

Carolyn Maher

From: Ben McDevitt <Ben.McDevitt.old@asada.gov.au>
Sent: Thursday, 9 April 2015 10:24 AM
To: 'Howman, David'
Cc: Elen Perdikogiannis
Subject: RE: ASADA press conference - statement and questions - 1 April 2015 (2) [SEC=UNCLASSIFIED]

Follow Up Flag: Follow up
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Thanks David. [REDACTED]

[REDACTED]. I will copy this to Elen in order for her to consider whether there is any other material which we might be able to provide to you prior to our conversation which may assist.

Regards
ben

From: Chinnarassen, Marjorie [mailto:Marjorie.chinnarassen@wada-ama.org] On Behalf Of Howman, David
Sent: Thursday, 9 April 2015 6:30 AM
To: Ben McDevitt
Subject: RE: ASADA press conference - statement and questions - 1 April 2015 (2) [SEC=UNCLASSIFIED]

Dear Ben,

Thank you for your note and the accompanying statement. It is helpful to have that by way of background.

We have had an opportunity of reading the decision, but of course do not have your background in terms of the actual evidence that was presented and how it was so presented.

We also look forward to the conversation next week, but we will come to it with that slight disadvantage as you will appreciate.

[REDACTED]

Kind regards,

David

From: Ben McDevitt [mailto:Ben.McDevitt@asada.gov.au]
Sent: Tuesday, April 07, 2015 6:39 PM
To: Howman, David
Subject: ASADA press conference - statement and questions - 1 April 2015 (2) [SEC=UNCLASSIFIED]

Hi David,
FYI this is the statement I made to media at last weeks media conference. I look forward to our hookup next week.
Regards
ben



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Transcript

BEN MCDEVITT: Ladies and gentlemen, thanks very much for being here today, and I should hasten to add to thank the Federal Department of Health for allowing us to use this facility. We don't actually have facilities as nice as this at ASADA for being able to do this sort of thing.

For the past two years, ASADA has remained mostly silent on matters associated with Operation Cobia, and the reasons for that have been quite obvious. There've been legal reasons and operational reasons. But with the decision of the AFL doping tribunal known or at least partly known, given that we're still waiting on the Dank side of the decision, I would like to take this opportunity to make a statement and hopefully be able to answer some of your questions, although there are still a whole range of matters, obviously, which I won't be able to answer questions on, particularly in relation to specific, individual cases - cases that are still at various stages of our anti-doping processes and framework. But let's see how we go.

The first question, I have no doubt, that people want to ask is, is ASADA going to appeal? Are we considering an appeal? The answer to that is yes we are. An appeal option is a very live option for ASADA. That's the first point that I would make. We have a report from the Tribunal; it's hot off the press. It's 130-odd pages long. In fairness to the tribunal, we need to carefully examine that report; we need to carefully look at the findings and, in particular, the reasons behind each of the findings. We need to look at it from multiple perspectives and then we need to come to a reasoned, dispassionate decision about what we might do next.

So, what are the mechanics of any appeal in the first instance? ASADA has 21 days to determine whether or not it's going to lodge an appeal with the AFL Anti-Doping Appeals Tribunal. Beyond that, of course, there is an opportunity for the World Anti-Doping Authority [Agency] to lodge its own appeal, which would go directly to the sport of arbitration - sorry, to the Court of Arbitration in Sport [Court Of Arbitration for Sport].

I also make the point that we are still eagerly awaiting the tribunal's findings and decisions in relation to Mr Stephen Dank, the self-identified support person who was also subject of deliberations by the tribunal. And, of course, the findings in relation to Mr Dank and the accompanying reasons there will be very useful to us in our overall considerations. I made the point yesterday that in my view, what happened at Essendon in 2012 was just an utter disgrace. And, let's make it clear, this was not a supplements program, this was an injections regime.

The task before the tribunal was not an easy one. They had to adjudicate over what was effectively the largest anti-doping case in Australia's history. As an example of its complexity, ASADA tended almost 700 documents to the tribunal to support the case of possible doping. It actually took us six days to outline the case in our opening submission. In fact, I note in the report of the tribunal which came out yesterday, the tribunal itself actually described their job in

adjudicating on these matters and they described their job as being beyond merely a challenging one. In their words, they described their task at arriving at a decision to be a formidable one.

So, how did we get here? This injection regime was well described by Switkowski and was recognised and accepted by the AFL and by the Essendon club itself, with heavy sanctions being imposed for poor governance and for bringing the game into disrepute. I acknowledge the strong actions taken by the AFL in dealing with the governance issues and I am going to go on in a little while about we have two sets of issues here. We have governance issues and we have anti-doping arrangements. They are quite different. They are very different frameworks to negotiate. In particular, I feel for the Essendon fans who were so poorly let down. Unfortunately, for those who place so much trust in the club, the allegations in relation to Essendon were far more serious than just poor governance, far more serious than just poor governance.

