LEARNING THE LESSONS OF HISTORY: DISPUTES AND THE OLYMPIC GAMES

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I. INTRODUCTION

There are lessons to be learnt from the disputes related experiences of other cities which have hosted the Olympic Games. Even now, about one year prior to the staging of the Sydney 2000 Olympic Games, it is still possible to take note of and learn from past experiences. In 1995 and 1997 the writer travelled to Atlanta, Georgia, USA to conduct field research into non-sporting disputes generated as a result of the staging of the Atlanta 1996 Olympic Games. This research led to information about the disputes experience of Los Angeles in the 1984 Olympic Games. The writer submits that if history repeats itself in terms of Olympic Games related disputes, Sydney will suffer a high level of costly and potentially disruptive disputation. However, it is still possible to implement in Sydney a system for preventing, managing and resolving Olympic Games related disputes. This article will examine in overview the disputes related experiences of Los Angeles and Atlanta and extrapolate from them lessons to be learnt and applied in Sydney. The experiences of Sydney up until August, 1999 will be explored, and a hypothesis developed as to the most likely areas of potential disputation for Sydney. Finally, models and methods of dispute prevention, management and resolution will be outlined. The focus will be on non-sporting Olympic Games related disputes, but disputes in the broad sense, whether leading to litigation or not.

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II. LOS ANGELES IN 1984

It was reported that Los Angeles experienced over 4000 legal claims as a result of the staging of the 1984 Olympic Games.[1] Approximately 3000 of these were claims for compensation based on personal injuries suffered by visitors to Games and associated venues. The remaining claims were commercially oriented claims, initiated by disappointed licensees, sponsors, suppliers and other contracting parties. There were also a number of class actions by licensees and ticket holders. A dispute involving vendors of Olympic paraphernalia and relating to exclusivity rights was reported to have been settled in the early 1990s on the basis of a payment of over US$100 million.[2] The Liquidating Trust which was established in 1986 by the Los Angeles Organising Committee for the Olympic Games for the express purpose of winding up the 1984 Games, was given a US$10 million budget for this purpose, and most of this was reported to have been spent in meeting the cost of non-insured claims.[3]

Some interesting lessons may be extrapolated from the Los Angeles disputes experience. First, an Olympic Games seems to present the opportunity for a high quantity of disputes. Second, given that the Liquidating Trust did not complete its task until at least 1993, nine years after the Los Angeles Olympic Games were staged, the potential for disputes to linger over long periods of time is a very real one. Third, the cost of disputes, as difficult as this is to quantify, has a significant impact on the financial outcome of the staging of the Games. The US$10 million budget given to the Liquidating Trust and used by the financial controller to meet costs of claims, represented 2.2 per cent of the budgeted costs of staging the Games, or 4 per cent of the reported surplus. These figures do not, however, take into account the impact of the Olympic paraphernalia dispute referred to above, though it must be acknowledged that this settlement may have been paid from another source. The potential cost of disputes must be a contingency contained within the budget of any city staging an Olympic Games.

III. ATLANTA IN 1996

The disputes experienced in Atlanta were significant, both in terms of quantity and diversity. The categories of disputes included contractual, personal injury, building and construction, ticketing, labour, intellectual property, employment and equal opportunity, consumer, land use acquisition and development, administrative, constitutional, street vendor, social, criminal and disputes within members of the Olympic family. It is beyond the scope of this article to examine these disputes in detail, but this has been undertaken by the writer elsewhere.[4]

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1 Information on the Los Angeles Olympic Games disputes experience is (unless otherwise stated) derived from interviews with GM Stevenson, Program Director, Atlanta Committee for the Olympic Games, formerly Financial Controller, Los Angeles Committee for the Olympic Games.

2 Information on this dispute was obtained from an interview with FR Nix, Attorney at Law of Atlanta.

3 Note 1 *supra*.

4 See T Altobelli "A Tale of Three Cities: Disputes and the Olympic Games" (1998) 9 *ADRJ* 277 at 279-84.

Whilst the earliest disputes originated within a short period of Atlanta succeeding in its bid to stage the Olympic Games, the frequency of reported disputes appeared to increase within the 12 month period preceding the Games, and then significantly escalate after the conclusion of the Games. When the writer visited Atlanta in 1995, one year prior to the staging of the Games, there were relatively few reported disputes, and a phenomena of dispute suppression or avoidance was observed.[5] However, when the writer returned in 1997, a very different scenario presented, and it was possible to attempt to not only identify the disputes which had arisen but to categorise them as set out above. Estimating the cost of disputation is problematic, an issue which will be discussed below, but it is estimated that, as at June, 1997, the known reported actual cost of disputes was US$46.9 million, and claims outstanding were around US$987 million.[6]

Before considering the lessons to be learnt from Atlanta's experience of non-sporting disputes, it is apposite to make a number of observations based on the field research undertaken in Atlanta in 1995 and 1997. Of concern to the writer was the disconcerting absence of any overview of Atlanta's disputes related experience. While the individual experience of many of the persons interviewed was that there were few disputes, this reflected the narrow focus of their own experience. Collectively, the experiences of those interviewed suggested a relatively high number of very diverse and often complex disputes. Thus, for example, the Atlanta Committee for the Olympic Games (ACOG) officials and lawyers who were interviewed were almost exclusively focussed on disputes involving ACOG, and had little awareness of numerous other Olympic Games related disputes and claims. Furthermore, the lack of overview is manifested by

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5 For a report of the 1995 field research undertaken in Atlanta, see T Altobelli "Designing a Dispute Resolution System for the Sydney 2000 Olympic Games" (1995) 6 *ADRJ* 274.

