

OVER BEFORE IT STARTS – A CAREER IN JEOPARDY! A SPORT IN JEOPARDY! CASE B:

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ABSTRACT

The related cases A and B highlight the nature and impact of the changing stakeholder landscape of professional work, focusing on the nature of stakeholder relationships and dynamics and their role in effecting attitudinal and cultural change within a profession. The cases are set in the context of a violent incident involving an aspiring professional. The cases encompass the unfolding career threatening consequences of unethical behaviour; increasing calls for accountability in relation to the managerial and governance practices of organisations; and societal disquiet with both organisational culture and the role of the legal system in pursuing and dispensing justice for victims.

KEYWORDS: Ethical Behavior, Stakeholders, Crisis Management, Governance, Sport Culture

INTRODUCTION

The related cases A and B highlight the nature and impact of the changing stakeholder landscape of professional work, focusing on the nature of stakeholder relationships and dynamics and their role in effecting attitudinal and cultural change within a profession. The cases are set in the context of a violent late night assault involving an aspiring professional athlete, and examines the immediate and then much delayed consequences of the assault which left the athlete and his victims with career damaging outcomes; and his professional sport organisation, a sport and its governing body, with myriad unforeseen reputation damaging outcomes.

This case can be used to explore issues of ethical behaviour and moral responsibility relating to individuals, matters of group and organisational management, and of national body governance. It foreshadows discussion of how such behaviour may be perceived by a spectrum of stakeholders with different stakes and interests, and then how stakeholder legitimacy intersects with influence and an ability to command urgency, to impact the nature and timeliness of action taken by critical actors.

As such, cases A and B not only foreshadow and encompasses the unfolding career threatening consequences of individual behaviour; but also increasing calls for accountability in relation to the managerial and governance practices of professional communities and organisations. The cases also surface societal disquiet with both the culture of professional organisations and the role of the legal system in pursuing and dispensing justice for victims.

This case B, and the related case A, may also be used to explore specific issues of locus of responsibility for individual conduct that relate not only to the education of individuals, but to the legal and quasi-legal disciplinary processes that deal with breaches of codes of conduct. In addition, the cases provide a context for examining changing societal attitudes to alcohol and violence, including attitudes and violence to women, on the one hand, and the management of risk, crisis and media management, on the other hand.

CASE OVERVIEW

Prior to discussion of Case B, a broad overview of Case A can be used to stimulate discussion. In doing so, much can be gained by outlining the details of the case in a gender and sector neutral manner – as follows:

Case A Outline

On the Saturday night of 10 October 2015 leading up to 2am Sunday morning, a violent incident took place in a central City party district. The incident involved alleged assault(s) by a young aspiring professional and a sibling, on two males and two females.

At the time, the young professional held an intern-like position in a leading professional organisation. He had secured the internship based on his record of achievement and potential.

Six months later, on Wednesday, 20 April, 2016, following formal charges, a *Case Review Hearing* was held in the courts.

One month on, the Intern was promoted to a fixed term part-time contract – acknowledged in the media.

The following month, on Monday, 13 June 2016, the Intern made an application for discharge without conviction, with a supporting personal affidavit, another from the co-offender, and a number of supporting references/letters (14), including one from the Intern's employer.

Two days later, Police Prosecutors formally sought to oppose such a discharge.

This and other matters would be formally considered at a *Sentence Indication Hearing* held at a later date.

However, for whatever reason, during this 8 months period from when formal charges were first laid, the incident did not reach the media, receive media attention, or affect the intern's employment relationship.

In order to provoke and/or direct student discussion, the following constitutes a sample of questions and discussion prompts:

1 What action should the Employer CEO, have taken on first learning that the Intern
(i) had been involved in a late night incident
(ii) had been charged
(iii) had been charged with alleged assault
(iv) was facing criminal court proceedings?

2 What action should the CEO have taken when asked to provide a letter of reference and to comment on the consequence of the Intern receiving a conviction?

3 What action would you expect fellow workers, advisors or management to take, on becoming aware of the Intern's involvement in an alleged assault?