Australians are well-known around the world for our sporting achievements. We are known for playing hard and for playing fair. We firmly believe that clean athletes should have every opportunity to compete on a level playing field and this country, Australia, actually remains on the forefront in the fight against doping. Doping is cheating. We have got to do everything we can to expose it and to deal with it. I hasten to add that ASADA is not the enemy and the fight against doping is not a fight against sport. It's totally about protecting the rights of clean athletes. Every time an Australian athlete gets set to compete, whether it be at the Olympics or in a junior sport, whether it be at a team sport or at an individual level, our expectation is that the rights of clean athletes to compete against other clean athletes must be protected.

Some may find this hard to believe but these allegations had to go before a sports tribunal. The reason I say this is that in fairness to the players, the fans, the general community and the global community, who watches us with interest, that whilst the findings of the Switkowski review reported on an experimental drugs regime, it didn't identify exactly what substance was administered to what player on what day. What we do know is that 34 players signed consent forms to receive four different substances, one of those substances being described simply as Thymosin. ASADA has contended that the Thymosin referred to was in fact the banned substance Thymosin beta-4. And possibly to save some questions in relation to that substance, I can tell you that the tribunal itself recognised that Thymosin beta-4 was a banned substance during the period in question. What we also know is that hundreds, if not thousands, of injections, apparently unsupervised and undocumented, were given to Essendon players during the course of the 2012 season.

I started at ASADA less than 12 months ago. Within a month of my appointment, I issued show-cause notices to 34 current and former Essendon players. Under the legislation, for me to issue show-cause notices, there are two elements required. The first is I have to form a belief in my mind that a possible doping violation has occurred and, secondly, I need to determine that that violation actually warrants action, that we need to proceed. My decision to issue the show-cause notices were subsequently supported by the independent Anti-Doping Rule Violation Panel who agreed that action should be taken and that possible violations had occurred. Put yourself in my place. In my view, having read the material in the show-cause notices, in support of those notices, having had the benefit of the review conducted by former Federal Court Judge Garry Downes, to me it would have been an absolute, just a gross dereliction of my duty as CEO to not go ahead with the issuance of those show cause notices.

As I said earlier, we know that hundreds, if not thousands of injections were given to Essendon players during the course of 2012. The absolutely deplorable and disgraceful lack of records of

these injections means we still have young men not knowing what was injected into them. And we heard yesterday in the media from one of those young men, Jobe Watson, about the sort of distress that has been placed on those players, on those individuals. They have been used as pin cushions and we don't know what was injected into them.

No party has disputed that Stephen Dank played a central and critical role, the lead role in administering the injections. Stephen Dank has publicly stated that extensive records of the injection regime were kept but, throughout this investigation, no such records have been found. Curiously, Mr Dank, in a statutory declaration provided to ASADA, in response to a disclosure notice, declared he had no documents to produce. Despite the lack of formal records, and the absence of a positive blood or urine test, during the course of this investigation, ASADA and the AFL have gathered significant circumstantial evidence in relation to the injections regime. This has included statements by players and others about the injections, material gathered for examination, like telephone records, financial transactions and evidence of the procurement of raw materials from China, which we allege were used to manufacture the peptides which were subsequently delivered, we allege, to Stephen Dank. And the blind faith placed in coaching and support staff meant most players were willing to subject themselves to an experimental regime of injections, gels and creams. And yet we now find ourselves in the position where numerous players simply do not know what they received. I call once again upon Stephen Dank, if you have got records, produce them.

Since taking on the investigation, ASADA has been subjected to considerable criticism over the length of time it took for this investigation and the way in which the investigation was conducted. I have worked in law enforcement for around about 30 years and I can tell you with some certainty, that this was a complex investigation, involving thousands and thousands of hours of examination of records, hundreds and hundreds of interviews, a highly complex investigation. These investigations take time to conduct. But many of the delays actually were about the decisions of others. I mean the delays from the start to where we are now. For example, the day after I issued the disclosure notices, Essendon, as an entity, and senior coach James Hird, exercised their right, which they have, to take this to the Federal Court. Now, that's fair and reasonable but when we start talking about delays in processes, there you had three or four months added until we had a decision, a decision which was quite compelling in terms of its dismissal of the claims and in terms of its support for the lawfulness of the ASADA investigation. We then had a subsequent appeal. That potentially could have led to another three or four months. I made a determination that, despite that subsequent appeal, in fairness to the players, to try to move this along to reissue the notices and go anyway. I think I would have been well within my rights to await the second appeal, to await the full judgement of the Federal Court.

Whilst this has been in ASADA's hands, I have tried to move it on as quickly as possible at all stages. As I said, within a month of starting the job, I went through a mass of material and issued the 34 show-cause notices to the AFL. Within three months of being in the job, I issued the 17 notices against the NRL club. Can I tell you, that involved examination of a lot of material and a lot of long nights to actually be able to process that and get to a position where I had the right, requisite belief in my mind.

It is clear that ASADA, when we talk about the timeframes and everything else, needs to reassess its own processes. The same as the AFL said yesterday, they are reassessing their own processes. The same as Essendon are reassessing their own processes. But whatever we do in terms of processes, we are not going to be dissuaded from trying to maintain a level playing field for all sports people. This is just too important and if it takes time and if it takes protracted time

to get to the bottom of the truth, then so be it. There are always lessons learned. In law enforcement, everywhere I have worked, after an investigation it is a normal process to do an internal review of the investigation. We will do exactly that. We will look for opportunities for improvement and everything else. That said, I might say that both ex-Federal Court Judge Garry Downes complimented ASADA on the quality of the investigation and the material presented, as did the tribunal yesterday.

