured in the information on betting accounts obtained by the ATP in 2007 to the extent described above, none of whom were highly ranked players, the Panel has seen nothing to indicate that any other players should have been the subject of disciplinary proceedings on the basis of the information obtained:

161.1 It was not the case, as suggested<sup>242</sup> in the media, that the information on betting accounts obtained by the ATP in 2007 revealed that 100 players had been caught gambling on tennis, including "*high-ranked players*" and "*one global star*".

161.2 The same threshold criteria were applied by the ATP in relation to all accounts identified by betting operators, irrespective of how highly ranked any of the players were.

161.3 Save for the player associated with Account 7, who had retired, there were no players whom the ATP found to have satisfied both criteria, but against whom it nevertheless chose not to bring disciplinary proceedings based on the information on betting accounts obtained by it in 2007. That player was not a highly ranked player.

161.4 The ATP did not discriminate unfairly in its selection of which players to prosecute arising out of the information on betting accounts obtained by the ATP in 2007, or in its approach to seeking further information.

161.5 The ATP did not fail to bring proceedings based on the information on betting accounts obtained by it in 2007, against highly or relatively highly ranked players (in whose names there were betting accounts) in order to protect its revenue or reputation.

<sup>242</sup> "Tennis match-fixing: 'More players should be investigated'" (BBC Sport, 15 March 2016), available at: <http://www.bbc.co.uk/sport/tennis/35808571> [accessed 9 April 2018].

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162. The Panel has not seen anything to indicate that the ATP “*alerted*” all other players instead of prosecuting them, as suggested<sup>243</sup>.

**Was the ATP’s approach to investigating coaches appropriate?**

163. The steps taken in respect of coaches were far more limited than those taken in respect of players. In the present<sup>244</sup> view of the Panel, while the ATP’s focus on players was understandable, once it had received information from ESSA concerning coaches, more should have been done to investigate.

164. In particular, it seems to the Panel that the two threshold criteria that the ATP had applied to players should have been applied to the coaches.

165. The ATP should have also taken steps to identify any matches that had been bet upon by the accounts identified by ESSA, not least to see whether the coach had bet on matches involving his own player.

166. From the contemporaneous documents seen by the Panel and the evidence given by Gayle Bradshaw, the fact that more was not done is largely explained by the fact that the ATP was fully engaged in dealing with the Sopot investigation and the betting accounts belonging to players. It appears that anything else was regarded as something that could, if appropriate, be dealt with by the new TIU, which was soon to be established<sup>245</sup>.

167. Gayle Bradshaw’s recollection is that the ATP did hand over information in relation to the coaches to the new TIU<sup>246</sup>. Jeff Rees does not recall seeing it and suggests it may not have been received. The Panel addresses the circumstances of the handover and what the TIU did with material it received in Chapter 9<sup>247</sup>.

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<sup>243</sup> Heidi Blake & John Templon, ‘Tennis covered up for 95 gamblers, says family of suspended player’ (BuzzFeed News, 15 March 2016), available at: <https://www.buzzfeed.com/heidiblake/tennis-accused-of-covering-up-for-95-gamblers> [accessed 9 April 2018].

<sup>244</sup> Pending the consultation process between Interim and Final Reports.

<sup>245</sup> Statement of Gayle Bradshaw (ATP).

<sup>246</sup> Statement of Gayle Bradshaw (ATP).

<sup>247</sup> Chapter 9, Section A.

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**C GENERAL HISTORICAL APPROACH OF OTHER GOVERNING BODIES TO MATCH-FIXING AND RELATED BREACHES OF INTEGRITY**

168. The first two sections above of this chapter addressed the actions of the ATP because, as set out above, it was the most active of the International Governing Bodies in addressing the problem of breaches of integrity. The Panel addresses below the historical approach of the other international governing bodies, starting with the WTA<sup>248</sup>, which also introduced new rules to address the problem; and then the Grand Slams<sup>249</sup>, which saw some problem matches; and lastly the ITF<sup>250</sup>, which was at this point (before the later advent and rapid expansion of online gambling on ITF matches) largely removed from the problem.

**(1) RULES AND ACTIONS OF THE WTA BETWEEN 2003 AND 2008**

**The WTA Rules in 2003**

169. The Code of Conduct in the WTA Rules in 2003 prohibited taking or giving a bribe to influence efforts<sup>251</sup>, dishonourable or unprofessional conduct reflecting unfavourably on tennis<sup>252</sup>, wagers on tennis by players<sup>253</sup> and association with those involved in gambling<sup>254</sup>. There was a defined process and sanctions were a fine up to US\$100,000 plus the value of the bribe or other payment, but any suspension would have to be brought in through a dishonourable conduct or flagrant abuse charge. There was an obligation to report known or suspected violations<sup>255</sup>.
170. There was also an obligation to use best efforts<sup>256</sup>, punishable for a first offence by a warning alone; for a second offence by a point penalty and a fine up to US\$1,000; and for a third or subsequent offence a game penalty and a fine up to US\$5,000.
171. Flagrant abuse<sup>257</sup> of the prohibition on dishonourable or unprofessional conduct provision could carry a fine up to US\$25,000 and a suspension in the discretion of the WTA Board.
172. Again, the WTA Rules lacked the same wider provisions as the ATP Rules lacked<sup>258</sup>.
173. As described in paragraph below, from 2007 the WTA changed its rules in a similar way to the way that the ATP had done in 2005.

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**248** Section C(1) below.