6 Atlanta 1996 Olympic Games: Known Cost US$46.9 million

* US$6 million damages paid arising out of collapse of lighting tower at Olympic Stadium. Source: *Atlanta Journal & Constitution* (AJC) 1 May 1996, and interview in 1997 with D Davis ACOG Lawyer.
* US$1.5 million damages paid arising out of a ticketing dispute. Source: Interviews in 1997 with GM Stevenson and D Davis.
* US$1.1 million shortfall in funds available to pay bonds - dispute between ACOG and Metropolitan Atlanta Olympic Games Authority as to who to pay. Source: AJC, 2 May 1997.
* US$1.3 million bill for use of Olympic stadium for pre-Olympic events, between ACOG and USA Track and Field. Source: AJC, 28 November 1996.
* US$27-30 million Risk Management Budget for ACOG. Source: Interview in 1997 with W Harper, Director of Risk Management ACOG.
* US$10 million (at least) in legal fees paid by ACOG. Source: Interviews in 1997, with GM Stevenson.

Atlanta 1996 Olympic Games: Claims Outstanding June 1997: US$987 million
(where value of claim is specified)

* US$10 million contractual dispute between developers and managers of Olympic related residential facility. Source: AJC, 31 May 1996.
* US$2.5 million damages sought against NBC relating to sub-lease of an apartment used as an Olympic TV studio. Source: AJC, 15 June 1996.
* US$13.5 million damages sought in claim between an Olympic T-shirt licensee and sub-licensee. Source: AJC, 13-15 May 1996.
* US$931 million damages sought by Black Vendors Association against ACOG and City of Atlanta. Source: AJC, 25 July 1995.
* US$30 million (at least) claim by street vendors against ACOG and City of Atlanta arising out of street vendors' licences. Source: Interviews in 1997 with FR Nix, Attorney for plaintiffs, Atlanta.

the absence of any formal, centralised system of recording disputes, and the difficulty of researching the topic. This lack of overview means that even the writer's own field research represents a fragmented impression of the true level of disputation in Atlanta. This does not, however, undermine the potential implications of this research - indeed the opposite is more likely to be so. The actual level of disputation is probably much higher, and may never, in fact, be known.

Another pertinent observation is that risk management strategies such as 'risk exportation' do not prevent or manage disputes, the strategies merely re-direct responsibility. ACOG and its lawyers pursued a vigorous policy of risk exportation and so, wherever possible, it was a term of ACOG contracts that the risk of the transaction was borne by the party contracting with ACOG, and not ACOG itself. If that was not possible, the risk would be covered by insurance. ACOG would not participate in high risk activities such as the organisation of street vendors. This privilege was given to the City of Atlanta with potentially disastrous consequences for it.[7] The Sydney Organising Committee for the Olympic Games (SOCOG) has adopted a similar strategy.[8] This may well result in SOCOG itself becoming involved in fewer disputes but it does not necessarily mean that disputes will not arise, or that the party contracting with SOCOG will not seek recompense elsewhere.

The focus of this research is dispute prevention, management and resolution. When one major stakeholder in the Olympic Games shifts the risk onto other lesser stakeholders and participants in the Games their self interest is clearly understandable. However, this is not effective prevention, management or resolution of disputes - those disputes subsist, but the disputing parties may be different. In any event, risk exportation seems to depend upon the existence of contractual provisions to this effect. These provisions are subject to interpretation and, as will be seen from the discussion below of the disputes that have in fact arisen, many disputes do not arise out of the contract.

Measuring the quantity of disputes alone, is of little assistance in the present context. It was observed that the number of disputes in Atlanta in 1996 was lower than Los Angeles in 1984. It is to be hoped that the number of disputes in Sydney as a result of the 2000 Games will be even lower. Numerical quantity of disputes, however, is a poor indicator of potential adverse impacts and yet it is this latter factor which should assume the greatest significance in the present discussion. Thus, for example, single disputes arising out of the Los Angeles Games (the Olympic paraphernalia exclusivity claims) and the Atlanta Games (the street vendor claims) may completely overshadow all other disputes in terms of cost and other adverse impacts. A related and interesting issue which flows logically from a consideration of the quantity of disputes is to hypothesise on the

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7 The saga of the street vendors' claims against the City of Atlanta arising from the 1996 Atlanta Games would make an interesting article in its own right. The claims are referred to in T Altobelli, note 4 *supra* at 282.