One of the first home truths I have learned in my time at ASADA is that Australia faces an ongoing threat from doping. Even with our best efforts, doping in this country is not going away. It is harder to detect, it's more sophisticated, it's more readily available and we need to focus on it. Let me give you a couple of examples of that. In the last 20 months, ASADA has issued 118 show-cause notices to athletes and support people across 16 different sports in this country. 118 notices to 16 different sports in this country. An interesting side observation of that, is that most of you probably wouldn't be able to name those 16 sports and most of you certainly wouldn't be able to name the 118 athletes who received the notices. That is normally the way this sort of regime and framework would be conducted. Unfortunately, in this case, that wasn't the case and ASADA was placed in a position where it had to do an investigation under incredible media scrutiny from day one. That is not the normal way that these matters are progressed.

I also might comment in relation to doping in this country, that we have averaged over two positive tests every month over the last five years, is our average, just over two positive tests every month in the last five years. Now, let's not be alarmist about this. I am not saying that doping is a particularly huge problem in Australia, as compared to anywhere else, or that any particular sport is a lot worse than others, we are dealing with a global problem. It is an issue for us. And don't be alarmist but let's be vigilant. Let's be vigilant and let's keep an eye on this. We cannot afford to not pay attention to this threat. And I think with that, I will open up to questions from any of you and I will endeavour to do my best to answer your questions.

QUESTION: Is it the blackest day in anti-doping administration in Australia and do you feel like an April fool today?

BEN MCDEVITT: I knew the April fool one would come. That is nice, yeah. The blackest day - where that throwaway line came from - I mean that is a cheap line, a sensationist line, just crazy. I mean, let's just dismiss that. I don't think it is a useful descriptor for any of us. Are you saying that it's a black day for ASADA? Is that what you mean? I certainly don't think so. I am incredibly proud of the team at ASADA for the extraordinary work that they have done in assembling a very complex and comprehensive brief which has been recognised as such based on circumstantial evidence. You know, on the lack of a positive test, you don't have a positive test which is always an easy start. We didn't have that. We had witnesses of which, you know, everybody knows the credibility of those people. And by the way, you can't force people to attend. The AFL Tribunal itself could not compel witnesses to attend. ASADA did everything it could to get witnesses to attend. Even going to try and get to the Supreme Court to subpoena witnesses. Now, that was done in an effort to make the very best evidence available to the tribunal, a simple application of the best evidence view rule.

QUESTION: That issue of compelling witnesses, obviously the failure to get Dank, Charter and Alavi to testify, how much did that hurt the case?

BEN MCDEVITT: Well, that's a - look, that's a good question. The problem is generally, if you do not have a witness present in the witness box, then all parties involved, in this case the

players and ASADA, don't have the opportunity to actually cross-examine that person and question them over their evidence. In any case, not having, I think, the witness in person to give evidence is obviously going to make it more difficult to prosecute your case.

QUESTION: So, just to clarify, why - do you not have any legislative powers to force Dank to testify and if you do why haven't you used them?

BEN MCDEVITT: We have no powers whatsoever to force Stephen Dank to testify, none at all.

QUESTION: You got [indistinct] not to obtain the sworn [indistinct] statements in the first instance.

BEN MCDEVITT: There is some - there are some signed statements. Some people, believe it or not, don't want to sign statements. In an ideal world, yes, of course you would do that. But unfortunately, some people don't - aren't prepared to sign statements. That is the reality.

QUESTION: This is, obviously, an outcome that's not ideal for ASADA. You wouldn't be happy to [indistinct] this finding by the tribunal. Does it dent your confidence with what could happen with the Stephen Dank case?

BEN MCDEVITT: Look, I think they're quite different. I was confident about the position we had with the players, in terms of the quality of the evidence that was produced. I was confident that we would reach the level of comfortable satisfaction. I might just comment on that. I heard a commentator this morning say comfortable satisfaction was a lower bar than balance of probability. So, to that bush lawyer, it's actually not. It hovers between those two levels, up as far as beyond a reasonable doubt. But anyway, yeah look, let's see how we go. I wait with interest the outcomes in relation to Stephen Dank.

QUESTION: Do you have any idea how much this has cost the taxpayer so far?

BEN MCDEVITT: Good question. Pass it on to Senate estimates, I will probably get it. But no, off the top of my head, I don't know. It has cost a lot of money but at the end of the day, whilst the financial considerations are very, very important, for me, it doesn't say was there a possible violation, does it warrant action and how much is it going to cost? And I think that's quite deliberate.

QUESTION: Did ASADA ignore the advice of some of its own investigators, in pushing ahead with this case?

BEN MCDEVITT: Not to my knowledge. But, what will always happen in agencies, is that various investigators, various legal people will have various views on cases, I have seen that in the ACC, I have seen that in every law enforcement, AFP, everywhere I have ever worked. So, if that is the case, it's not surprising. I wouldn't make a particularly big deal about it. What I had to make the decision on was the material in front of me. And with all due respect to anybody else in the organisation and their view, ultimately it was up to me to reach a view.