**249** Section C(2) below.

**250** Section C(3) below.

**251** The WTA Official Rulebook, 2003, Section IV, paragraph 4.5.1(c).

**252** The WTA Official Rulebook, 2003, Section IV, paragraph 4.4.1.

**253** The WTA Official Rulebook, 2003, Section IV, paragraph 4.5.(a).

**254** The WTA Official Rulebook, 2003, Section IV, paragraph 4.5.(b).

**255** The WTA Official Rulebook, 2003, Section IV, paragraph 4.5.(d).

**256** The WTA Official Rulebook, 2003, Section IV, paragraph 4.3.2.

**257** The WTA Official Rulebook, 2003, Section IV, paragraph 4.4.2.

**258** Section A(7) above.

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**Investigatory approach of the WTA between 2003 and 2008**

174. From the contemporaneous documents reviewed by the Panel in relation to the period between 2003 and 2008, investigation and disciplinary action in respect of breaches of the WTA rules, including as to integrity, fell to be carried out by the WTA's CEO at the time, Larry Scott<sup>259</sup>. Investigations were in practice dealt with by David Shoemaker (the WTA's General Counsel at the time) and Angie Cunningham (the WTA's Vice President of Player Relations and On-Site Operations at the time)<sup>260</sup>. Under the WTA's rules (as amended from time to time) WTA Players were obligated to cooperate with any investigation carried out<sup>261</sup>.
175. From the contemporaneous documents, between 2003 and 2008 the WTA took steps to enter into memoranda of understanding to ensure that suspicious or unusual betting patterns were reported to it. The WTA entered into a memorandum of understanding with Betfair on 25 October 2005 and in or around March/April 2007, the WTA also entered into a memorandum of understanding with ESSA.
176. In respect of investigating suspicious or unusual betting patterns reported to the WTA, it presently appears to the Panel<sup>262</sup> from the contemporaneous documents, that the WTA would generally take the following steps:
- 176.1 Contact the relevant tournament supervisor and obtain the match scorecard.
- 176.2 On occasion, obtain the report of the chair umpire in relation to the competitiveness of the match.
- 176.3 If there was a suspicion in relation to an injury, obtain the medical assessment from the tournament doctor.
- 176.4 Contact Betfair for anonymous betting account information in respect of the user IDs betting on the match.
- 176.5 Instruct external counsel, Proskauer LLP, formally to request from Betfair details of the betting activity, including name and contact information, of the individuals associated with specific user IDs (identified through the anonymous information sent from Betfair in the first instance).
- 176.6 If necessary, formally notify the players by letter that an investigation was being conducted by the WTA into potential violations of the relevant WTA Rules in respect of the match.
- 176.7 Conduct interviews with the players.
- 176.8 Request itemised mobile phone statements.

**Investigations undertaken by the WTA that did not lead to disciplinary action**

177. Cumulatively, over the period 2003 to 2008, the Panel has found references to suspicious or unusual betting patterns at approximately 10 WTA matches<sup>263</sup>, although not all these may have been reported at the time.
178. From the contemporaneous documents, the Panel has been able to review two of the investigations carried out by the WTA, set out in further detail below.

<sup>259</sup> Statement of David Shoemaker (formerly WTA).

<sup>260</sup> Statement of David Shoemaker (formerly WTA).

<sup>261</sup> The WTA Official Rulebook, 2004, Section XV, paragraph 4.6. The WTA Official Rulebook, 2005, Section XV, paragraph 4.6. The WTA Official Rulebook, 2006, Section XVII, paragraph D.17(b). The WTA Official Rulebook, 2007, Section XVI, paragraph E(2). The WTA Official Rulebook, 2008, Section XVI, paragraph E(2).

<sup>262</sup> Pending the consultation process between Interim and Final Reports.

<sup>263</sup> As appears from the evidence seen by the Panel and reflected in its composite list of alerts. The Panel's composite list of alerts is not published because it cannot be suitably redacted.

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***Unusual betting on lower ranked player before the start of the match and higher ranked player retires during the final set***

179. One of ESSA's members reported to it that there was unusual betting on a lower ranked player to win before the match started. Other betting operators removed the match from their markets. ESSA reported the unusual betting pattern to the WTA after completion of the match.
180. The result of the match saw the higher ranked player win the first set, lose the second set and then retire during the final set whilst ahead. The higher ranked player was also treated by a physio during the match.
181. The WTA initiated its investigation by taking the following steps:
- 181.1 The tournament supervisor was contacted and a copy of the scorecard was obtained.
  - 181.2 Although there was no memorandum of understanding in place with ESSA at the time, the WTA asked ESSA to make further enquiries of its members in respect of other matches involving the same player. The responses from ESSA members indicated that there were no suspicious betting patterns on the player's other matches and the only information of relevant was that the player in question "*retires frequently*".
  - 181.3 Betting data from Betfair was requested and provided in an anonymous format<sup>264</sup>.
  - 181.4 Proskauer LLP was instructed to write to Betfair, pursuant to the terms of the memorandum of understanding, to obtain specific information in relation to the betting activity, including name and contact information, of the individuals associated with certain user IDs. Betfair however responded to Proskauer's request stating that it had investigated the accounts and there was no justification to share the requested information.
182. Approximately 3 months after the match took place the players were sent a formal notification from the WTA that an investigation was being conducted into potential violations of the Wagering and Corruption Rules and other provisions of the WTA Rulebook. The players were put on notice that they might be asked to attend an interview and the WTA might seek documents or information from them.
183. Both players were interviewed. While the Independent Review Panel has not seen the interview transcripts, it appears from emails sent by the players being questioned that the retiring player had been suffering from an illness on the day of the match. The report of the respective WTA tournament doctor confirmed this.
184. Between the initial alert and the interviews being conducted the WTA entered into a memorandum of understanding with ESSA. Pursuant to that memorandum of understanding, the WTA asked ESSA to request from its members betting information in relation to the match in question. This request was made after the players had been interviewed. ESSA provided the WTA with some details in relation to the bettors and confirmed that other ESSA members had nothing to report in relation to the match.
185. It appears from the contemporaneous documents that after carrying out the investigative steps described above, the WTA concluded that there was a plausible explanation for the higher ranked player's poor performance. Four months after the player interviews were conducted, the players were notified by the WTA that the investigation has been closed. No further action was taken in respect of either player.