8 For example, most contracts entered into by SOCOG contain provisions which shift any risk of loss or damage associated with the transaction to the other contracting party. Furthermore, the other contracting party is required to indemnify SOCOG, the IOC, AOC and any affiliated person or entity against any risk arising out of the transaction, or claim resulting from the transaction which is the subject of the contract.

possible reasons for differences in disputes experiences as between host cities. To extrapolate principles in this regard would certainly be interesting, perhaps even helpful, but the focus is still on frequency of disputes, rather than impacts of those disputes.[9]

Another observation about Atlanta is that the use of alternative dispute resolution (ADR) was sporadic and uncoordinated. Most ACOG contracts contained arbitration clauses. There was little or no systematic attempt to use ADR, and what attempts were made were reactive (designed to deal with a dispute once it had arisen), rather than proactive (emphasising prevention of the dispute).[10]

These observations lead to a consideration of some of the lessons to be learnt from Atlanta. Common themes which emerged from the writer's many discussions and interviews with ACOG officials and lawyers, Atlanta judges and lawyers, journalists and ADR professionals included firstly, their interest in the nature of the research being undertaken, and secondly their admonition to be prepared.

One of the major lessons to be learnt from Atlanta is to adequately prepare for the possibility, indeed probability, of disputes.

Another lesson is that Olympic Games non-sporting disputes are very diverse in nature and are often complex to deal with because of the issues and personalities involved and the context in which they arise, that is, a very high profile event.

The third lesson is that disputes will arise at the most inconvenient times - just before the Games are staged, and then after they have concluded. The inconvenience derives from the lack of time and attention that can be applied to the dispute during those periods. In the year prior to the staging of the Games, all stakeholders seem to be focussed on the event and preparation for it. Disputes are 'bad news' and no stakeholder with an interest in the success of the Olympic Games is willing to acknowledge, let alone focus on problems when walking in the ever increasing shadow of the imminent Games. Even the media is disinterested in negatives unless there are sensational elements to it. After the Games have been staged, stakeholders move into winding up mode, except for those participants whose expectations of profits or other outcomes from the Games have been disappointed. The former group's interest in the Games and problems associated with them diminishes at the same rate as the latter group's interest in recovery or compensation increases. The public's interest in disputation arising from the Games is probably never high, but if the Games are perceived to have been successful, interest in disputes will invariably be very low. If the Games are not perceived to have been successful, the presence of disputes will arouse public interest, particularly if the public perceives that it will be underwriting the cost of those disputes. This is a factor which organisers of government-underwritten Games should consider. The inappropriate times at which disputes arise mean that attempts at dispute resolution lack focus. Disputes

9 An hypothesis as to possible reasons for the difference between Los Angeles, Atlanta and Sydney is contained in T Altobelli, note 4 *supra* at 285.

10 The use of ADR in Atlanta is set out in T Altobelli, *ibid* at 286.

are allowed to linger and fester. In Los Angeles claims relating to the Games were still outstanding in the following decade. In Atlanta, three years after the staging of the Games, street vendor claims are still unresolved and, indeed, new claims are being filed and different disputes are arising.[11]

The fourth lesson flows from the above. Dealing with disputes on an ad hoc basis leads to ad hoc results. The lack of preparation, diversity and complexity of disputes, and the inconvenient times at which disputes will arise, all demand a systematic, not ad hoc, approach to dispute resolution.

IV. COSTS OF DISPUTATION

The cost or potential cost of Olympic Games related disputation appears to be foremost in the minds of Games administrators and the media, when the issue of disputation is considered. The issue of cost is problematic, and in any event focussing on cost alone ignores that disputes have many other adverse impacts, some of which are far more significant than financial outcomes. The financial cost of a dispute is a very crude measurement because it focuses on the settlement or verdict in terms of dollars, often ignores the cost of the process of resolving the dispute both public and private, and usually overlooks the monetary costs directly and indirectly associated with the dispute such as lost time, missed opportunities, human resource costs, overheads and so on. Nonetheless, it is disturbing that the costs of disputes associated with both the Los Angeles and Atlanta Games measured purely in terms of verdicts, is quite high. This ignores other associated costs such as legal fees and insurance.[12] The real inadequacy of using cost of a dispute as a measurement of the dispute is that indirect costs, and non-financial costs, cannot be quantified either easily or at all. Possibly the best examples of this are disputes occurring in the Australian context, and will be described below.

V. SYDNEY IN 1999

Interesting parallels exist between the situation in Atlanta during the writer's first field trip in 1995, one year before the 1996 Games, and Sydney in 1999, one year prior to the 2000 Games. These observations are quite subjective. The writer perceives that SOCOG and the Olympic Coordination Authority (OCA) are, quite properly, focussed on preparing for the staging of the Games. Many of the disputes which have arisen in the context of the Sydney 2000 Olympic

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11 For example, the *Fulton County Daily Report*, a newspaper circulating in Atlanta, ran as its headline on 19 January 1999 "Olympics Long Over, but Litigation Drags on". The opening sentence of the story states: "The longest race of the 1996 Olympic Games is the litigation marathon". On 8 July 1999, the Cox News Service reported that a dispute over public access to Olympic records went before the Fulton County Court.