4 What are the implications, ethics and crisis management lessons, for those involved in management and governance?

5 Can the situation be seen as presenting opportunities for the key people to accept responsibility for leadership, values and ethics; to be honest, to behave appropriately and to convey integrity?

- The likely responses to Q1 are that the CEO should have engaged in a basic fact-finding exercise, to determine, amongst other matters, what happened; the nature of the formal charges; what legal processes were involved, including a timetable for legal proceedings; whether the male and female victims needed support; whether the Intern needed support and advice; then whether the Intern's behaviour breached the organisation's code of conduct; whether the behaviour was likely to bring the organisation into disrepute; whether its reputation could be harmed; and whether the organisation's relationships with various stakeholders could be jeopardised.
- If none of the above actions had taken place, then Q2 would certainly indicate that alarm bells should be ringing for the CEO, and that a fact finding exercise should be employed.
- Q3 begs the question of what was known by other colleagues and co-workers and whether any relevant information could have been or should have been relayed to senior managers. Despite the absence of media coverage, an additional question of whether it would be inconceivable for others not to know what had happened.
- Qs 4 & 5 then provide opportunity for issues relating to whistle-blowing, moral muteness, or the operation of an implicit *code of omerta or silence*, to be discussed

Two months later, now, Monday 15 August 2016, the *Sentence Indication Hearing* was held for the defendant, presided over by Davidson J, District Court Judge. The outcome of the hearing was that the Defendant was discharged without conviction under s 106 Sentencing Act 2002 on the 4 charges faced.

6 Would the *discharge without conviction* suggest that many of the concerns raised in responses to Qs 1-5, had been overstated or exaggerated?

Students may then be informed that neither the *Sentence Indication Hearing* nor its outcomes received media attention.

So, students should recognise that during an eight month period from when the incident occurred and when formal charges were first laid, to the judgements set out in the *Sentence Indication Hearing* that news of the incident did not reach the media, receive media attention, or affect the Intern's employment relationship. Additional questions may then be posed:

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|---|
| 7 Reframing Q6, would the absence of media attention suggest that many of the concerns raised in responses to Qs 1-5, had been overstated or exaggerated? |
| 8 What lessons should have been learned from what had happened - for the Wellington Rugby Football Union as employers, its CEO and senior management; the New Zealand Rugby Union as the national governing body, by fellow professionals; by Filipo himself? |

Once this discussion has taken place, then Case B could be introduced – with the actual context, the professional setting and the identity of individuals revealed – thus providing students with a basis for later discussion of whether their perceptions/views had changed on knowing the nature of the sector, the profession, the individuals involved etc.

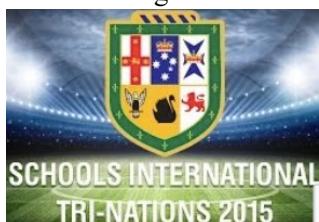
Case B

THE ATHLETE

Losi Filipo was a schoolboy athlete with a talent for the football codes of rugby union and rugby league. He helped his school to the 2014 finals of Wellington province's secondary school rugby union and rugby league finals, both played on the same October weekend, and even scoring three touch downs to win the latter [1]. In that same year, he was 'scouted' by a leading Australian rugby league team to join a training camp; he became the youngest player in the New Zealand Under 16s rugby league team; and he was selected for the Wellington U16 team to compete in the Hurricanes region inter-provincial championship.

His sporting performances had also warranted a four-year academy contract with the NZ Warriors professional Rugby League club, from which he sought release to sign a two-year contract with the Wellington Rugby Football Union joining as an Academy player with hopes of progressing to the Wellington Lions semi-professional provincial rugby union team.

One year later, in his last year of school, and having starred for the Wellington representative Under 19 team in the Hurricanes region schools tournament [7].



Filipo was selected to represent New Zealand in a one-week-long Tri-Nations tournament involving Australia and the country of his parents' birth, Samoa. The tournament played through Thursday 24 September 24 to Friday 2 October, 2015 [10]. It was a shared opinion that his sporting endeavours and successes so far looked likely to lead to the career as a professional rugby union player that he wanted.