<sup>264</sup> In other words the betting accounts were identified by user ID only.

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***The same accounts that had bet unusually on the Sopot match also bet unusually on a WTA match leading Betfair to suspend paying out, although it eventually did pay out***

186. Shortly after the Sopot match<sup>265</sup>, Betfair reported to the WTA that an unusual betting pattern had arisen in respect of a WTA singles match that was currently being played. As a result, Betfair suspended paying out on the match.
187. The WTA contacted the tournament supervisor immediately upon notification, and the tournament supervisor spoke to the chair umpire. The report from the chair umpire was that both players played the match competitively and tried their best. The losing higher-ranked player was identified as suffering from an illness that had been reported to the tournament doctor. The scorecard and medical report on both players were also obtained. The medical report confirmed that the player in question was suffering from an illness and had seen the tournament doctor minutes before the match started. A member of the WTA's Sports Science and Medicine team also confirmed that many of the players and staff at this tournament had suffered from gastrointestinal illnesses.
188. The WTA also contacted Betfair in order to obtain further betting information.
189. As a result of the WTA communicating to Betfair that the losing, higher-ranked player was suffering from an illness, Betfair paid out on all bets.
190. The WTA asked the BHA to assist it with its investigation into this match. The BHA advanced two investigators to carry out the investigation on behalf of the WTA, one of whom also assisted with the Sopot investigation. The investigators produced an initial report confirming that the betting was suspicious and that *"five Betfair accounts based in Russia placed bets on the match winning a total of £33,429 from £206,934 staked. All five of the accounts traded on the recent Vassallo Arguello versus Davydenko match in Sopot, Poland"*.
191. In order to assist the investigators, the WTA carried out the following steps:
- 191.1 The WTA formally notified the players involved in the match that an investigation was being conducted into potential violations of the Wagering and Corruption Rules and other provisions of the WTA Rulebook. The Players were put on notice that they might be asked to attend an interview and the WTA might seek documents or information from them.
- 191.2 Both the players under investigation also played each other in a doubles match shortly following their singles match. The higher-ranked player was also part of the losing doubles pair. The WTA's initial investigations suggested that the doubles partner of the higher-ranked player in question and with whom she was sharing a room, checked out of the hotel whilst the higher-ranked player's singles game was still in progress and before the doubles match started. The timing of this player's check-out suggested that the outcome of the doubles match might have been decided in advance. Given that the doubles partner of the losing, higher-ranked player also appeared to be implicated, the WTA formally notified that player that an investigation was being conducted and put her on notice that she might be asked to attend an interview and that the WTA might seek documents from her.
- 191.3 The WTA formally notified the chair umpire and tournament supervisor of the investigation and that they may be required to attend an interview.
- 191.4 The WTA arranged the interviews with the players, the higher ranked player's doubles partner, the chair umpire and the tournament supervisor. These interviews were then conducted by the investigators.
- 191.5 The WTA instructed Ernst & Young to download and examine mobile phone data. The players cooperated in

<sup>265</sup> As described in Chapter 8, Section A.

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handing over their mobile telephone(s) for examination.

191.6 The WTA obtained legal advice as to the privacy law of the jurisdiction where the interviews were to be held in relation to the downloading of mobile phone data.

191.7 The WTA requested the itemised mobile phone statements for the month in which the match took place for all three players interviewed.

192. As part of the investigation, some of the betting account holders were also interviewed by the investigators.

193. It appears to the Panel from the documents that the WTA received the investigators' final report some 5 months after the interviews with the players took place. The report was sent to the WTA by one of the investigators rather than by the BHA itself.

194. The BHA investigators reported to the WTA:

194.1 The final concluding paragraph of the report stated that *"as a result of the research and interviews carried out in the course of the enquiry the investigators have not been able to uncover anything that suggests any of the three players were involved in any form of corruption or tanking of their matches. Quite the opposite as both the singles and the doubles matches were hard fought. It is felt the only conclusion to be drawn from this investigation is that [the] WTA match was not corrupt"*.

194.2 In respect of the timing of check-out at the hotel, initial enquiries *"proved to be incorrect"*. The doubles partner was able to produce a hotel bill that corroborated that the losing pair checked out of the hotel after they had lost the respective singles and doubles matches. The flights bookings of the losing pair were also made post both matches.