12 The risk management budget in Atlanta was reported to be between US$27-30 million of which insurance premiums were approximately US$22 million. Source: W Harper, Director Risk Management ACOG. It was suggested that ACOG's legal fees were "in excess of US$10 million". Source: GM Stevenson, Director of Internal Audit, ACOG.

Games have been quite high profile. Nonetheless, there is no consciousness of the need to plan for disputation. There has been reaction to disputes, but no proaction to them. Some of the high profile disputes have involved court action, but others have not reached that stage.

One of the first reported disputes associated with the Sydney 2000 Games had its origins on the 24th September 1993, the day after the announcement was made that Sydney had won the right to stage the Games. On that date Baxter & Co Pty Ltd applied for registration of a trademark, THE OLYMPIC, in respect of certain footwear. The Australian Olympic Committee (the AOC) opposed the registration of the trademark on the basis that the AOC owned the trademark, and that the proposed use would be contrary to law, and would deceive and confuse the public. In *Baxter & Co Pty Ltd v The Australian Olympic Committee Inc*[13] the Registrar of Trademarks dismissed the opposition by the OCA to the registration of the trademark, and awarded costs against it.

The Battery Hens Liberation Case is another early high profile dispute. A Tasmanian based anti-battery hen crusader, Pam Clarke, launched her campaign to free battery hens under the name of Freedom 2000, by distributing T-shirts and badges featuring a design which was described as depicting a hen in a cage with five eggs below. This became known as the "sad chook" symbol. SOCOG argued that the sad chook symbol infringed its copyright in the Olympic logo. A SOCOG spokesman was reported as saying, inter alia, that the dispute with Pam Clarke about the sad chook symbol was a test case, and that they could not make exceptions to the rule.[14] The dispute ended in the Federal Court of Australia. In *Sydney Organising Committee for the Olympic Games v Pam Clarke*[15] Branson J restrained the respondent from reproducing the logo or breaching the Olympic logo copyright, and issued an order for delivery up of all infringing copies of the work. The respondent was also ordered to pay SOCOG's costs.[16]

The AOC had mixed success in a recent case in which the main issue was the present ownership of copyright of film taken at the Melbourne 1956 Olympic Games, the commercial significance and value of which was greatly increased as a result of the Sydney 2000 Olympic Games. In *Australian Olympic Committee Inc v The Big Fights Inc*[17] Lindgren J held that the AOC owned the copyright in the films but one of the respondents had a licence to reprint and sell copies of the films. It is noteworthy that this case was heard over seven days and involved two applicants and eight respondents. The issues were complex. The commercial stakes were high. Justice Lindgren's judgment ran for 449 paragraphs.

In another high profile dispute, Greenpeace commenced proceedings in the Federal Court against the OCA and Environmental Planning Pty Ltd following the decision to use certain refrigerants in the Olympic Super Dome at Homebush. Greenpeace argued that the refrigerants would be ozone destroying, and their use

13 [1996] ATMO 54 (30 October, 1996).

14 See "Logo copy ruffles SOCOG's feathers" 3(1) *Countdown 2000 Newsletter* at 12.

15 [1998] 792 FCA (25 June, 1998).

16 Legislation protecting Olympic logos and insignia is discussed in T Altobelli "Cashing in on the Sydney Olympics" (1997) 35(4) *Law Society Journal* 44.

17 [1999] FCA 1042 (unreported, FCA, Lindgren J, 3 August 1999).

would be contrary to the Environmental Guidelines for the Summer Olympic Games. Proceedings were commenced on 10 December 1998. The claim against Environmental Planning Pty Ltd was settled when it undertook not to repeat the representation that "green friendly products would be purchased" for the Olympic Super Dome. The claim against the OCA was more problematic, with several interlocutory arguments relating to how, if at all, the case should proceed. The CEO of Greenpeace, Ian Higgins, stated that "we believe the OCA has made it clear it intended to use every legal opportunity to delay this case and ensure the real environmental issue in question was not discussed".[18] A further obstacle to the proceedings arose as a result of the High Court's decision in *Re Wakim; Ex parte McNally*.[19] This placed almost insurmountable procedural obstacles in the way of Greenpeace relying on alleged contraventions of the *Fair Trading Act* 1987 (NSW). The Greenpeace claim against OCA was discontinued in its entirety.