QUESTION: Do you have any new evidence that you could present to a possible appeal and if not, what is the likelihood of succeeding then, down that path?

BEN MCDEVITT: Sorry, do I have new evidence?

QUESTION: Is there any new evidence that you could present to an appeal?

BEN MCDEVITT: Well, I mean, that depends. I've - right now, five minutes ago, I asked Stephen Dank to produce his records. If he does, what might that involve? I don't know. Somebody may know something. Somebody may come forward. You know, this it's a difficult question to answer.

QUESTION: James Hird said he feels vindicated by this outcome, do you think he should feel like that?

BEN MCDEVITT: Sorry?

QUESTION: James Hird says he feels vindicated by this outcome. Do you think he should he feeling like that?

BEN MCDEVITT: James Hird feels vindicated by the outcome - well I mean look, if he feels vindicated, that is his feelings. I can't get into the mind or emotions of the man. It's a...

QUESTION: And on that, Paul Little said we know there was nothing given to players that was harmful or illegal. What's your response to that?

BEN MCDEVITT: I don't think that - well, that's an interesting statement because you can't on the one hand say nothing illegal or harmful was given, when on the other hand you actually can't state what was given. And that's part of the problem here. And that's the Jobe Watson comments from yesterday. We don't know what these players were administered. And I mean, what's that going to mean in terms of health repercussions for the players. I mean, what sort of strategies need to now be put in place to say, well this experimental regime involved multiple substances, what exactly were they?

QUESTION: [Indistinct] years ago, you did say that there was widespread use of illegal substances in sport. There were [indistinct]...

BEN MCDEVITT: [Indistinct]...

QUESTION: Sorry, the ASADA and ministers told the media we had widespread use of illegal substances, there was the involvement of organised crime as well. I'm just interested today you ended your statement by saying let's not be alarmist, let's be vigilant. Are you backing up on the rhetoric, did it go too far two years ago?

BEN MCDEVITT: Well, you know look, it's - there were a number of people on the stage two years ago. I wasn't one of them. But, look you know, the ACC report, I think you have got to think about two issues there. One is the report itself and the second is the delivery mechanism for the report. They are two quite different issues. I think the report had a lot of integrity in relation to it. I think you just need to look back in the last month or two around this country and read the press reports in relation to serious and organised crime and cocaine distribution and so on and you start to think well, quite possibly, we are seeing some of the truth, we are seeing some of that - some of those trends that were talked about emerge. Let's face it, we have had a surge of steroids and peptides at the border. That is a function of the market, supply and demand and there is demand for it. We know that steroids - and I have spoken with counterparts overseas, steroids and peptides can be a different alternative if sometimes - seen as carrying less penalties than other major drugs. And you know, what you are dealing with here is facilitators and traffickers and commodities and we are talking about a new commodity, steroids and peptides.

QUESTION: [Indistinct] Senate inquiry into this, would you be prepared to give evidence and appear before that senate inquiry with evidence [indistinct]? And second question, do you think the AFL has an injection or doping problem, is there a performance enhancing drug problem?

BEN MCDEVITT: Two questions. Look, I think in relation to a senate inquiry or a parliamentary inquiry or anything the minister might want to initiate or government - look, that's a decision purely totally for government and the parliament, but you asked would I contribute to that, I would love to contribute to that.

QUESTION: [Indistinct]

BEN MCDEVITT: Sorry?

QUESTION: The second question, the AFL having a performance enhancing drugs problem?

BEN MCDEVITT: Does the AFL have a performance enhancing drug problem? Well, look I - it's probably a question better directed to the AFL. I talk with the AFL. The AFL has done some really good things. They have put in some really constructive measures in relation to background checking regimes for people coming and moving around the clubs, no injection policies, that sort of thing, toughening up their anti-doping policy. So, I think it's commendable what the AFL is actually putting in place and every time I speak with Gillon McLachlan, we talk about what else can we do to target harden your environment against would-be dopers.

QUESTION: [Indistinct] struggling(*) to get Carter and Alavi to participate or testify or participate in the early part of the investigation, the fatal blow in your opinion, do you think that was the case?

BEN MCDEVITT: I wouldn't say a fatal blow. Look, we all like to have credible witnesses who play a part in actually committing to the version of events, either on tape or on - you know, a record of conversation and to signing up to that and to maintaining that throughout the course of events. Well, we obviously haven't seen that in this case. But, I don't think - I mean, I have never used the word star witness. That has come from you guys. I've known what we were going in with and I was comfortable going in with and I believe there was a very strong circumstantial case. And, as I said earlier, the tribunal itself has already said as much in that they found this to be a really, really difficult decision to come to. It obviously, despite the comments of some, it obviously wasn't thrown out on the first day. It obviously wasn't comprehensively dismissed out of court. What they've said is they found their job, not just to be challenging, but to be formidably and challenging to actually arrive at a decision.

QUESTION: So standing here right now...

QUESTION: [Interrupts] [indistinct] what will this mean for ASADA moving forward? You mentioned that...

BEN MCDEVITT: Sorry?

QUESTION: ...ASADA will reassessing its processes but you must admit this AFL tribunal decision was a slap in the face and how can you say to the public that your credibility stacks up?