One week later, however, his life took an unexpected turn, and one year on, as the 2016 season drew to a conclusion, his rugby union career seemed to be in tatters – and in jeopardy! Having achieved an ambition of breaking in to the Wellington Lions Mitre 10 squad and becoming a professional rugby player, Filipo chose first, to withdraw from the Lions squad, and then after seeking a contract release, reached an agreement with the WRFU's CEO, Steve Roger, to terminate his contract [17]. The case sets out events leading to these decisions, the associated media attention surrounding them, the involvement of a spectrum of stakeholders, and intersection of sport and law.

THE INCIDENT

Saturday night, 10 October 2015, was a typical Saturday in Wellington's entertainment quarter - busy restaurants and bars overflowing with music, noise and people – mainly young people. Losi Filipo and his 18 year old brother, Sam, were amongst those people. As the evening wound past midnight, the effects of drink were taking their toll on many, some becoming unpleasant, others anti-social and a minority becoming aggressive and violent.

Just one week after representing New Zealand in an International Tri-Nations tournament, still at school, and six weeks before his eighteenth birthday, Losi Filipo was one of the latter. A violent incident had led to Losi Filipo and his brother being subject to serious charges – assault, assault on a female, and assault with intent to injure – involving two male and two female victims.

However, for whatever reason, during a nine months period when formal charges were first laid and when court proceedings began, the incident did not reach the media, receive media attention, or affect his employment relationship with the WRFU.

The court proceedings involved, for example, a *Case Review Hearing* held some six months later on 20 April 2016. Following this *Hearing*, Losi Filipo's legal team sought an *indication of a discharge without conviction*. Subsequently, related to information received, Filipo's legal team made an application on 13 June 2016, for discharge without conviction under s106 Sentencing Act 2002 on the four charges faced.

Fourteen letters of reference, and an affidavit by Filipo, were deposited in support of the application, including one from the WRFU as Filipo's employers at that time. However, just two days later, Police prosecutors formally sought to oppose any such discharge.

Coincidentally, in the following week, on 26 June, Sam Filipo pleaded guilty to assault charges, and was sentenced in the Porirua District Court to four months community detention, twelve months supervision, and ordered to pay \$1,500 by way of reparation.

Losi Filipo's request for discharge without conviction, and the police opposition to such a request, were formally considered at a formal *Sentence Indication Hearing* on 15 August 2016. Coincidentally, Filipo's *Hearing*, which attracted no media attention, followed an incident involving the players of another of NZ's elite professional rugby teams, the Waikato Chiefs, which had saturated the media in the previous weeks, and did so for the next few months.

The Chiefs Affair involved episodes of alleged homophobia and misogyny at a post-season celebration on 1 August 2016 [12] [13]. Fed by separate initial exposure on social media, a subsequent media furore and sustained advocacy and activism by Women's Rights and LGBT movements, led the Waikato Chiefs and the New Zealand Rugby Union to reconsider how best to address what many saw as the underlying culture within the sport that had led to such inappropriate behaviour.

In November 2016, NZR "committed to an independent *Respect and Responsibility Review* to understand how NZR can lead, develop and support people within the rugby system to be better people" [14]. This commitment was made not knowing of the Filipo assault.

THE JUDICIAL PROCEEDINGS - THE SENTENCE INDICATION HEARING

The formal *Sentence Indication Hearing (SIH)* was presided over by Judge Davidson on 15 August 2016, in the District Court at Wellington, almost one year after the assaults. Details relating to the charges became evident at the *Hearing* and were captured in the notes of Judge Davidson.

The Nature of the Incident – Revealed

Davidson's notes recounted evidence that, "seemingly unprovoked", Losi Filipo had ran up to one male victim, Greg Morgan, "grabbed him by the collar, punched him towards his head, knocking him unconscious, and while on the ground, stomped on him around 4 times," causing "fairly significant injuries including concussion, grazing and bruising ... and (requiring) overnight hospitalisation "presumably for observation. The offending has had a significant effect on him and the others." [3]. These acts had led to an initial charge of injuring.

Charges related to four victims who had been walking on the pavement/footpath when the Filipo brothers crossed the road. Sam Filipo shouted at the victims "who ignored him and kept on walking. The brothers followed the victims, challenging them to a fight. The victims said they did not want to fight." [8].