A number of other cases have involved issues relating to the staging of the Sydney 2000 Games, without actually embroiling either SOCOG or the OCA. Interestingly, all have been in the Land and Environment Court of NSW. In *South Sydney City Council v Nettlefold Advertising Pty Ltd & Anor*[20] the dispute concerned development consent and usage of an advertising sign erected on the roof of a building at 217 Oxford Street, Darlinghurst which was to be used for Olympic Games related signage. In *Ryde Pool Action Group Inc v Ryde City Council*[21] the applicant was concerned about the removal of community land from council's control, the land in question being a public swimming pool and associated facilities proposed to be used by the OCA as a training or sporting facility in the Sydney 2000 Games, once it was re-developed. In *Willoughby City Council v Sydney Water Corporation*[22] the dispute arose out of the Northside Storage Tunnel project. In a complex decision involving the interpretation of a development consent Lloyd J found that "the overriding aim of the project is to achieve its purpose...by the time of the Olympic Games in the year 2000".[23]

Other disputes involving local government and environmental issues did not result in litigation, but nonetheless attracted public attention. Thus, for example, Auburn Council was reported[24] to be attempting to block plans by the OCA to build the largest bus depot in Australia at Regents Park near Homebush. Auburn Council was concerned about the impact of noise on residents. The use of buses to be based at the proposed depot was an important part of the OCA's transport strategy. The same report refers to Auburn Council's previous unsuccessful

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18 Greenpeace Press Office, "OCA uses delaying tactics to dodge Greenpeace claims", Media Release, 23 July 1999: http://www.greenpeace.org.au/Releases.

19 [1999] HCA 27. The impact of this decision was to partially invalidate the cross-vesting scheme which had been created as a result of the *Jurisdiction of Courts (Cross-Vesting) Act* 1987 (Cth) and, for present purposes, the *Jurisdiction of Courts (Cross-Vesting) Act* 1987 (NSW). In effect the Federal Court could not be invested with State jurisdiction - in this case, pursuant to the *Fair Trading Act* 1987 (NSW).

20 [1999] NSWLEC 21, (Unreported, Pearlman J, 1999).

21 [1999] NSWLEC 96, (Unreported, Cowdroy AJ, 1999).

22 [1999] NSWLEC 131, (Unreported, Lloyd J, 10 June 1999).

23 *Ibid* at para 11 of judgement.

24 L Allen, "Council opposes Games but depot" *Australian Financial Review*, 26 August 1999, p 5.

dispute with the OCA about construction of the Olympic Village, and another dispute between a group of corporate landowners and the OCA about development controls of land near the Olympic site. Each of these disputes illustrates the potential for Olympic Games related disputation affecting local government, the community, state instrumentalities, private business and land owners. In all of these disputes a common feature is that the staging of the Games is either one of the fundamental causes of the dispute, or a factor which has driven or prolonged the dispute.

Many other high profile disputes have arisen, but have not necessarily resulted in litigation, or certainly not at this stage. A dispute between Gold Members of the Sydney Cricket Ground (SCG) and the Sydney Football Stadium (SFS) Trust on the one part, and the operators of the Olympic Stadium, Stadium Australia Limited was reported to be nearing litigation.[25] The dispute related to seating arrangements for members at the stadium, pursuant to a confidential agreement between the stadium operators and the SCG and SFS Trust to protect the respective interests of their members.

A dispute which received enormous public attention was the dispute between Phil Coles on one part, and the International Olympic Committee (IOC), the AOC and SOCOG on the other, as to whether Mr Coles should resign his various positions on Olympic boards and organisations. The dispute involving Mr Coles was one of a number of controversies which was reported to have tarnished the image of the Olympic Games, allegedly making sponsorship much harder to obtain.[26] Senior Australian Olympic official Phil Coles was the subject of an IOC inquiry into allegations that he had accepted free trips to the United States as a guest of the Salt Lake City bid committee, and that he received expensive jewellery during the unsuccessful Athens bid to host the 1996 Olympics. Olympic organisers conceded that the Coles saga was hurting the image of the Sydney 2000 Olympic Games and its sponsorship drives.[27] Major Olympic sponsors attacked the IOC for failing to banish Coles.[28] An IOC investigation found Coles guilty of serious negligence, but not corruption. He was not expelled from IOC membership, but did resign from the SOCOG board. Whilst this dispute does not appear to have become litigated, and for that matter did not even necessarily involve direct issues of law, one is left to wonder whether adverse impacts of inestimable quantity could have been avoided if an appropriate dispute management and resolution approach had been adopted. What if, for example, a neutral person such as a Dispute Resolution Adviser (DRA) had intervened at an early stage of the dispute? The DRA would have addressed the procedural and substantive issues which arose in this dispute. Characteristics of this dispute included difficulty in ascertaining the facts; conflicts of interest and duty for all the parties concerned; lack of objectivity

25 M Moore, "Big spending sports fans to sue after going for gold" *Sydney Morning Herald*, 15 April 1999.

26 See for example "Sponsors get nervous as rings lose lustre" 5(1) *Countdown 2000 Newsletter*, February 1999 at 1.

27 Comments by John Coates and Sandy Hollway reported in AAP Newsfeed, 19 March 1999.

28 Comment by D D'Alessandro, president of John Hancock Financial Services, a US$50 million Olympic sponsor, reported in AAP Newsfeed, 6 May 1999.

among the stakeholders; failure to understand the underlying interests of Coles, the IOC, AOC, SOCOG and the public of NSW; inability to deal with the problem in a timely and efficient manner. The DRA would have intervened at an early stage by meeting with and discussing the issues with all stakeholders, identifying the interests lying beneath their stated positions, recommending quick and inexpensive methods of resolving factual disputes, and then bringing the parties together in a context where a facilitated exchange of views and exploration of options could take place.