BEN MCDEVITT: Well, I mean, you talk about slap in the face. Look, let's go through the various processes. We have had a whole range of court outcomes in various courts here. Some you win, some you get the result that you wanted and hoped for and some you don't. I don't see it

as a slap in the face. I see it that this material had to go before the tribunal. It went to the tribunal, I believe in a convincing and a compelling way and we got the decision that we got.

QUESTION: So, standing here right now, how confident are you that Essendon players were given performance enhancing drugs?

BEN MCDEVITT: Our whole case is based around the fact that we believe that the Thymosin referred to was a banned substance Thymosin beta-4.

QUESTION: In running this investigation - in following that press conference and the publicity surrounding it, do you feel that - in a way, that sabotaged the investigation and do you feel that perhaps you were set up to fail?

BEN MCDEVITT: Look, it's probably a question best asked of my predecessor, who was the one who was actually - found herself in the very difficult position where - and obviously it wasn't announced at the press conference but shortly after the press conference we had two teams named, a Sydney-based team and a Melbourne-based team and I think it would be fair to say that that did make ASADA's job very, very difficult.

QUESTION: [Indistinct].

BEN MCDEVITT: To actually be able to go and interview witnesses and obtain evidence under such a public spotlight, to have witnesses come in with members of the media as their interview friend to do an interview, for example, that's an example of, yeah, it does make it a bit difficult I think would be reasonable to say.

QUESTION: And would you say that also the reason for the failure to maintain confidentiality of the investigation?

BEN MCDEVITT: Well, it's - once you've had names out there, it's unfair and it makes it very, very difficult, as it did in this case.

QUESTION: Have you spoken to WADA? Have you spoken to WADA about the case? Briefed them on what's happened? Have they given any indication to you whether they will appealing, and do you think this will end up [indistinct]?

BEN MCDEVITT: I speak to - look, I speak to WADA constantly. I spoke to WADA last week. I spoke to WADA last night.

QUESTION: What was their reaction?

BEN MCDEVITT: Look, WADA is a separate agency. WADA maintains its right to review and its right to appeal and I think that that separation is useful and it then has an external review focus and capacity which I think is one of the really good things about this global framework to which we are all committed.

QUESTION: Who or what will determine whether ASADA appeals? Who or what?

BEN MCDEVITT: Well, as I said at the start, we will go through very carefully the examination of the material that we have and the considerations for the decision.

QUESTION: Ultimately, is it your decision?

BEN MCDEVITT: Well, ultimately, yes, that is true.

QUESTION: And how much weight do you put on Gillon McLachlan's urging yesterday that ASADA does not appeal?

BEN MCDEVITT: This is not a decision for Gillon McLachlan.

QUESTION: You said there was a differentiation there between the matter of doping and the matter of governance within the football club. Is ASADA overstepping its jurisdiction by making comments about how the Essendon Football Club is governed?

BEN MCDEVITT: Which comments?

QUESTION: You said that there was - you said that in your address just earlier that there was two separate issues here: the matter of doping and the matter of governance. Are you overstepping the mark by making comments on how the club is governed?

BEN MCDEVITT: Well, what I - my comments were that I think that the AFL took some very comprehensive action in relation to the governance issues which had been identified. I mean, they fined the club \$2 million. The club was removed and eliminated from being able to compete in the finals competition. Other players were - sorry, other actors within the Essendon framework were dealt with, and my comment is that as an outside observer, I think it is good that that action was taken. And I think it was taken in a timely manner and it was appropriate. But as I say, there is governance issues and there is anti-doping issues. You can take a hard-line on governance; it doesn't make the anti-doping issues go away.

QUESTION: How do you think it will change processes moving forward for ASADA?

BEN MCDEVITT: Well, look, generally in relation to ASADA, I was brought into ASADA because I have an investigations and intelligence background. I have restructured the agency already; we have more of a focus on intelligence and investigations. The reality here is that if you look at the World Anti-Doping Code you will see there are 10 possible violations. Only two of them can be proven through a urine or blood sample. How are you going to prove the other eight? How are you going to prove trafficking? How are you going to prove complicity? How are you going to prove aiding, encouraging, and abetting - those sorts of things?

So doping - and look, this is not just here in Australia; this is an anti-doping trend worldwide and the WADA code itself, the new iteration of the Code, actually specifically talks about NADOs - national anti-doping organisations - getting into the field of investigations and intelligence so that they can gather evidence and can successfully prosecute.

Now, I will add one more thing, and that is in relation to now holding samples for up to 10 years. So we used to hold them for up to eight years, urine and blood samples, and my very clear message here to would-be dopers is, you are backing yourself not only against the science of today if you cheat, you are backing yourself against a decade of science. And technology does catch up. New tests come out.

QUESTION: [Indistinct] will improve those investigations and get more into that side of things, do you - does ASADA need more powers?

BEN MCDEVITT: Look, we have a - during the course of this investigation, it obviously went to the Parliament and ASADA was given powers to issue disclosure notices and that sort of thing.

We are looking at our information exchange arrangements, our MOUs with law enforcement, for example, and we'll - yeah, we'll sort of keep assessing that. That's part of the stuff that we'll look at within our internal review and ultimately, that sort of thing may well be addressed if there is to be any further inquiry.