194.3 In relation to the fact that the betting accounts were the same accounts involved in the Sopot match, the final report found that *"each of the five [accounts] involved with the WTA match shares computers with up to 7 other Russian Account holders. Of the 12 Russian account holders whose computer usage is linked, there were only five who bet on [the] WTA Match. If there was inside information, why was this? Why did all the connected accounts not get in on the act?"*

194.4 The report also concluded that there was a distinct diversity in the betting and that the betting liabilities in this match were much lower than the betting liabilities in Sopot.

195. A year after the initial betting alert was reported, and four months after the BHA report was sent to the WTA, the players were notified that the investigation had been closed.

***"Five or six" cases under investigation in early 2008***

196. The WTA informed the press in early 2008 that it was investigating *"five or six"* arising out of suspicious or unusual betting patterns<sup>266</sup>. The Panel requested disclosure from the WTA of all documents relating to these investigations. In response, the WTA produced records to the Panel for two pre-2009 investigations into suspected betting or match-fixing. In the Panel's view, the WTA took appropriate investigative steps in these two cases<sup>267</sup>, neither of which resulted in disciplinary sanctions. In the absence of documents, the Panel is unable to evaluate the WTA's handling of any other pre-2009 investigations.

<sup>266</sup> ESPN Outside the Lines 10 February 2008 reported that Larry Scott of the WTA had informed ESPN that the WTA was investigating "five or six" unusual betting patterns in relation to WTA matches as at that date. This is not dissimilar to the ten WTA matches identified by the Panel in its composite list of alerts. The Panel's composite list of alerts is not published because it cannot be suitably redacted.

<sup>267</sup> Note that the WTA case in which investigators had been appointed was still under investigation at the time of the press announcement.

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**Approaches**

197. In addition to reports of suspicious betting patterns, the WTA was also faced with reports of approaches to its players during the period 2003 to 2008. The Panel has seen a WTA internal email quoting a match-fixing approach made to a player in June 2007: “Hi. Sorry you don’t know me yet but I have a proposition for you. If you want to get \$20,000 you must lose the first round. I will give the money to your parents [redacted] before the match. It is good for everyone.” It is unclear from the contemporaneous documents provided to the Panel what investigatory steps were taken. No disciplinary action followed.

**Rule changes made by the WTA between 2005 and 2008**

198. Although the extent of the WTA’s experience of breaches of integrity during the period between 2003 to 2008 involved far fewer instances than the ATP faced, the WTA followed the ATP’s lead and from 2006 introduced changes to its rules on integrity, in part based on the ATP TACP:

198.1 Prohibitions were introduced on associating with persons whose activities reflect adversely on tennis<sup>268</sup>, on wagering<sup>269</sup>, on inducing a player to not use best efforts<sup>270</sup>, on receiving or providing consideration with the intention of influencing efforts or that could bring tennis into disrepute<sup>271</sup> and on receiving or providing consideration for the provision of information<sup>272</sup>.

198.2 There were also “*additional provisions*” making players responsible for breaches by their Player Support Team of which they were aware<sup>273</sup>, and requiring the reporting of known or suspected breaches<sup>274</sup>.

198.3 The new rules involved sanctions for players of a fine up to US\$100,000 plus prize money received, up to three years ineligibility, and permanent ineligibility in some instances<sup>275</sup>. The sanction for player support personnel was confined to withdrawal of credentials, which could be permanent<sup>276</sup>.

198.4 The procedure involved investigation by the WTA CEO, and a decision by the WTA Board<sup>277</sup>.

**(2) RULES AND ACTIONS OF THE GRAND SLAMS BETWEEN 2003 AND 2008**

**The rules applicable to Grand Slams in 2003**

199. The Code of Conduct in the Grand Slam Rules in 2003 mirrored that in the ITF Rules, except that the financial sanctions provided for were higher. The provisions contained a prohibition on taking or giving a bribe to influence efforts<sup>278</sup>, a general prohibition on conduct contrary to the integrity of tennis<sup>279</sup> and a prohibition on wagers on tennis by players<sup>280</sup>. There was a defined process and sanctions were a fine up to US\$100,000 or the amount of the prize money won at the tournament (whichever was greater) and a suspension of up to three years.

**268** The WTA Official Rulebook, 2006, Section XVII, Code of Conduct, paragraph 16.b.i.

**269** The WTA Official Rulebook, 2006, Section XVII, Code of Conduct, paragraph 16.b.vi.

**270** The WTA Official Rulebook, 2006, Section XVII, Code of Conduct paragraph 16.i.i.

**271** The WTA Official Rulebook, 2006, Section XVII, Code of Conduct paragraph 16.b.iv-v.

**272** The WTA Official Rulebook, 2006, Section XVII, Code of Conduct paragraph 16.b.vi-vii.

**273** The WTA Official Rulebook, 2006, Section XVII, Code of Conduct paragraph 16.c.i-iv.

**274** The WTA Official Rulebook, 2006, Section XVII, Code of Conduct paragraph 16.c.i-iv.

**275** The WTA Official Rulebook, 2006, Section XVII, Code of Conduct paragraph 16.d.i.

**276** The WTA Official Rulebook, 2006, Section XVII, Code of Conduct paragraph 16.d.ii.

**277** The WTA Official Rulebook, 2006, Section XVII, Code of Conduct paragraph 16.e.i.

**278** The Official Grand Slam Rulebook, 2003, Code of Conduct paragraph IV B.

**279** The Official Grand Slam Rulebook, 2003, Code of Conduct paragraph IV D.

**280** The Official Grand Slam Rulebook, 2003, Code of Conduct paragraph IV A.

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200. There was also an obligation to use best efforts<sup>281</sup>, punishable by a point penalty and a fine up to US\$10,000 for each violation.
201. There was a provision by which a repeated or flagrant breach could be more severely punished as aggravated behaviour<sup>282</sup>. Sanctions were a fine up to US\$100,000 or the amount of the prize money won at the tournament (whichever was greater) and a suspension from one or more Grand Slams.
202. Consistent with the ITF Rules, the Grand Slam Rules also lacked the same broader provisions as the ATP and WTA Rules<sup>283</sup>.