The notes of Davidson [4] indicated that two charges of assault on a female, "apart from the fact they involve young ladies - are not particularly serious in themselves", and that they were "more in the nature of pushing and shoving of each of them." A fourth charge, that of assault with intent to injure involved Losi Filipo "joining in his elder brother and punching the victim – Hayden Williams - towards the head. The victim received nasty injuries. He also suffered a fractured finger which because of the nature of his work as a builder has caused him ongoing difficulties."

The SIH Judgement

Davidson stated that “this was a fairly serious case of street violence, the kind of offending that is of significant concern to the public.” His judgement is set out below:

- Conventional sentencing would demand a starting point of at least 1½ years’ imprisonment; such a starting point in my view would be unimpeachable. Obvious mitigating features would include his age (he was only 17 at the time), his lack of previous convictions; his remorse; willingness to undergo restorative justice; the large body of community support he enjoys suggesting an unlikelihood of ever reoffending; his commitment to counselling and voluntary community work and the like. Conventional sentencing would not see the defendant sent to prison but would see him suffer a conviction.
- In my view, there are real and significant consequences of conviction for the defendant. His chosen career could well be outside his purview if convicted. … There is no difference in assessing this than assessing someone at the beginning of any other form of career. The evidence about the potential damage to career prospects is all one way.
- Coming to the weighing exercise, can it be said that those consequences are out of all proportion to the gravity of the offence? In my view, they are. I have to ask myself are the courts truly in the business of destroying people’s career prospects when there is a safety valve mechanism available? It has been said time and time again in recent years when dealing with applications for discharge without conviction that there was a time a generation ago when convictions were often regarded as a rite of passage. But it is only now in New Zealand in 2016 that people are truly beginning to understand the impact of convictions on people for all sorts of reasons.
- To sum up, in my view the offending is in the relatively serious category, both in itself and for the kind of offending it is. But there are significant potential consequences. For those reasons, I am prepared to indicate that were the defendant to plead guilty, he could expect to be discharged without conviction.
- Given that he has completed a significant amount of voluntary community work and has reparation funds available, they would be reflective of the kind of conditions imposed upon the discharge.

Davidson’s notes also revealed his knowledge that Sam Filipo had also been charged for his involvement with the assault, and that he had been “convicted, fined and placed on supervision.” Unlike his younger brother, Sam Filipo had previous convictions.

RESPONSES TO THE SENTENCING INDICATION – 1

The *Sentencing Indication* Hearing did not receive media coverage. Neither did Judge Davidson’s decision to discharge Losi Filipo without conviction. Whilst distraught with the decision, the four victims and their families did not immediately seek to put the matter into the public arena.

The Victims and the Media

However, within a short time, the victims, as formal complainants, and the Newshub media organisation, requested access to court documents and the court file. Judge Davidson granted access to documents for inspection, in a ruling on Wednesday, 21 September 2016. Four days later, on Monday 26 September, the victims went public with details of the assaults and the sentencing. The victims also made a request to the police to appeal against the discharge without conviction because the “factual basis of the sentencing was inaccurate.” [16]. That request appeared not to be acted on by the police, at that time.

The Victims’ Story as Response

Greg Morgan in a tearful interview with Newshub recounted what had happened; that he hadn’t been able to work for eight months; that he was still suffering chronic fatigue and migraines; and the loss of his dream to play rugby. His friend Olivia Samuels told Newshub that “He did look dead - I thought he was. And then I saw Losi running towards me and that’s when, with a clenched fist, he punched me straight in the throat and I fell down” [15]. Samuels also recounted:

“I remember the two brothers running around the road screaming and cheering. It was like they were celebrating they had won. Meanwhile Greg was looking dead, they didn’t care. I was a little scared about telling our story at first, I didn’t know what the backlash would be but I’m glad it’s out now.

I think if he was to go to jail, it would be a risk for him but I don’t think he should just get off. He should be stood down from his rugby contract, so that he has some actual realisation that his actions have consequences. It seems he’s just got away with it, and he knows it.”