QUESTION: What about powers to compel witnesses to give testimony?

BEN MCDEVITT: To compel witnesses to give testimony before a court or before a tribunal?

QUESTION: Either?

BEN MCDEVITT: Well, look, those powers at present don't exist. It's really probably a question for - it's probably a question for Government.

QUESTION: Do you want them, though? Would that make a difference?

BEN MCDEVITT: Look, I come from an environment where there are powers to compel witnesses to attend; it is difficult when you don't have that, but we're not a police agency. We don't want to be a police agency. But yeah, you know, when you have witnesses and they can actually attend in court and be subjected to cross-examination by all parties, I think that's a much fairer model for athletes.

QUESTION: Talking about samples being stored, there is reports that the Essendon samples will be stored for up to seven years. Is there a chance as tests develop they will be retested and you could mount another case?

BEN MCDEVITT: Look, we store thousands and thousands of samples, and part of the reason that we store those samples is that from time to time, new tests come out, new technologies come out, and in particular they will pick up metabolites from banned substances that remain in the system for longer. So the science itself is actually quite sophisticated. So, yeah, look, the reason we keep them - or, one of the main reasons we keep them is of course so that when new tests come out, we can pull out the vials out and retest them.

QUESTION: Putting the players aside for a minute, do you believe that Essendon has been adequately punished for the injection program that you described yesterday?

BEN MCDEVITT: Look, Essendon, I think, is doing a lot of work at the moment to try to rebuild its reputation, its capability, its culture. We have heard some things in recent days about what the club is doing and that is absolutely commendable. I am supportive of that, for what it is worth, but at the end of the day, what we have here is possible anti-doping violations and for me, that's front and centre.

QUESTION: How comfortable are you...

QUESTION: [Indistinct] that question on the samples. How long do you think it will be until you're able to test those samples for TB4?

BEN MCDEVITT: Look, I honestly - I couldn't even guess at that. New tests do come out from the laboratories. There is a network of I think 32 WADA-accredited laboratories around the world. They have invested into them a comprehensive research fund which goes into constantly testing for new substances because we know that new substances come out and are available constantly onto the market, either the legal market or the black market. And so WADA is very

conscious of that and tries to stay at the forefront.

QUESTION: Are you comfortable with the fact that the coach and doctor remains at Essendon?

BEN MCDEVITT: Sorry, you're both talking at once.

QUESTION: Was the case doomed - just on the TB4 - was their case doomed from the start, given that there was no test for TB4?

BEN MCDEVITT: Was their...?

QUESTION: Was it doomed?

BEN MCDEVITT: No, there wasn't a test for TB4, so it is not unusual that there wasn't a positive test. Is that what you're saying?

QUESTION: Yes, was that a problem from the start, though, and do you think that put the case in jeopardy moving forward?

BEN MCDEVITT: Look, not of itself. I talked about 118 show cause notices that I have issued - or, sorry, that we've issued over the last 20 months. I think about a third of those relate to positive tests.

QUESTION: Who is ultimately responsible for botching the investigation and prosecution of this case, Aurora Andruska or yourself? And many people have suffered reputational damage. Does ASADA accept that there may be cause to pay civil damages in the future?

BEN MCDEVITT: I don't accept at all your premise that this investigation was botched. And in fact, as I have said to you, we have had an ex-Federal Court Judge look at the material and say it was a comprehensive package that was put together very, very well. We've had the tribunal say similar things, that the investigation that was put together was very, very comprehensive. So I don't know how you get the word botched out of that and I find it offensive.

QUESTION: ...[indistinct] to Stephen Dank to come forward, is that what the likelihood of an appeal rests on, whether Stephen Dank produces a [indistinct]...?

BEN MCDEVITT: No. No, it doesn't. I wouldn't rely on anything Stephen Dank decides to determine my actions. I mean ASADA has tried to get Mr Dank, on multiple times, to come forward and to be interviewed. He has refused to do that. We have issued disclosure notices to him; he has refused to respond. He is the one who has constantly come out publicly saying that at the right time, apparently, he's going to come out and support the players. Well, I think that time has come and gone and still no sign of Mr Dank.

QUESTION: Do you believe he has records?

BEN MCDEVITT: Do I believe he has records? No. All the evidence that I have seen probably would indicate if there were records, they would be shambolic and chaotic.

QUESTION: What action would you like to see taken against Stephen Dank?

BEN MCDEVITT: Well, I've made that clear publicly before. I think we need to wait now to see what the finding is with the Tribunal and then we would have an opportunity to contribute a recommendation to sanctions. ASADA doesn't actually issue sanctions. Sanctions are issued by the sport.

QUESTION: How comfortable are you with the fact that there are people who oversaw this regime that you have so derided that remain in place at Essendon, namely the doctor and the senior coach?

BEN MCDEVITT: Well, look, they are issues for Essendon, for the club, and for the AFL as to their level of comfort with those people being in...

QUESTION: I am asking about your level of comfort.

BEN MCDEVITT: No, it's their decision as to whether or not they are comfortable to have those people in those places.