**Investigatory approach of the Grand Slam Committee between 2003 and 2008**

203. Between 2003 and 2008, investigation and disciplinary action in respect of breaches of the rules applicable at Grand Slams fell to be carried out by Bill Babcock, irrespective of the Grand Slam at which the match took place. At that stage Mr Babcock was employed both by the ITF as an Executive Director and, independently, as Administrator of the Grand Slam Committee. He then became director of the Grand Slam Board when the Grand Slam Committee became the Grand Slam Board.
204. The Grand Slam Committee had a memorandum of understanding with Betfair that was entered into in September 2005<sup>284</sup>, and others (including international governing bodies, officials or members of the public) might also make *ad hoc* reports to the Grand Slam Committee.
205. Bill Babcock gave evidence to the Panel that the approach of the Grand Slam Committee when a report of a suspicious or unusual betting pattern was received, was to do the following<sup>285</sup>:
- 205.1 The Grand Slam Committee would initiate an investigation, through Bill Babcock. The Grand Slam Committee did not open a formal file, other than retaining emails related to each investigation, but from January 2007 kept an ongoing list of Grand Slam matches investigated, as further described below<sup>286</sup>.
- 205.2 Bill Babcock's first step was to contact the Supervisor at the relevant Grand Slam. If the match was yet to be completed, the Supervisor would be asked to watch it and check for player injuries and retirements, and to also check player accreditations<sup>287</sup>. If the match had been completed, the supervisor was asked to speak to the chair umpire to identify any relevant factors. This first step generally led to the end of the investigation on the basis that there was insufficient evidence to warrant going forward in the light of the definition of the offences.
- 205.3 On occasion the Grand Slam Committee interviewed the player or made further inquiries of the betting operator. Specifically, there was a close investigative relationship with Betfair as part of the information sharing memorandum of understanding.
- 205.4 The question for the Grand Slam Committee was whether there was clear evidence of a player taking a bribe to influence his or her efforts in a match, passing on information for reward or wagering, such as to be sufficient to secure a disciplinary conviction of a Player Major Offense. The Grand Slam Committee took the view that it needed a preponderance of evidence connecting the player to the betting<sup>288</sup>.

<sup>281</sup> The Official Grand Slam Rulebook, Grand Slam 2003, Code of Conduct paragraph III E.

<sup>282</sup> The Official Grand Slam Rulebook, Grand Slam 2003, Code of Conduct paragraphs III E, in relation to best efforts and set out above, and IV C more generally.

<sup>283</sup> Section C(1) above.

<sup>284</sup> Statement of Bill Babcock (GSB; formerly ITF).

<sup>285</sup> Statement of Bill Babcock (GSB; formerly ITF).

<sup>286</sup> Paragraph 206 below.

<sup>287</sup> Statement of Stefan Fransson (ITF).

<sup>288</sup> Statement of Bill Babcock (GSB; formerly ITF).

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205.5 The Grand Slam Committee did not consider that the report of a suspicious or unusual betting pattern alone was sufficient, absent more, to conclude that there was such evidence. The Grand Slam Committee felt that the pattern could be due to players' actions that were not caught under the then applicable rules, such as a player deliberately losing for other reasons or passing inside information other than for reward, or to other circumstances.

205.6 Following the steps taken above, in the absence of further evidence, the Grand Slam Committee would close the investigation without commencing disciplinary proceedings under the Grand Slam code of conduct.

**Grand Slam Committee list of matches investigated that did not lead to disciplinary action**

206. As set out above<sup>289</sup>, the Grand Slam Committee kept a list of Grand Slam matches investigated that did not lead to disciplinary proceedings. That list was entitled "*Betting Activity at Grand Slams*" and was a document updated by Bill Babcock as cases occurred<sup>290</sup>.

207. The Panel has reviewed various iterations of the Grand Slam Committee list. The last iteration covered the period from the US Open 2005 to Wimbledon 2007 and listed:

207.1 12 entries related to reports of suspicious or unusual betting patterns concerning specific Grand Slam matches; and

207.2 three entries related to potential player betting accounts.

208. The Grand Slam Committee list was not said to be exhaustive. It does however appear to reflect the key matters reported to the Grand Slam Committee during the period it covered.

209. The Grand Slam Committee investigated each of the 12 specific matches referred to in the list, but in each case decided that there was no basis to take disciplinary action. The reasons for those decisions generally fell into the following classes:

209.1 The Grand Slam Committee considered that there was a plausible explanation for a player's poor performance, such as injury or illness or that the surface was not his or her preferred surface.

209.2 The Grand Slam Committee considered that there was no evidence, and in the light of the limitations in the ITF's and Grand Slam Committee's investigatory powers and capabilities no evidence could be obtained, of a player deliberately losing for betting or other corrupt purposes. The betting pattern could have arisen due to other reasons not disclosing a breach, such as bettors manipulating the market, a player deliberately losing for other reasons and this becoming known or inside information simply leaking out other than for reward.