The other female victim, Kelsey Odell recalled that:

"He then came behind me and clenched his fist again ... punched me straight in the chin. I fell to the ground ... blood was just pouring out. I was hyperventilating - totally in shock" [11].

Morgan said that he was "gobsmacked and lost for words" by the sentencing.

"Losi didn't even get a slap on the hand" [6].

Losi Filipo -The Player

- When contacted by Newshub that same day, Losi Filipo provided a statement through his lawyer:
"I took full responsibility for my actions by pleading guilty to the charges and have apologised through my lawyer to the people involved. I have been fortunate to have support from throughout the community so that I continue to take positive steps to ensure nothing like this ever happens again."

Rugby Bodies

- Steve Rogers, WRFU CEO released a statement on Monday, subsequent to the Newshub interviews:
"Wellington Rugby does not condone Losi's actions, but also believe he is genuinely remorseful for what happened. We are committed to helping Losi ensure he does not make the same mistakes again and have put in place structures to help him work toward a positive long term outcome."

RESPONSES TO THE SENTENCING INDICATION & NEWSHUB INTERVIEWS - 2

Throughout the following day, Tuesday, media involvement intensified with more interviews with Filipo's victims, responses sought from the rugby authorities about their responsibilities, and opinions sought from legal experts about the judgement of Judge Davidson. Indeed, prime-time early morning radio and TV programmes started the day with interviews with the victims, and commentary from within and without of the rugby world, social activists, opinion makers etc.

Professional Rugby Players Association - NZ PRPA, CEO Rob Nichol

- Nichol, in an interview on the prime-time RNZ *Morning Report* programme, offered an opinion that that Filipo had been given a massive let-off and an unbelievable opportunity to turn his life around.

"The controls and the structure that rugby or a professional sport environment can provide a young man can be good for him. At the same time, it can be a huge risk in that it is so structured, and when the players are assembled with the team, they are in a safe environment, people are watching out for them. They are given lots of tools etc.

The real risks for these guys, who have a propensity in this area, is when they fall outside of our structures – and they go out by themselves and they cut loose and make unbelievable errors.

So whether he chooses to pursue rugby or study, there will always be a time in this young man's life when he is by himself and he is in a compromising situation. And if he makes the same mistake again, he's going to go down. So, he's got to get it right."

He also offered his view about the need to separate criminal proceedings within a court from employment implications and other societal implications.

Legal Commentators

- A variety of opinions were offered by legal commentators. For example, Law Professor Bill Hodge said Judge Bruce Davidson was wrong to 'go soft' on Filipo just because a conviction could interfere with the 18-year-old's international rugby career. In contrast, leading defence lawyer, Robert Lithgow, defended Filipo's discharge when interviewed for *Morning Report*. Yet, Retired District Court judge Roy Wade told the *Checkpoint with John Campbell* programme on Tuesday afternoon that Filipo should never have been discharged without conviction.

As the media intensity rose, pressure also built on the WRFU to account for their stance in continuing to employ and involve Filipo in the Lions squad; and on NZR for their perceived lack of action and leadership on the matter. Pressure also built on Filipo.

Rugby Authorities

- Steve Rogers, CEO of WRFU, issued a statement early on Tuesday, prefaced with a comment that it was a difficult situation for all involved:

"Wellington Rugby is extremely disappointed in Losi's actions and does not condone such behaviour from any member of the organisation regardless of their position or status.

We have been aware since late last year that Losi was involved in an off-field incident, but delayed any internal investigation to allow the judicial process to be completed.

Based on the facts made available to us, and the court judgement that deemed a conviction out of proportion to the gravity of the offence, we continued down the path of providing Losi with a support network to assist in his rehabilitation.

We also began an internal process that included our newly employed personal development manager working with him on a regular basis with the view to achieving a positive long term outcome."

- Steve Tew, CEO of NZ Rugby, in a prepared release said:

"Losi Filipo has been through the judicial process and it is not for us to comment on how he has been treated. That is a matter for the police and the courts.

New Zealand Rugby does not condone Losi's actions and now that he has left school and is in the Wellington Lions environment he is getting the support he needs to make better decisions.