A dispute which is still current at the time of writing this article is the marching bands dispute. SOCOG had contracted with a company World Projects Corporation to provide marching bands to perform in the opening ceremony at the Sydney Games. The controversy erupted in June 1999 when reports emerged that Olympic organisers were planning to import 1300 American and 200 Japanese marching band members for the Opening Ceremony of the Sydney Games. As a result of a very vocal public backlash at this decision, SOCOG rescinded the invitation. By June 29 there were reports of a compensation claim by World Projects of up to $10 million.[29] Following talks between SOCOG, World Projects and band leaders, a compromise was sought about playing at alternative venues, but agreement could not, apparently, be reached about financial compensation. On 16 July 1999, World Projects commenced proceedings against SOCOG and the Olympics Minister, Michael Knight, in the Supreme Court of NSW, seeking damages for breach of contract.[30] On 11 August, reports suggested that SOCOG had offered World Projects AUD$800 000 but the latter wanted AUD$1.2 million, as part of a settlement which included a revised make up of the bands.[31] Despite what appeared to be some progress towards settlement, on Friday 13 August World Projects sought, without success, an injunction from Bryson J in the New South Wales Supreme Court to prevent SOCOG from organising the opening ceremony without the participation of World Projects. Justice Bryson had earlier expedited the hearing of the claim. The matter was heard on Monday 16th August, but World Projects and SOCOG settled for a sum reported to be AUD$1 million. The claim against Olympics Minister Michael Knight for procuring a party not to honour a contract remains pending.[32] An excellent account of the marching bands litigation was written by Matthew Moore, the Sydney Morning Herald's Olympics Editor.[33] The disruption caused by Olympic disputes generally and the inefficiency of SOCOG's attempts to resolve this matter are typified by Moore's comment:

> With just over a year to go until the biggest event on Earth swamps Sydney, SOCOG's senior management has wasted seven weeks trying to sort out a seven minute ceremonial moment, and its not over yet.

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29 AAP Newsfeed, 29 June 1999 referring to a report in *The Australian* newspaper on that date.

30 Proceedings no. 003230/99 *World Projects Corporation v Sydney Organising Committee for the Olympic Games and one other.*

31 Deutsche Presse-Agentur, 11 August 1999; The Desert News (Salt Lake City, UT) 11 August 1999.

32 M Moore and B Walkley, "Knight eats humble pie as band brouhaha plays on" *Sydney Morning Herald*, 27 August 1999.

33 M Moore, "How SOCOG learned the score" *Sydney Morning Herald*, 14 August 1999, p 47.

There are other examples of disputes and potential disputes which have not yet attracted much public attention, but which might be characterised as disputes 'simmering in the background'. A potential dispute involves the Olympics Club, established in February, 1998 as an Olympic supporters club, and reported to have 60 000 members.[34] Jointly owned by SOCOG and the AOC, the Olympics Club was intended as a fundraising activity which would provide members with enhanced opportunities to obtain tickets to the Games, with many potential collateral benefits. To break even, the Club needed 200 000 members. A loan of AUD$3.5 million from SOCOG to the Club could not be repaid. An insurance policy was claimed on so that SOCOG could be repaid, but that could mean that the insurer may seek to be indemnified against this loss. The Club is reported to be unable to pay for tickets it has obtained from SOCOG and sold to members.[35] Managers of the Club were reported to feel "ambushed" by SOCOG.[36] Members may become dissatisfied with the benefits actually received from membership being less than represented or anticipated. SOCOG is reported to be reviewing its ticketing commitment to the Olympic Club.[37] The scene is set for a potentially complex and acrimonious dispute involving many parties and numerous issues. The writer submits that any such potential dispute could have been prevented by early intervention using dispute prevention, management and resolution strategies.

A dispute was reported[38]between the local maker of street furniture and the French company JC Decaux over a contract to provide street furniture for Sydney prior to the Olympics. The local maker of furniture indicated that it would lodge a claim for damages for more than AUD$2.5 million against the other company.

A dispute has been running for several months between the OCA, Waverley Council and various groups of residents having an interest in Bondi Beach, the proposed venue for beach volleyball during the Sydney Games. In the latest round of this dispute, the 'No Stadium at Bondi Beach' group was reported to be obtaining the advice of senior counsel in relation to proposed action in the Land & Environment Court or possibly even in international courts.[39]

VI. POTENTIAL PROBLEMS FOR SYDNEY

The marching bands, Phil Coles, and the Battery Hens Liberation Case, are, arguably, disputes without real precedent and, therefore, could not reasonably have been anticipated in Sydney. The intellectual property, environmental development and land use disputes, as well as the possible ticketing disputes, all have precedents in Atlanta. The experiences of Los Angeles in 1984 and Atlanta in 1996 suggest that ticketing and street vending are high-risk areas for Sydney.