***Betting operator's suggestion that player retired to void a losing bet***

210. An example of a type of case that arose in relation to Grand Slams was an unusual betting pattern reported in 2005 to the ATP and subsequently to the Grand Slam Committee. The betting operator's report was to the effect that the betting suggested that a syndicate had arranged to enjoy a 'free bet' whereby the syndicate backed one player in the hope that he might win, but safe in the knowledge that if such a win was looking unlikely, the player would retire in the first set, leading the betting operator to void all bets in accordance with its policy that this would happen whenever a match did not enter a second set.

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<sup>289</sup> Paragraph 206 below.

<sup>290</sup> Dated 6 August 2007. The Grand Slam Committee's "Betting Activity at Grand Slams" list of alerts is not published because it cannot be suitably redacted.

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211. The Grand Slam Committee had an official watch the match and, following the player's retirement in the first set, had a doctor check the player. The player was interviewed after the match and denied any wrongdoing. At that time the ITF and the Grand Slam Committee did not have an express authority to request phone records, although the ATP did and expressed an internal view that its rules might have permitted it to request that the phone records be disclosed.
212. The Grand Slam Committee concluded that there was no evidence of a breach of its then rules. It concluded that, at most, the retiring player had played, and retired, injured because the Grand Slam prize money was so high, even for losing, that a player could not afford not to play.

***Heavy betting on wildcard against higher ranked opponent***

213. A second example of a type of case that arose in relation to Grand Slams was an unusual betting pattern reported in 2006 by Betfair taking the form of heavy backing of a wildcard player against a much higher ranked player.
214. The Grand Slam Committee interviewed the agent of the losing player, who denied any wrongdoing; interviewed the winning player, who saw nothing untoward; and discussed the match with Betfair, which considered that the betting pattern might have stemmed from information on tennis forums that the player was injured. It does not appear that the losing player was interviewed.
215. The Grand Slam Committee decided that there was no evidence of a breach of its then rules. It was concluded that the upset may have been due to the winning wildcard player being a specialist on the surface in question, whereas the losing higher ranked player was a specialist on a different surface.

***Inside information possibly being passed on to others to bet on player's behalf***

216. A third example is that in 2006 an informant told the Grand Slam Committee that he or she had seen text messages from a player stating that a straight sets outcome was "*a done deal*". The informant suggested that the player had made money on the match by getting a friend to bet for the player and had also passed on information about player injuries by text.
217. The Grand Slam Committee interviewed the player identified by the informant. The player denied the accusations. The informant was not prepared to go on the record, or to assist further with any investigation. The ITF and Grand Slam Committee had no express power under its then rules to demand the player's phone or phone records. The Grand Slam Committee decided that there was insufficient evidence of breach of its then rules in the absence of the informant's cooperation.

***Betting accounts***

218. The Grand Slam Committee's investigation of the three potential player betting accounts referred to in the above-referenced list titled "*Betting Activity at Grand Slams*" also provided no useful information. Betfair was asked whether accounts were held in three names, but no useful information emerged. The ITF and Grand Slam Committee had no memoranda of understanding with any other betting operators, and undertook no further investigation.

**Grand Slam matches not on the Grand Slam Committee list**

219. Cumulatively, over the period 2003 to 2008, the Panel has found reference to suspicious or unusual betting patterns at approximately 27 Grand Slam matches, including the 12 matches on the Grand Slam Committee list<sup>291</sup>.

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<sup>291</sup> Dated 6 August 2007. The Grand Slam Committee's "Betting Activity at Grand Slams" list of alerts is not published because it cannot be suitably redacted.

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220. The Panel is aware that the Grand Slam Committee commenced at least three major offence investigations in respect of matches that did not feature in the Grand Slam Committee list:

220.1 In 2003, the Grand Slam Committee investigated a player following newspaper allegations that the player had offered to lose a qualifying match at the French Open in exchange for cash. The player, the player's representative and relevant ATP personnel were interviewed. The Grand Slam Committee determined then that *"in the absence of testimony and/or physical evidence to the contrary, the player was not guilty of any of the Major Offense provisions of the 2003 Grand Slam Code of Conduct"*.

220.2 The Grand Slam Committee also investigated two of the players who had been subject to investigation and sanction by the ATP for wagering on tennis. The ATP's investigation uncovered evidence that the players had bet on Grand Slam matches. While proceedings were initiated by the Grand Slam Committee, an agreement was reached between each of the players and the Grand Slam Committee that the players would not play Grand Slam tournaments during the period of ineligibility imposed by the ATP, and in return the Grand Slam Committee would not impose any additional sanction.

221. With the exception of the matches referred to in the Grand Slam Committee list, and the major offence investigations referred to above, the Panel has insufficient information to determine whether any steps were taken, and if so which steps, in respect of any other of the 27 Grand Slam matches identified by the Panel.

222. The Panel understand that during the period 2003 to 2008, the ITF and Grand Slam Committee, through its officials, also summarily sanctioned six players for failure to use best efforts at Grand Slam matches. The ITF and Grand Slam Committee did not take any disciplinary action for failure to use best efforts in an aggravated manner at Grand Slam matches.

**Rule changes made by the ITF or Grand Slam Committee between 2003 and 2008**

223. The Grand Slam Rules incorporated the same amendments described below in respect of the ITF Rules, albeit financial sanctions remained significantly higher. From 2007 the financial sanctions for Player Major Offenses (wagers, bribes or other payments, aggravated behaviour and conduct contrary to the integrity of the game) were increased to a fine of up to US\$250,000 or the amount of the prize money won at the tournament (whichever was greater).