We do not tolerate any behaviour by players that disrespects women or anyone for that matter.

We believe young men, like Losi, are better off with rugby in their lives."

- Steve Rogers, CEO of WRFU, made a further statement on the Tuesday evening. Following extensive talks with Filipo and others, he announced a mutual agreement to terminate the contract between Filipo and the WRFU [21]. Rogers said that the termination would not, however, stop Losi Filipo from playing rugby for his club within WRFU competitions, or playing elsewhere. In responding to questions about why the WRFU had not acted earlier when they became aware of the charges, and why they had provided a letter of reference for Filipo, Rogers said:

"We knew that there had been an incident ... we were not privy to the details of that. The only information we were asked to provide was 'what could happen if a player got a conviction for assault', so we provided a generic response to that."

Rumour suggested otherwise, and that Filipo's charges were common knowledge in Wellington rugby circles before he was offered a Wellington Lions Academy contract [21].

On Wednesday afternoon, the WRFU issued a further statement setting out their thoughts on the matter.

"Recent publicity around the case of Wellington age grade player Losi Filipo has given our organisation cause to look closely at how the matter was handled.

In that regard, we are seeking a strong independent voice to lead (a) review and will be establishing robust terms of reference for that review.

Wellington Rugby is open to change, committed to doing things better in the future, and determined to ensure the organisation follows best practice should any similar cases emerge in the future."

- Wellington Lions Coach, Earl Va'a spoke to the media on Thursday, offering an apology on behalf of the Wellington Lions:

"We're all aware of recent revelations about the assault charge involving Losi Filipo. On behalf of the Lions coaching staff, our management and players I'd like to sincerely apologise to the victims involved in this assault, for the hurt and anguish that you and your families have had to endure over the past year.

What happened is not a representation of what anyone in our team stands for - and as a father and member of the community and head coach of the Wellington Lions, I'd like to personally express my disappointment at the actions of the player involved. They were quite simply unacceptable.

Violence towards anyone, especially women, cannot be tolerated in our society. I'd like to say that the players in our team have deeply been affected by the events of the past week but it's important to remember that they are innocent parties in all of this, and proud representatives of this team, their province and their families.

I'd like to thank the players for the way they have dealt with things this week, and also our fans and sponsors who have stood by us at this difficult time. I'd also like to say that rugby can be a positive influence on young people's lives, especially those that face tough circumstances off the field.

Though it has not been tenable in this case, I would like to think that sport will continue to provide an avenue of rehabilitation in support of young people throughout our country."

- Sir John Kirwan, former All Black

Va'a's apology had come after another made on the Thursday morning *Breakfast* programme, when former All Black, mental health campaigner and rugby personality, Sir John Kirwan offered an unsolicited apology on behalf of NZ rugby community to Filipo's victims [19].

Social Cause Movements

- The *Family First* movement requested of Solicitor-General, Una Jagose, that *Crown Law* appeal the decision. This request started a chain of events:

First, the Solicitor-General reviewed the sentencing of Filipo made by Judge Bruce Davidson in the District Court. Second, he gave approval for the NZ Police to file an application for leave to appeal the decision and judgement "on a question of law" [2]. Third, the New Zealand Police did appeal.

The request was thus granted, and an Appeal Hearing was scheduled for the High Court.

Sponsors

- Steve Drummond, Director, The Green Man pub, said they do not condone violence.

"We are making our own inquiries in to the matter. Once we have more information we will be in a position to make a comment."

- Simon Smith, Senior Communications Advisor, Tui, of DB Breweries, also said that DB does not condone violence of any kind and that they shared concerns and expectations with Wellington Rugby.

"This behaviour is unacceptable ... we are extremely disappointed by the actions of this player.

We understand that an internal review process is being implemented by the Wellington Lions and we will be expecting a serious consequence for an offence of this nature.

Until we understand the outcome of the ... internal review, we will have no further comment."

THE NZ POLICE APPEAL TO THE SENTENCING OF FILIPO

The Police and the Legal Profession

The Appeal was heard in the High Court of New Zealand, Wellington Registry, on 26 October 2016 [18], with a judgement made by Judge DB Collins released the following day. Collins allowed the Appeal, setting aside Judge Bruce Davidson's decision to discharge Filipo without conviction [8].