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34 M Moore, "Supporters club may not be the ticket" *Sydney Morning Herald*, 14 August 1999, p 47.

35 *Ibid.*

36 *Ibid.*

37 *Ibid.*

38 M Evans, "Street seats may miss Olympics" *Sydney Morning Herald*, 27 August, 1999, p 3.

39 D Brearley, "Court threat to volleyball stadium" *The Weekend Australian*, 14-15 August 1999, p 11.

It is interesting to observe the absence of any disputes which pertain, in effect, to native title issues in Australia and which are linked to the Olympic Games. The issue of native title and indigenous land rights might be characterised as political, but there is no shortage of precedents for using the Olympic Games as a stage upon which to make political statements.[40] The native title issue may be perceived by some indigenous Australians as inextricably inter-related with other serious issues facing the indigenous Australian community such as high infant and adult mortality rates, unemployment and the stolen generation. SOCOG has, of course, developed initiatives for consultation and coordination with indigenous Australian communities such as the National Indigenous Advisory Committee,[41] though some prominent indigenous Australians have expressed quite sceptical views about these initiatives.[42] The challenge here is to develop a system which emphasises prevention of these disputes and which takes into account the cultural issues which arise in this specific context. As outlined earlier, if disputes do arise it is likely to be at a time which is most inconvenient to Games organisers, and when much world attention will be focussed on Sydney.

In Atlanta in 1996, one of the greatest concerns expressed by ACOG and its lawyers were the legal issues surrounding US constitutional guarantees of freedom of speech and freedom of movement.[43] The staging of the Atlanta Games necessitated restriction of access to otherwise public places, thus restricting freedom of movement and also freedom of speech. The writer sees a parallel in this regard with the Australian indigenous issues referred to above. In Atlanta, rather than suppress the right of groups of people to express their views at the time of or in the context of the Olympic Games, ACOG actually facilitated this taking place in a controlled environment. This was done by establishing 'free-speech zones' which were public venues which could be booked in advance by groups wishing to stage events or make statements or advance a cause. From the dispute resolution perspective, this is an excellent example of dispute prevention and management. The interests of groups wishing to 'have a say' in the context of the Olympics is satisfied whilst at the same time meeting the interests of Games organisers to avoid disruption to the staging of the Games. SOCOG would be well advised to consider such preventative measures. Specifically, greater consultation with and involvement by indigenous leaders costs little, but potentially prevents disputes at a most inconvenient time. SOCOG should consider having on-call dispute resolution experts who are of indigenous background or who have experience in such disputes. Perhaps another option would be for SOCOG to actually sponsor a major conference on indigenous issues in Sydney, prior to the Games. The staging of this conference would act in much the same way as the 'free speech' zones in Atlanta - a

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40 For example, CR Hill, *Olympic Politics*, Manchester University Press, (1992). In the Montreal 1976 Games, 28 African nations boycotted the Games over apartheid issues. In Moscow in 1980, 62 nations did not attend following the USSR invasion of Afghanistan. In 1984, the USSR and 16 allied nations boycotted the Los Angeles Games, ostensibly by way of retaliation for the 1980 Moscow boycott.

41 See generally G Moore "Access and equity and the Sydney Olympics" (1996), 23(7) *NCOSS News* 9.

42 For example, comments attributed to Charlie Perkins in the *Sydney Morning Herald*, 6 August 1996, p 9.

43 Source: discussions with D Davis and H Sibley of King & Spalding, ACOG lawyers.

controlled and safe environment is created for a rigorous and robust public debate about important issues.

Warnings have recently been issued by experts in tourism and hospitality law about the potentially serious legal implications of overbooking, overcrowding, delay and disappointment.[44] Legal remedies include the *Trade Practices Act* 1974 (Cth), fraud, breach of contract tort and breaches of occupational health and safety regulations. Leading intellectual property lawyers have also warned about the dangers of ambush marketing, that is the unauthorised association by businesses of their names, brands, products or services with a particular sport, event or team, without paying for those rights.[45]

Atlanta experienced immigration issues arising in the context of visitors to the Games wishing to remain in the USA.[46] This raises not just legal and policy issues in the present context, but potentially leads to litigation in the Administrative Appeals Tribunal and/or Federal Court of Australia as well as political tensions. Already one instance has been reported of four Romanian wrestlers who were present in Australia to compete in an Olympic test event, who have gone into hiding and are seeking asylum.[47]

There is potential for industrial action in Australia as a result of the staging of the Games. The Communications Electrical and Plumbing Union has threatened industrial bans on mail delivery during the Games because of fears that United Parcel Service, a major Olympic sponsor, has been given a contract for mail delivery within the Olympic village.[48]

A Sydney human rights lawyer Dr David Kinley, has warned of "serious legal battles" dealing with whether blood tests to detect drugs in athletes are an invasion of privacy. Both SOCOG and the Australian Sports Drug Agency apparently want to introduce blood testing at the 2000 Games as a more reliable method of detecting the presence of banned performance-enhancing substances.[49]

Another example of where legal and social issues overlap and interact in the context of the Games is in relation to whether, and if so how, legal protection should be given to renters and other people in marginal accommodation. Concerns have been expressed that rentals have already increased as a direct result of development associated with the Olympic Games, and that tourists and visitors to Sydney who can pay more for accommodation will displace those in marginal accommodation. There have been calls for legislation to protect these people.[50]

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44 T and T Atherton, "The legalities of overbooking, overcrowding, delay and disappointment", presented at Mission Possible: Sports Business and the Olympics, 24 March 1999.