**(3) RULES AND ACTIONS OF THE ITF BETWEEN 2003 AND 2008**

**The ITF Rules in 2003**

224. The Code of Conduct in the ITF Rules in 2003 contained a prohibition on taking or giving a bribe to influence efforts<sup>292</sup>, a general prohibition on conduct contrary to the integrity of tennis<sup>293</sup>, and a prohibition on wagers on tennis by players<sup>294</sup>. There was a defined process and sanctions were a fine up to US\$250 or the amount of the prize money won at the tournament (whichever was greater) and a suspension of up to 3 years.

225. There was also an obligation to use best efforts<sup>295</sup>, punishable by a point penalty and a fine up to US\$250.

226. There was a provision by which a repeated or flagrant breach could be more severely punished as aggravated

<sup>292</sup> ITF Code of Conduct for 2003 ITF Futures Tournaments and Satellite Circuits: article IV B (Men's Circuit) and section VIII, paragraph 5b) (Women's Circuit).

<sup>293</sup> ITF Code of Conduct for 2003 ITF Futures Tournaments and Satellite Circuits: article IV D (Men's Circuit), section VIII, paragraph 5d) (Women's Circuit).

<sup>294</sup> ITF Code of Conduct for 2003 ITF Futures Tournaments and Satellite Circuits: article IV A (Men's Circuit) and section VIII, paragraph 5a) (Women's Circuit).

<sup>295</sup> ITF Code of Conduct for 2003 ITF Futures Tournaments and Satellite Circuits article III E (Men's Circuit) and section VIII, paragraph 4m) (Women's Circuit).

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behaviour<sup>296</sup>.

227. Again, the ITF Rules lacked the same wider provisions as the ATP and WTA Rules lacked<sup>297</sup>.

**Actions of the ITF in relation to ITF matches 2003 to 2008**

228. Between 2003 and 2008, the ITF did not take any disciplinary action in respect of ITF matches under its rules in place against players taking or giving a bribe to influence efforts or for gambling on tennis.

229. During the same period, the Panel understand that the ITF through its officials summarily sanctioned six players for failure to use best efforts at ITF matches. The ITF did not take any disciplinary action for failure to use best efforts in an aggravated manner.

230. Over the period 2003 to 2008, the Panel has found no references to reports of suspicious or unusual betting patterns at ITF matches. The ITF conducted no investigations. The ITF did not have any memoranda of understanding in place with betting operators.

**Rule changes made by the ITF between 2003 and 2008**

231. From 2007 the financial sanctions for Player Major Offenses (wagers, bribes or other payments, aggravated behaviour and conduct contrary to the integrity of the game) were increased to a fine of up to US\$5,000 or the amount of the prize money won at the tournament (whichever was greater). In addition, the prohibition on taking or giving a bribe to influence efforts was expanded to include attempts to influence player participation.

232. From 2008 the Player Major Offenses were amended to apply to “*Related Persons*” (defined by the ITF to include: coaches, therapists, trainers, management representatives and family and business associates<sup>298</sup>). Sanctions against Related Persons were a maximum of permanent revocation of accreditation and denial of access to all ITF Pro Circuit Tournaments. In addition, the non-financial sanctions against players were increased to a suspension of up to a lifetime.

**(4) EVALUATION OF GENERAL APPROACH OF OTHER GOVERNING BODIES TO MATCH-FIXING AND OTHER BREACHES OF INTEGRITY BEFORE 2008?**

233. The Panel has considered against the facts above whether the general approach of the other governing bodies to match-fixing and other breaches of integrity before 2008 was appropriate.

**The approach of the WTA**

234. The documents provided by the WTA have been limited to the two cases described above. From the evidence available to the Panel, the Panel presently considers that the WTA took reasonable steps to investigate the alerts reported to it in relation to these two cases.

235. The Panel is unable to form an assessment on the other alerts that were raised with the WTA during this period due to the absence of contemporaneous documents. As set out above<sup>299</sup> the Panel understands that there were no responsive documents to the Panel's requests in the WTA's records.

<sup>296</sup> ITF Code of Conduct for 2003 ITF Futures Tournaments and Satellite Circuits article III E (Men's Circuit) and section VIII, paragraph 4m) (Women's Circuit), in relation to best efforts and set out above, and article IV C (Men's Circuit) and section VIII, paragraph 5c) (Women's Circuit) more generally.

<sup>297</sup> Section A(7) above.

<sup>298</sup> ITF Pro Circuit Code of Conduct 2008, Article V.A.

<sup>299</sup> Paragraph 196.

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236. As to the BuzzFeed News / BBC suggestion in the *“The Tennis Racket”*<sup>300</sup> that in *“the past decade”* (in other words 2006 to 2016) the international governing bodies had been *“repeatedly warned about a core group of 16 players - all of whom have ranked in the top 50”*<sup>301</sup> - but none have faced any sanctions”, so far as the WTA is concerned, the Panel’s composite list of alerts<sup>302</sup> (which includes matches not reported to the WTA at the time) indicates:
- 236.1 There was one winner of a singles or doubles title at a Grand Slam event who was the loser<sup>303</sup> in a WTA match on the Panel’s list of alerts during 2003 to 2008.
- 236.2 There were six players who were ranked in the top 50 who were losers in WTA matches on the Panel’s list of alerts during 2003 to 2008.
- 236.3 There were no players who were losers in more than one WTA match on the Panel’s list of alerts during 2003 to 2008.
- 236.4 No player was sanctioned by the WTA during the period.
237. This must be seen in the light of the fact that, as explained in Chapter 3<sup>304</sup>, an alert in respect of a player does not necessarily mean that there was a provable breach of integrity by the player<sup>305</sup>. The same is true of repeated alerts.