Judge Collins stated that "normally", he would have substituted the decision of the District Court with his own decision which would result in a conviction.

However, he considered that because Filipo had pleaded guilty - following the prior *Sentence Indication* that he would be discharged without conviction - he would "allow Filipo the opportunity to vacate his guilty plea if he so wishes." He indicated that he would resume the Hearing on 2 November 2016, at which time, he would decide whether the sentencing would be made by the High Court, or remitted back to the District Court for decision.

In his judgement, Judge Collins indicated the offences warranted a starting point of two years' imprisonment. However, given the mitigating factors associated with Filipo:

"... guilty plea, his youth, lack of previous convictions and the efforts he made after the incident with counselling, saving to pay reparation, doing community work and offering to apologise",

... he had grounds for discounting the sentence of imprisonment to one of supervision.

In contrasting his decision to that at the District Court, Collins said "it is easy to understand why Judge Davidson took the compassionate approach that he did" and why he had "under-assessed the gravity" of Filipo's offending." However, Collins, in his judgement [8], concurred with Judge Davidson that with his offending, Filipo had suffered a significant setback to his goal to be a professional rugby player. Collins' reasoning relating to the issues raised by the Appeal is set out in Appendix 1.

At the time of the *Sentence Indication Hearing*, Filipo was a volunteer "teacher aide" at what was described as a school for at-risk youth, and also doing volunteer work at a sports trust. He had also taken a part-time job as a car-groomer, saving his wages to make \$1000 reparation to his victims [16].

EPILOGUE

The Final Sentencing of Losi Filipo

Filipo was sentenced on Wednesday, 2 November 2016. He had chosen to maintain his guilty plea, and was convicted of all charges. He was subsequently sentenced to nine months supervision for the assaults, and also ordered to attend alcohol counselling and a course on "living without violence." [20].

Filipo accepted the sentencing, issued further apologies to the victims and offered to engage in restorative justice processes. When asked to comment of Filipo's future in rugby, WRFU Chairman, Ian Potter said that "Filipo could come back to Wellington Rugby if he stays on the straight and narrow" [9].

The Victims

Greg Morgan, as a victim, made no further immediate public comment on the sentencing.

The WRFU – Lessons Learned, Being Accountable, Accepting Responsibility

Aware of lessons learned from the Filipo affair, the WRFU decided to authorise an independent review of its processes relating to broad matters of player conduct, player education, management of disciplinary processes etc. In early October 2016, the respected former senior civil servant, Dame Margaret Bazely was appointed to conduct the review. In her review, delivered on 21 December 2016, Bazely found that the WRFU had a male-dominated view on managing off-field misconduct and described its processes as a "shambles". Her recommendations included increasing gender diversity at all levels of the organisation, especially governance [9].

Dame Margaret made six recommendations, including that the union embark on a 10-year plan to bring its cultural norms up to the expectation of modern standards. She indicated that the expected changes to the rugby culture in Wellington would prompt changes around the country.

"I'm confident that this is going to be done in Wellington, I'm also confident because of the concern across the whole country that the rest of the country won't sit back and let Wellington be the shining star."

She suggested that a taskforce should be created to design a new system of standards, policies and documents, including a new code of conduct encompassing off-field behaviour. A new code of conduct should cover off-field behaviour such as drunkenness, violence and inappropriate sexual behaviour. She said the union did not have a "robust set of documents" instructing it on what to do in Filipo's case

"I have concluded that the WRFU, faced with an extremely difficult situation, managed it as well as could be expected."

Her review recommended that the committees and panels set up to develop the changes all have at least two women members and at least one outside expert.

The WRFU – Women in Governance

At the April AGM of the WRFU, Ina Hansen became the first woman to be elected as a Vice-President; former NZ Black Fern, Izzy Ford, Deputy Mayor of Porirua City, became the second female appointed to the Board of Directors.