QUESTION: One of the criticisms of this process has been is the different treatment meted out for the ARL [sic] versus the AFL. What do you say to the Cronulla players who last year cut a deal and have been forever tainted as drug cheats while the Bombers have got off?

BEN MCDEVITT: Well, I think the first point to make there, and I need to be careful because I don't want to stray into a whole range of other matters; we are here to talk about Essendon. But the first point would be the NRL matters and the AFL matters are significantly different. Significantly different. Different year, different substances, different administration regimes, different numbers, different levels of sophistication. Now, what we had there was 17 players who had been issued notices, all of whom had their own independent, very well-qualified legal advice, 12 of whom showed - decided - made their own independent decision to make admissions to receiving banned substances. That is quite different than what we are dealing with, with the AFL.

QUESTION: Of the likelihood of an appeal, you said before that you'd like people like Stephen Dank come forward, is that what it rests on - people to come forward?

BEN MCDEVITT: No, no, no, no. Let me make this really, really clear. My decision on an appeal really - if I was resting or relying on anything in relation to Stephen Dank, I would be in a very precarious position. Very little to do with Stephen Dank, quite frankly. We will make the decision based on our assessment of the tribunal decisions that we have thus far but, as I said earlier, we eagerly await that component from the tribunal because Stephen Dank was the alleged architect here and so it will be very interesting to see what the findings are and what the reasons behind those findings are from the tribunal. So it will certainly enable us, I think, to - just to make a more informed decision.

QUESTION: Former ASADA boss Richard Ings said last night that the anti-doping framework in Australia is broken. There will be many that share his view. What's your response to that?

BEN MCDEVITT: Well, Richard Ings has a lot to say, hasn't he? I've - look, Richard Ings is an ex-, ex-CEO. I have never met the man. He has never spoken to me. I have no idea what his motivations are for what he says or what he actually bases what he says on; what material he has in front of him. I guess the only thing I could say about Richard Ings is he doesn't subscribe to the view that ex-CEOs should ride off quietly into the sunset.

QUESTION: What about the substance of what he said last night, which is, his words, the anti-doping framework in Australia is broken?

BEN MCDEVITT: Well, look, that's - I've said that's a view by Richard Ings, which...

QUESTION: I don't [indistinct].

BEN MCDEVITT: Which quite frankly I think is common. I think there's - you know, there are people out there who I would place a lot of credibility in their views, in what they thought. I have said if there is to be any - we will do an internal review, if there is to be. If Government makes a decision to do an external review or the Parliament does, we would actively contribute to it. I have said publicly before I believe our current arrangements are convoluted. I believe they're a bit clunky. I believe they're a bit cumbersome. Other NADOs, for example, directly issue the infraction notices. The CEO would directly issue it, so you wouldn't be going to an independent panel with subsequent appeal options. Other countries have a single sports tribunal so you don't have the multiple tribunals. I mean, there are always options and considerations but really, it's a matter for Government.

UNNAMED SPEAKER: I'm sorry, we have to cut it off. Is there any final, final questions?

BEN MCDEVITT: Thanks very much to all of you for coming. Thank you.

–END–

Carolyn Maher

From: Ben McDevitt <Ben.McDevitt.old@asada.gov.au>
Sent: Tuesday, 14 April 2015 10:05 AM
To: Howman, David
Cc: Tony Baccari; Elen Perdikogiannis
Subject: Draft sensitive - ASADA statement re appeal decision [DLM=For-Official-Use-Only]
Attachments: Draft statement re appeal decision.docx

Follow Up Flag: Follow up
Flag Status: Completed

Hi David,



Best regards
ben

Carolyn Maher

From: Elen Perdikogiannis
Sent: Tuesday, 14 April 2015 5:38 PM
To: Howman, David; 'Niggli, Olivier'
Cc: Ben McDevitt
Subject: AFL Anti-Doping Tribunal - Joint Advice
Attachments: img-414104553.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Dear David and Olivier,

Please find attached the Joint Advice that I discussed this morning. It has been prepared by Mr Patrick Knowles, who was the junior counsel to Mr Malcolm Holmes QC, and the Australian Government Solicitor, our instructors in the matters before the AFL Anti-Doping Tribunal.

Mr Holmes has been out of Australia since 16 March 2015; he returns to Australia tomorrow our time. If you like, we can try to arrange a conference between Mr Holmes and you.

I am advised that while Mr Holmes was consulted on an earlier draft of the advice while travelling, he was not consulted on the form or content of Part 1 (Executive Summary), or Part 14 (Overall Conclusion).

Kind regards
Elen

Elen Perdikogiannis
National Manager Legal and Support Services Australian Sports Anti-Doping Authority

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ASADA Hotline 13 000 ASADA (13 000 27232)

Please consider our environment before printing this email.

Carolyn Maher

From: Niggli, Olivier <Olivier.Niggli@wada-ama.org>
Sent: Thursday, 16 April 2015 1:27 AM
To: Elen Perdikogiannis; Howman, David
Cc: Ben McDevitt
Subject: RE: Draft statement

Hi Elen,

[Redacted]

Thanks

Olivier

From: Elen Perdikogiannis [mailto:Elen.Perdikogiannis@asada.gov.au]
Sent: Tuesday, April 14, 2015 8:08 AM
To: Howman, David
Cc: Ben McDevitt; Niggli, Olivier
Subject: Draft statement

David,

Please find attached the draft statement.

