



SPORTS LAW ASSOCIATION
OF MALAYSIA

SLAM DIGEST



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GREETINGS!

BY: SAMRITH KAUR

Welcome to our third Edition of SLAM Digest.

It is an honour to be serving as President of SLAM for the second year and a privilege to be working alongside with my superb team, Sri Sarguna, Balbeer, Danaindran, Isacc, Dato' Ricky Tan, Lesley, Danesh and Jayavarman.

Last year, SLAM's focus was on getting back on track by promoting and creating awareness of SLAM. This year, our focus is on developing and collaborating with sports related bodies. Our team members have been actively involved and made presence in several sports related workshops and seminars. A few of which that stand out are as follows; an invitation from FA Selangor to participate in Future of Women in Football Workshop, in conjunction with the inaugural Women's Super League 2021 attended by Lesley; ADAMAS Workshop attended by Lesley and Sri Sarguna; and a Seminar on Anti-Doping for Key Management Officers attended by Sri Sarguna and Balbeer.

In March 2022, to commemorate and celebrate International Women's Day, SLAM invited and heard the trials and triumphs from three amazing and successful ladies from different sporting fields - an Olympian, a Sports Administrator & Agent and a Sports lawyer. Do watch this interview on our social media pages.

I am also delighted to announce SLAM's collaboration with Malaysian Olympians Association (MOA). A Memorandum of Understanding was signed with MOA, with the objective of exchanging of information and knowledge, providing education and training, legal clinics and promoting sports and sports related services for the benefit of both SLAM and MOA members.

Further, in our effort to fulfil SLAM's objective, led by our Patron, HRH Tunku Imran, we made a courtesy visit to the Olympic Council of Malaysia (OCM), where we were well received and had fruitful discussions with OCM's President, Tan Sri Dato' Sri (Dr.) Mohamad Norza Zakaria; Secretary General, Dato' Mohd Nazifuddin and Chief Operating Officer, Ms. Michelle Chai. We will be sharing more on this in due course.

I would like to take this opportunity to thank Dato' Rajasekaran Murugiah, with whom I had the privilege to be the co-panellist in the Ad-Hoc Arbitration Panel for the 29th Kuala Lumpur SEA Games 2017, for so graciously agreeing to be interviewed by our editorial team. A special thanks to Mickey from Philippines for his contribution to our Digest, and all those who contributed one way or another. Please keep it coming.

To my editorial team led by Danesh and Jayavarman, thank you once again for meeting the deadline to have our Digest printed out for the first time to be distributed at SLAM's first Members and Friends Get Together Night at Pavilion @ Royal Lake Club which will be held on 24th June 2022.

Enjoy the read.



Samrith Kaur

President, Sports Law Association of Malaysia

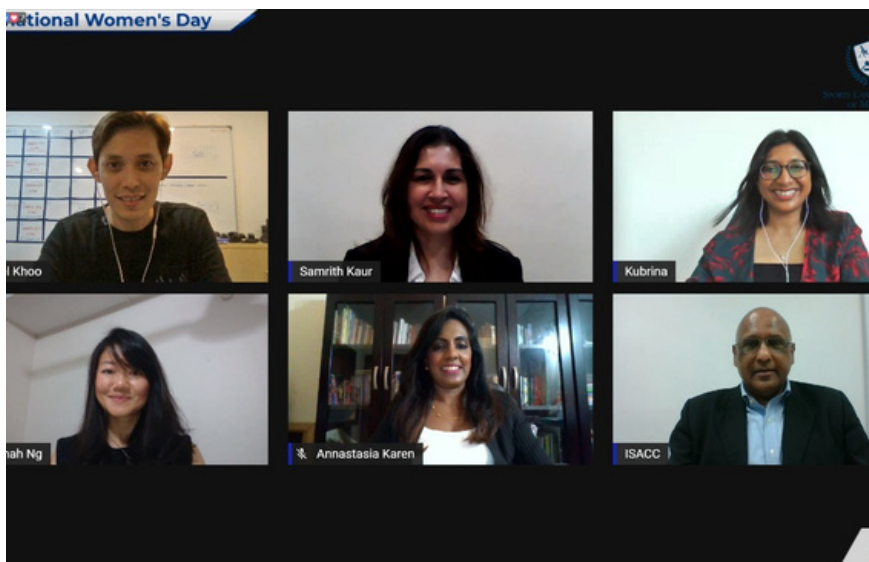
SLAM ACTIVITIES HIGHLIGHTS



THE FUTURE OF WOMEN IN FOOTBALL WORKSHOP

SLAM was proud to be part of “The Future of Women in Football Workshop” organised by FA Selangor in conjunction with the inaugural Women's Super League 2021 (WSL), the nation's first ever women's football league. Our representative, Ms. Lesley Lim, was 1 of the 21 participants present among club teams, league managers, arena operators, academies, schools and other NGO's. The discussion at the workshop centered around the 4 core pledges and campaign commitments of Women's Football development in Selangor:

1. Equal access to football for Women;
2. Realising potential of Women in football;
3. Safe environment for Women's football;
4. Enhancing messaging and promotions.