45 See C Oddie and A Laing, "Ambush Marketing", presented at Mission Possible: Sports Business and the Olympics, 24 March 1999.

46 Discussed in T Altobelli, note 4 *supra* at 283.

47 See M Spencer and A Crosweller, "Freedom on hold as wrestlers in hiding" *The Weekend Australian*, 21-22 August 1999, p 9.

48 See R Wainwright, "Olympic blackmail: posties threaten to ban US contractor" *Sydney Morning Herald*, 14 September 1999, p 4.

49 See D Cameron, "Games blood testing bid raises legal hurdles" *Sydney Morning Herald*, 27 August 1999, p 10.

50 See M Moore, "Rent-watchers urge legal protection" *Sydney Morning Herald*, 17 September 1999, p 14.

The categories of potential disputes which might affect the Sydney 2000 Olympic Games are not closed, and indeed the sheer diversity of disputes which arose in Atlanta as a result of the 1996 Games supports this observation.

VII. MODELS AND METHODS TO DEAL WITH DISPUTES

The need for a systemic and systematic approach to Olympic Games dispute resolution has been argued by the writer elsewhere, both in general terms[51] and in specific terms.[52] The favoured options are either establishing the Office of the Dispute Resolution Adviser (DRA) to the Sydney 2000 Olympic Games,[53] or a Centre for the Prevention, Management and Resolution of Olympic Games Disputes (the Centre). Both the DRA and the Centre must be independent of SOCOG and the OCA. The office of the DRA could consist either of one or several qualified individuals and a small support staff. The focus of the DRA is to establish a dispute system to deal with disputes arising out of the preparation and staging of the Sydney 2000 Olympic Games. The dispute system emphasises prevention of disputes (through education about the problem of Olympic Games related disputation and an emphasis on risk-prevention), management of disputes which do arise (timely disposition, use of appropriate dispute resolution mechanisms, litigation cost management), and then resolution using procedures which best match the type of dispute. The dispute resolution system considers litigation as but one method of resolution, not the primary method. Thus a great diversity of dispute resolution options (for example, negotiation, conciliation, mediation, facilitation, evaluation, arbitration and hybrids of these and other processes) can be applied in the context of a great diversity of disputes. The Centre has the same focus as the DRA, but it would also be responsible for on-going research, consultancy, provision of education and training. Both the DRA and the Centre would tap into existing networks within industry, community groups, the legal profession and ADR providers.

Surely the lessons of history, which are there to be learnt from Los Angeles and Atlanta, indicate that disputes will inevitably arise in Sydney, and that they will be diverse, numerous, costly and disruptive. Surely Sydney's own experience with Olympic related disputes to date is indicative of history repeating itself. The writer submits that if a dispute resolution system had been implemented to deal with the problem of Olympic Games related disputes, the disputes encountered by Sydney to date would not have been so high profile, so disruptive, so damaging to the reputation of Sydney, and so expensive. Of course this statement is open to the criticism that it is both self-serving and made with the benefit of hindsight. Self serving it is - the writer freely acknowledges that the cause of preventing, managing and resolving Olympic Games related disputes is one which he and others has advocated since 1995. Interestingly, even the Law Society of New South Wales has

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51 Note 5 *supra*.

52 Note 4 *supra* at 277.

53 This option is explored further by R Hemphill in "A Model for an Office of the Olympic Dispute Resolution Adviser" (1999) 37(5) *Law Society Journal* 61.

endorsed these principles as policy.[54] The statement that Sydney's dispute experience could have been ameliorated is also made with the benefit of hindsight - but not based on Sydney's actual experience to date, rather on that of two previous host cities. Even now there is benefit to be had in implementing a dispute system for the Sydney 2000 Olympic Games which emphasises prevention, management and early cost effective and appropriate resolution of those disputes.

Aldous Huxley, the British writer stated:

That men do not learn very much from the lessons of history is the most important of all the lessons that history has to teach.[55]

In terms of Sydney's preparation for disputes arising out of the Sydney 2000 Olympic Games, as at August, 1999, Huxley's statement appears to be quite appropriate.

54 Specifically, the Council of the Law Society of NSW in 1998 endorsed the recommendations contained in a report to the Minister for the Olympics, the Hon Michael Knight, called "A Tale of Three Cities: Disputes and the Olympic Games".

55 "Collected Essays" (1969) cited in *The Pan Dictionary of Contemporary Quotations*, Pan Books Ltd, (1982).