The text in Ben's original covering email is below:

"Hi David,

[Redacted]

Best regards
Ben"

Elen Perdikogiannis

National Manager Legal and Support Services
Australian Sports Anti-Doping Authority

T +61 (0) 2 6222 4267

F +61 (0) 2 6222 4367

E Elen.Perdikogiannis@asada.gov.au

W www.asada.gov.au

ASADA Hotline 13 000 ASADA (13 000 27232)

Please consider our environment before printing this email.

Carolyn Maher

From: Elen Perdikogiannis
Sent: Friday, 17 April 2015 9:54 PM
To: david.howman@wada-ama.org; olivier.niggli@wada-ama.org
Cc: Ben McDevitt; Darren Mullaly
Subject: Passwords, and opinion from Rich Young
Attachments: Opening documents from an encrypted USB.DOCX; HROCSP-#244157-v2-mcdevitt_letter_opinion_re_Essendon_players.docx

Follow Up Flag: Follow up
Flag Status: Completed

Dear David and Olivier,

This will be the last email from me this evening (morning). It covers two items.

Passwords for the court book and the hearing transcripts These have been sent to you, and should arrive in the course of next week.

The court book is on the USB key and the password for it is [REDACTED]

The instructions for opening the USB key are also attached.

The hearing transcripts are on a DVD - the password for it is [REDACTED]

Advice from Rich Young

This morning, we received an opinion from Rich Young about prospects of success in the Court of Arbitration for Sport, which is attached to this email. We had not mentioned it previously, as we did not anything that we were able to provide you. As you may be aware, Rich has provided advice to us at various points through the investigations into the AFL and the NRL. We retained Rich because of his experience with these sorts of non-analytical investigations, [REDACTED]

Kind regards
Elen

Elen Perdikogiannis
National Manager Legal and Support Services Australian Sports Anti-Doping Authority

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W www.asada.gov.au<http://www.asada.gov.au/>

ASADA Hotline 13 000 ASADA (13 000 27232)

Please consider our environment before printing this email.

Carolyn Maher

From: Ben McDevitt <Ben.McDevitt.old@asada.gov.au>
Sent: Sunday, 19 April 2015 11:39 AM
To: Howman, David
Cc: Tony Baccari
Subject: Sensitive in confidence - Draft statement re appeal decision [SEC=UNCLASSIFIED]
Attachments: Draft statement re appeal decision.docx

Follow Up Flag: Follow up
Flag Status: Completed

Hi David,

Please find attached my latest draft of a media release which I intend to issue tomorrow afternoon. I would welcome your advice as to any comments or concerns you may have prior to me finalizing the release. You will note I have already incorporated your feedback from our earlier versions.

Best regards

Ben

Draft – Sensitive

ASADA statement re appeal decision

ASADA CEO Ben McDevitt has today announced that he will not appeal to the AFL Anti-Doping Appeals Tribunal in respect of the findings in relation to 34 current and former Essendon players and one support person, Mr Stephen Dank.

“As with all other decisions I have made in these matters this decision has largely been informed by comprehensive legal advice.

I am conscious that ASADA does not have a direct right of appeal to the Court of Arbitration for Sport (CAS) and the only appeal avenue open to ASADA at this time is to the AFL Anti-Doping Appeals Tribunal. I am also aware that appealing any of these decisions within the AFL framework would ultimately serve only to delay consideration of these matters by WADA.

I have therefore arranged to provide the entire case file encompassing all 35 matters to WADA for its independent review. This is in accordance with global anti-doping protocols. WADA will then be able to make an independent decision as to whether to exercise its appeal option, which would not be to the AFL Anti-Doping Appeals Tribunal, but rather directly to the CAS. ASADA will support any WADA initiated appeal in relation to these matters.

In the interests of transparency I would welcome the fullest possible release of the Tribunal’s findings and reasons on all of these matters.”

Emily Fitton

From: Howman, David <David.Howman@wada-ama.org>
Sent: Monday, 20 April 2015 6:13 AM
To: Ben McDevitt
Cc: Tony Baccari
Subject: Re: Sensitive in confidence - Draft statement re appeal decision [SEC=UNCLASSIFIED]

Thanks Ben
No further comment from us.
Cheers
David

On Apr 18, 2015, at 21:42, Ben McDevitt <Ben.McDevitt@asada.gov.au<mailto:Ben.McDevitt@asada.gov.au>> wrote:

Hi David,
Please find attached my latest draft of a media release which I intend to issue tomorrow afternoon. I would welcome your advice as to any comments or concerns you may have prior to me finalizing the release. You will note I have already incorporated your feedback from our earlier versions.
Best regards
Ben
<Draft statement re appeal decision.docx>

Draft – Sensitive

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Carolyn Maher

From: Ben McDevitt <Ben.McDevitt.old@asada.gov.au>
Sent: Monday, 20 April 2015 9:36 AM
To: Kay Mcniece
Subject: Draft statement re appeal decision [SEC=UNCLASSIFIED]
Attachments: Draft statement re appeal decision.docx

Kay,
As discussed
Ben

Draft – Sensitive

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