INTERNATIONAL WOMEN'S DAY

In conjunction with International Women's Day 2022, SLAM hosted a webinar comprising of three amazing women representing women in different sporting fields.

The speakers were: 1. Susanah Ng, a notable Sports Lawyer;

2. Kubrina Dass, an Athlete Commercial Manager who is the Founder of Dass Sports Management;

3. Anastasia Karen, a Malaysian Track & Field Olympian & current Director of Talent Acquisition.

The full video of the webinar can be watched on the *Sports Law Association of Malaysia (SLAM) Facebook page*.



DINNER WITH THE PATRON OF SLAM

SLAM Committee of 2022 had a formal introduction dinner with HRH Tunku Imran, the Patron of SLAM. Tapping on HRH Tunku Imran's vast experience and knowledge on sports related matters, the members had a fruitful discussion on future plans, goals, and vision of the Association over dinner with HRH Tunku Imran. The committee members are obliged to Tunku for taking time in sharing his experience, thoughts and vision for the Malaysian sports industry.



SLAM - MOA COLLABORATION

SLAM was represented by our President, Miss Samrith Kaur and Committee Member, Dato' Ricky Tan at the Malaysian Olympians Association (MOA) inaugural OLY Day 2022. The event was organised to celebrate and pay tribute to athletes who have represented the country in the Olympic Games.

At the said event, SLAM and MOA also signed a Memorandum of Understanding reflecting both parties' support for each organisation. With the collaboration, MOA members are welcomed to get legal advice from the Teratai Legal Clinic.



ADAMAS WORKSHOP

Two SLAM Committee Members, Mr. Sri Sarguna Raj and Ms. Lesley Lim were invited to attend a 3 days 2 nights workshop organised by the Anti-Doping Agency of Malaysia (ADAMAS) where it was primarily to discuss the first draft of the Anti-Doping Agency of Malaysia Act.

The workshop was attended by fellow lawyers, doctors along with officers from Kementerian Belia dan Sukan, Kementerian Kesihatan Malaysia and Polis Diraja Malaysia.

The SLAM representatives contributed their feedback and views to the proposed Act and are looking forward to the day the Act is passed and ADAMAS is a statutory body.

#PlayTrue #WinClean #SayNoToDoping



SLAM - OCM MEETING

The Committee of SLAM led by its Patron, HRH Tunku Imran paid a courtesy visit to Wisma OCM. The Olympic Council of Malaysia (OCM) was represented by its President, Tan Sri Dato' Sri (Dr.) Mohamad Norza Zakaria, its Secretary General, Dato' Mohd Nazifuddin and its COO, Michelle Chin.

It was a productive meeting between both parties as many potential collaborations were discussed. SLAM and OCM also agreed to sign a Memorandum of Understanding to strengthen, expand and explore awareness and education towards sports law with the associations affiliated to the National Olympic Committee.

VOTE OR PLAY? THE MAY 9, 2022 V. VIETNAM SEA GAMES DILEMMA.

BY: MICKEY INGLES

With the start of the the 31st SEA Games in Vietnam which was held from May 12 to 23, 2022, it seems that athletes, coaches, and staff of the Philippine delegation were unable to cast their votes for the national elections held last May 9, 2022. The Philippine contingent had to fly to Hanoi, Vietnam a week in advance to get a feel of the venue and the competition.

The timing is unfortunate. But were there legal options for Philippine national athletes to vote while they represent the flag in Hanoi?

Short answer, not much.

One option that would've worked was under the Overseas Voting Act (OAV) of 2013, which revised Republic Act No. 9189. Under the OAV of 2013, Filipinos abroad who are 18 at the day of the elections may vote for President, Vice-President, Senators, and Party-List Representatives. Voting abroad is actually pretty convenient. It can be done personally, by mail, or other means determined by the Commission on Elections (COMELEC), and voting is not limited to a day but stretches over an entire month before May 9, 2022.