The Restoration of Losi Filipo

Filipo returned to the WRFU club rugby competition in early 2017, to play premier club rugby for his club, Petone. In May 2017, his performances led to selection and invitation to represent Samoa in the *World Rugby U20 World Cup* in Georgia. He captained Samoa in its matches against New Zealand and England, scoring two tries in the latter match. In June 2017, he was chosen for the Wellington Lions squad for the upcoming 2017 Mitre10 Cup national provincial championship. He made his debut for the Lions as a substitute/replacement player in the 29 August match against the Bay of Plenty, and two days later was selected to start a match against the Tasman Makos, in which he scored a try. Chris Gibbes, the 2017 Lions coach said:

"We've judged Losi on his rugby ability, and his work that he's done for his club has been good, and the little bit of time he's had with us he's really put his hand up. As far as all the other things that have gone in the past, that's not part of my history here. He's been selected on form."

Steve Rogers, WRFU CEO, commented similarly:

"As we've said from the outset, Losi had to play his way into the team through his performances in our club competition. He's done that and been selected on merit like any other player."

SAMPLE OF CASE B QUESTIONS AND DISCUSSION POINTS - Managerial Issues and Tasks

General:

9a - Chronology of Events, Decisions and Dilemmas

Students should familiarise themselves with the case by creating a **chronology of events**, including the **decisions made/dilemmas** confronted by the major **actors** and **stakeholders**.

9b - Stakeholder Analysis

In parallel, students should undertake a **stakeholder analysis**, identifying generic and specific stakeholders, their roles, stakes or interests, and their **attributes**.

Such **stakeholder attributes** would include: their **power** or **influence** to impact others; their ability to act with **urgency** or **timeliness** and/or to effect urgent or immediate response from other; and the **legitimacy** (social, legal or otherwise **acceptance**) of their views or actions.

The Stakeholder Analysis should clearly identify **stakeholder dynamics** in terms of the emergence of 'new' stakeholders, or stakeholders whose attributes, say power or legitimacy have changed over the time of the Affair.

9c - Crises and Crisis Management

Students should reflect on what they understand to be a crisis, and how crisis management situations can be distinguished from other management situations. In this case, students should become aware of how those stakeholders whose interests/views have gained in legitimacy, may also have gained influence, and an ability to 'coerce' a response – effecting a crisis in the primary case organisation.

Specific:

10 Crisis Management - Evaluating Actions by the WRFU organisation

10a Consider the actions taken by the CEO:

- (i) on hearing of the Assault
 - (ii) on being requested to provide a letter of reference supporting a discharge without conviction; and then
 - (iii) personal & public apologies on the Tuesday when the media storm erupted after the Sentencing
- ... and how they may reflect a crisis management plan to deal with such situations?

10b Given that there had been no immediate media coverage of the High Court Appeal Hearing decisions on sentencing, would it be reasonable for CEO to assume that a crisis/media storm had been averted? Say why.

11 Governance, Multiple Jurisdictions, Justice and Fairness, and Locus of Responsibility

Offer some brief comment on where the **locus of responsibility** should lie in the Filipo Affair? – players, coach, team management, WRFU, NZR, *World Rugby*, and/or the Players Association? That is, offer reasoned comment on whom should take responsibility for promoting ethical behaviour – away from the sporting arena.

12 Individual Self-Management

What advice could you give Filipo, the CEO and team management on how they could have **managed** those situations differently if they had **recognised** the **escalation of successive dilemmas**.

13 Applicability to other Managerial or Professional Situations

- a What are the implications, the ethics and crisis management lessons, for those involved in management and governance?
- b Can the situation be seen as presenting opportunities for the key people to accept responsibility for leadership, values and ethics; to be honest, to behave appropriately and to convey integrity?
- c Consider whether and why inappropriate behaviour – treatment of women and minorities - is more or less acceptable in some contexts than in others.
- d Provide a Summary of Implications for Management and Governance

14 On reflection, why did the case attract initial media attention?

In particular, comment on how and why evolving interest from different stakeholder groups kept the spotlight on the WRFU and the New Zealand Rugby Union.

15 Should the Wellington Rugby Football Union as employers, its CEO and senior management; have been pilloried for Filipo's actions, the decisions made in the court system, and for the culture of rugby the sport, being seen as essentially gendered

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