**The approach of the Grand Slam Committee to Grand Slam matches**

238. So far as the Grand Slam Committee is concerned, the Panel presently<sup>306</sup> considers that:
- 238.1 In each of the cases dealt with by the Grand Slam Committee, the investigation conducted was limited in scope and in each case was concluded swiftly. In some of the cases it might have been preferable to have pursued further inquiries with the betting operator (for example, requesting betting data and analysing that data) and to have carried out more detailed interviews. If it was felt that the powers or resources available to the ITF and Grand Slam Committee were limited, the rules could have been changed and additional memoranda of understanding could have been entered into, or resources sought.
- 238.2 While it is not possible to know what might have been possible with further investigation and greater investigatory tools, the Panel has not seen evidence demonstrating that any of the suspicious or unusual betting pattern cases actually reported to the Grand Slam Committee could ultimately have been proved to have involved a player contriving the result of a match for corrupt reasons or passing information for reward.

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**300** Chapter 11, Section A.

**301** As above, the Panel has interpreted the phrase “have ranked in the top 50” in this context as referring to players that have been ranked in the top 50 of the WTA Rankings (Singles) at any point in their career, rather than having ranked in the top 50 of the WTA Rankings (Singles) at the time at which the match/matches in which they were involved was/were flagged as being the subject of an unusual or suspicious betting pattern.

**302** The Panel’s composite list of alerts is not published because it cannot be suitably redacted.

**303** The alerts during the period 2005 to 2008 are limited in their detail. The Panel has therefore chosen to focus its analysis on the losing player in each relevant match. This proceeds on the assumption that the unusual or suspicious betting pattern has arisen in the context of the losing player having ‘thrown’ the relevant match. It is important to note that this methodology therefore does not identify the winning players in those matches who may have been the subject of unusual or suspicious betting patterns – for example those winning players engaging in “set and break” or spot fixes. This assumption also rules out the identification of the winning player in instances where both players may have been involved in a fix (e.g. in a scenario where the players have agreed that they will each win one of the first two (of three) sets each and then play out the third set competitively).

**304** Chapter 3, Section F.

**305** Chapter 3, Section F.

**306** Pending the consultation process between Interim and Final Reports.

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239. As to the BuzzFeed News / BBC suggestion in the *“The Tennis Racket”*<sup>307</sup> that in *“the past decade”* (in other words 2006 to 2016), the International Governing Bodies had been *“repeatedly warned about a core group of 16 players – all of whom have ranked in the top 50”*<sup>308</sup> – but none have faced any sanctions”, so far as the Grand Slam Committee is concerned, the Panel’s composite list of alerts<sup>309</sup> (which includes matches not reported to the Grand Slam Committee at the time) indicates:

239.1 There were three winners of singles or doubles titles at Grand Slams who were the losers<sup>310</sup> in Grand Slam matches on the Panel’s list of alerts during 2003 to 2008.

239.2 There were eleven players who were ranked in the top 50 who were losers in Grand Slam matches on the Panel’s list of alerts during 2003 to 2008.

239.3 There were two players who were losers in more than one Grand Slam match on the Panel’s list of alerts during 2003 to 2008. Of those, one player was listed four times and one player was listed twice.

239.4 No player was sanctioned by the ITF / Grand Slam Committee during the period.

240. This must be seen in the light of the fact that, as explained in Chapter 3<sup>311</sup>, an alert in respect of a player does not necessarily mean that there was a provable breach of integrity by the player<sup>312</sup>. The same is true of repeated alerts.

**The approach of the ITF**

241. So far as the ITF’s action in relation to ITF matches is concerned, because the available evidence does not suggest significant numbers of bettable matches at the ITF level, still less serious concerns about match-fixing or corruption, it seems reasonable that the ITF did not investigate such matters at the time.

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**307** Chapter 11, Section A.

**308** As above, the Panel has interpreted the phrase “have ranked in the top 50” in this context as referring to players that have been ranked in the top 50 of the ATP Rankings (Singles) or the WTA Rankings (Singles) at any point in their career, rather than having ranked in the top 50 of the ATP Ranking (Singles) or the WTA Rankings (Singles) at the time at which the match/ matches in which they were involved was/were flagged as being the subject of an unusual or suspicious betting pattern.

**309** The Panel’s composite list of alerts is not published because it cannot be suitably redacted.

**310** The alerts during the period 2005 to 2008 are limited in their detail. The Panel has therefore chosen to focus its analysis on the losing player in each relevant match. This proceeds on the assumption that the unusual or suspicious betting pattern has arisen in the context of the losing player having ‘thrown’ the relevant match. It is important to note that this methodology therefore does not identify the winning players in those matches who may have been the subject of unusual or suspicious betting patterns – for example those winning players engaging in “set and break” or spot fixes. This assumption also rules out the identification of the winning player in instances where both players may have been involved in a fix (e.g. in a scenario where the players have agreed that they will each win one of the first two (of three) sets each and then play out the third set competitively).

**311** Chapter 3, Section F.

**312** Chapter 3, Section F.