As an aside, I voted in 2016 as an overseas voter. I filled up the ballot in the comfort of my Dupont Circle apartment and then fulfilled my dream to be a bike messenger by biking to the embassy in Washington, DC to drop of my ballot.



Mickey Ingles is the editor-in-chief of Batas Sportiva. He is an associate of the Ingles, Laurel, and Calderon Law Firm, the leading sports law firm in the Philippines.

The catch with the OAV is that overseas voters must register with the relevant Philippine embassy... and the registration period ended last October 14, 2021. So, the OAV route wasn't possible for Philippine athletes.

Another option would have been local absentee voting (LAV) under COMELEC Resolution No. 10725. LAV allowed certain groups to cast their ballots from April 27 to 29, 2022. This would've been perfect for our national athletes, as this would have allowed them to vote before they flew to Hanoi.

However, LAV only covers government officials and employees, members of the Armed Forces of the Philippines and Philippine National Police who were assigned to perform election duties, and media practitioners who covered the elections. So, that didn't work for athletes either.

Philippine Olympic Committee head Abraham Tolentino—who incidentally ran and won as a city mayor during the elections—has said that missing the national elections is “one of those sacrifices of having to represent the country in an international competition.”

Hopefully, for the next elections, creative solutions can come up to accommodate our national athletes who wish to fulfill their civic duty and constitutional right. In the end, representing the country and the Constitutional right of suffrage should not be mutually exclusive.

**"THE SPORTS DEVELOPMENT ACT 1997 NEEDS TO BE AMENDED TO PROVIDE FOR THIS (ARBITRATION) BY HAVING A SIMPLIFIED MODEL FOR ARBITRATION."
- DATO' RAJASEKARAN MURUGIAH**

BY: DANESH THIAGARAJAH

The SLAM Editorial Team grabbed the chance to interview Dato' Rajasekaran Murugiah, an established lawyer with over 37 years of valuable experience in practise.

Dato' Raja, who is also a member of SLAM was appointed by the South East Asian Games Federation as the chairman of the Ad-hoc Arbitration Panel for the 29th SEA Games Kuala Lumpur 2017.

Dato' also successfully completed a course in 2020 in the CAS International Sports Law programme conducted by the University of Zurich and was a member of the Olympic Council of Malaysia Strategic Planning Committee for the term 2018-2021.

It is our honour to publish this insight from Dato' Rajasekaran Murugiah for this edition of SLAM Digest and we also take this opportunity to thank Dato' Raja for taking time off his busy schedule to do this.

Dato Raja, how did you first get involved with Sports Law and what pushed you to then become a Sports Lawyer?

The process of Arbitration has been growing in various multiple- disciplines including sports and in 2016, the Kuala Lumpur Regional Centre for Arbitration (KLRC) organized a pioneering programme for Sports Arbitration. I had been in law practice for about 32 years then. The prospect of a new challenge fired my imagination and I decided to sign up for the course which was also attended by a number of leading lights in the Malaysian legal fraternity. I am happy to say I passed. The course was very interesting and the field challenging. That gave me an even greater impetus to consider making a foray into the world of Sports Law although not on a full time basis but offer my services whenever an opportunity presented itself. Besides, there was more that I needed to do to equip myself to ensure I met the benchmark required of an arbitrator in the field. I kept my options open.

Sports law encompasses amongst others contract law, tort (negligence), medical law, competition, media, broadcasting and not to mention public policy requirements as well. It has a great impact on all the stakeholders in the sporting industry including the athletes. The tentacles of the law are so wide.

Can you please share with us your experience in dealing with Sports Law issues/cases in your 37 years of practise?

Prior to 2016, I was not very much involved in Sports Law cases. What I was involved in is advising on issues concerning the Baseball Association of Malaysia and also the Automobile Association of Malaysia (AAM), among others. The cases were not high profile and in the case of the AAM, we were involved in the hearing of a Judicial Review application challenging the decision of the then Sports Minister. As I saw, Sports Arbitration was still a developing field in Malaysia and not much thought was given to solving cases via arbitration. Still, these were small steps towards my formal passage into the arena of Sports Arbitration.



Dato' Raja at the Olympic Museum in Lausanne, Switzerland.

You were appointed by the South East Asian Games Federation as the chairman of the Ad-Hoc Arbitration Panel for the 29th SEA Games Kuala Lumpur 2017. Could you please share with us how the whole Ad-Hoc Panel worked during the SEA Games?

The appointment was a watershed moment for me. I had not expected the call from a senior official of the SEA Games Federation asking me to chair the Ad-Hoc Arbitration Panel for the 29th Kuala Lumpur SEA Games 2017. As you can imagine, I was both excited over the challenge and somewhat apprehensive over what it entailed. Interestingly, it was the first such panel to be established in the history of the SEA Games Federation.

This being the case, the panel had no clear guidelines to base its workings on and I had to come up with one that satisfactorily met the needs of the SEA Games Federation and SEA Games as such. It was not an easy task, but I went about very quickly drawing up the guidelines based on what the Court of Arbitration for Sport (CAS) used. I also looked at how CAS dealt with ad-hoc hearings and sent the guidelines to the SEA Games Federation Secretariat for its perusal.

At this time, the Ad-Hoc Arbitration Panel was further empowered with the appointments of members from the other SEA Games participating countries, namely Thailand, the Philippines and Singapore as well as two more individuals from Malaysia. The Secretariat was to be based in Malaysia and any disputes in the course of the 2017 edition of the SEA Games would be referred to it. Eventually, there would be one dispute that we would have to handle.



Dato Raja' (3rd from right) with the members of the first ever Ad-hoc Arbitration Panel for the 29th SEA Games Kuala Lumpur 2017.



Dato' Raja' with his son at Villa Park, England. Dato' has been supporting Aston Villa since 1974!

Would you be able to explain more on the dispute and what the process was like for the Ad-Hoc Panel in making its decision?

In the case concerned, it had to be settled overnight and involved the sport of ice hockey. The KLRCA graciously allowed us use of its premises for the hearing and it was an appeal over the suspension of a player from the Philippines and involved a match against Malaysia. The appeal was lodged by the Philippines Olympic Committee.

As the case in question involved a decision made during a match against Malaysia, myself along with the other Malaysian arbitrator had to declare our interest as such to obviate any allegations of bias and or conflict and to allow the appellant to object to the composition of the panel if so wished. Only when no objections were raised did we proceed to be a part of the subsequent deliberations.

Briefly, the appeal entailed the Philippines player who also happened to be the captain of the team. He had delivered a check with his shoulder to the head of a Malaysian player. The referee found the act of the captain to be reckless and to amount to dangerous play and he was penalised. The referee treated the incident as a major infringement and imposed an automatic game misconduct on the captain.

Although there were no game records made available to us of a written protest by the Chef de Mission, Team Manager of Technical Delegate pursuant to Clause 12 of the Handbook, we took it that there was in fact such a protest made. Confirmation of the written protest could be established from the correspondences exchanged between the International Ice Hockey Federation (IIHF) Technical Delegate and the representative of the Philippines Ice Hockey team, which made reference to the written protest.

The findings of the Technical Delegate resulted in a Supplementary Discipline sanction against the captain. The effect of the decision of the referee was to rule out the captain from playing game number 9, the penultimate match between the Philippines and Thailand, which incidentally turned out to be the game that ultimately decided the gold medallist for the ice hockey competition.

Dissatisfied with the decision of the Technical Delegate, the Philippines team manager appealed to the Jury of Appeal which upheld the decision.

In gist, the case for the appellant can be summarised as follows:

- a. That the Malaysian player put himself in a vulnerable position by turning at the last moment towards the captain, hence making the contact to the head inevitable;*
- b. That the captain was initiating a hit for the boards thinking that the Malaysian player would keep going straight around the boards but he turned abruptly, making the hit to the head inevitable and*
- c. That there were no previous incidents of the captain directing hits to the head of any other player.*

While other grounds were advanced at the hearing of the appeal, we found that in arriving at our decision, those issues were immaterial.

We heard oral evidence from the representatives of the Philippines Ice Hockey team and also from the captain. The video of the match was played multiple times and the representatives appearing for the appellant and the captain provided detailed explanations to us of the flow of the match leading to the incident.

Simply put, the issues for determination was essentially:

- a. Whether the captain had recklessly endangered an opponent by way of a checking to the head of the opponent and*
- b. If so, the penalty assessed in the circumstances was excessive.*

The panel also considered Rule 124 of the IIHF on Checking to the Head or Neck.

After reviewing the documents, hearing the evidence and watching the video, the panel was of the view that the incident occurred as a result of reckless and dangerous play by the captain. In any sport, the safety of players is paramount, and more so in a game like ice hockey which is a very physical sport.

On the facts of the case, at the third Directorate meeting on 23rd August 2017, it was minuted that after reviewing the video, a further sanction was necessary against the captain according to the IIHF Rulebook and Regulations. The IIHF Technical Delegate assessed and sanctioned a match penalty which was confirmed by the Jury of Appeal.

The Ad-Hoc Arbitration Panel found no reason to disturb the one-match suspension imposed on the captain and he was thus ineligible to play in the key match between the Philippines and Thailand.
[The Philippines eventually won the gold medal !].

This in a nutshell was how the Ad-Hoc Arbitration Panel approached the one appeal brought to it. I must say that it was an invaluable experience gained on my part, particularly in having to draw up the guidelines, reviewing the rules pertaining to sport, listening to the arguments put forth by their representatives and finally having to come to an objective decision for the benefit of the sport and its participants. I am sure the way the panel approached this appeal can form the basis of any case study for the future.

I also understand that you took a sabbatical for a year to pursue and extend your Sports Law knowledge in Switzerland. Can you share with us your experience and the extend of the knowledge you gained during this time?

The 2017 SEA Games ad-hoc panel chairmanship as well as the 2016 course of Sports Arbitration got me thinking of how far I wanted to go in the field or if I wanted to pursue this field at all. After having been in the legal field for more than three decades, I thought it was time to take on a new challenge. I am always keen to learn new things and thought that if I was serious about sports arbitration, I should go the full distance. So, in 2018, fresh from the SEA Games experience, I decided to take a sabbatical for a year to pursue and extend my knowledge of sports law at the University of Zurich. Logically, my destination was Switzerland. More than seventy-five per cent of the International Sports Federations (IFs) are based in that country. CAS is also based there.

Switzerland has also a very good legal system and is at the heart of various sports models in Europe. Sport has also moved from being amateur in scope to very much professionalism. Players are much better informed of their rights. The course I attended was very empowering with top notch sports law practitioners and even CAS arbitrators contributing to the course as lecturers. The knowledge they passed on at the course was invaluable. I feel very satisfied that I signed up for the course and from now it is just a matter of enriching myself with additional knowledge in the field from different sources. If something is worth doing we should do it well or not start.

The practise of Sports Law in Malaysia is not very big however slowly rising, in the next 5 – 10 years how do you see “Sports Law” in Malaysia evolving and what are your aspirations for Sports Law in Malaysia?

We need more people to be trained in the field of sports law so as to have a bigger pool of talent in this field for the purposes of arbitration. The Asian International Arbitration Centre (AIAC) in Kuala Lumpur is one of the hearing centres for CAS cases. To attain this, a greater sense of awareness needs to be created and a proper framework for sports law to be adopted and used by national sports federations in Malaysia. Players in Malaysia generally are not much aware of their rights. Cases should be referred to for arbitration to facilitate an early resolution of a sports dispute. The Sports Development Act 1997 needs to be amended to provide for this by having a simplified model for arbitration. We just need to think ahead, to look to the future and see how the world of sport is developing with regards to the field of arbitration.

Last but not least, what advice would you give to the other young lawyers and law students whom are interested to pursue Sports Law?

Sport is a growing arena in Malaysia. It is now more professional than amateur with full time players and officials in the game. For many it is now a source of livelihood. There is definitely a huge scope going forward for Sports Lawyers. Just looking back, if I had not attended the Sports Law course in 2016, I would not have been considered in 2017 to be the Chairman for the SEA Games Ad-Hoc panel. There is a dire need for arbitration at multisport events. I would even suggest that local universities run courses of Sports Law as part of the law curriculum or a specific course on the subject and we may be the first in Asia. It will go a long way in opening up the realm of Sports Law and Sports Arbitration in this part of the world. We just need the vision and ability to peer into the future as to the needs of sport.



Dato' Rajasekaran Murugiah

MALAYSIAN SPORTS LAW RELATED NEWS UPDATES

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Questions raised over athletes' allowance cuts

Published: 13.01.2021

The Youth and Sports Ministry (KBS) has been criticised for its decision to cut athletes' allowances from RM2000 to RM800.

Who is responsible for Malaysian athletes' welfare?

Published: 15.02.2022

Malaysia's national athletes deserve more, and it is imperative that significant efforts be made by national agencies and their related associations to care for its athletes.

Protection for athletes

Published: 19.03.2022

Former national gymnast Sarina Sundara Rajah, is determined to get the Malaysia Safe Sport Act passed in Parliament.

They Were Mocked For Wanting To Play For Malaysia In France.. They Answered By Winning 6 Medals!

Published: 12.05.2022

The team of young women and men faced several issues such as discrimination and lack of funding prior to the tournament. However, they did not let empty promises of support deter them from bringing glory to Malaysia on the international stage.