

# CLOSING THE LOOP:

PROPOSAL FOR A SPORT OMBUDS IN CANADA



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FINAL REPORT // MARCH 31, 2017



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## 1. EXECUTIVE SUMMARY

It has been more than 15 years since an expert working group recommended the creation of an ombuds office for amateur sport in Canada. In early 2016, the Sport Dispute Resolution Centre of Canada (the “Centre”) formed an *ad hoc* committee (the “Committee”) to revisit the concept and provide recommendations on creating a sport ombuds program.

Based on extensive feedback from recent stakeholder consultations, the Committee has concluded that there remains a strong interest and a clearly defined need for such an office. While there are many existing ombuds-type programs in Canada, none meets all of the specific needs identified during the Committee’s consultative phase.

For the sport ombuds office to be successful, it must be user-friendly, which means a nimble, responsive, and accessible customer service model. It must also complement, not duplicate, those services already available to the sport community.

Based on the stakeholder feedback, followed by extensive research and analysis, the Committee is recommending a creative and progressive hybrid approach that combines elements of traditional ombuds functions while adding other features designed to meet the unique needs of the Canadian sport system. Housed within the Centre and reporting to an independent advisory committee, the main functions of the ombuds would be to: informally resolve conflicts and other issues; investigate complaints and make recommendations; provide advice and referrals; monitor trends and emerging issues; and manage the ombuds office.

The recommended two-tiered approach recognizes the jurisdictional limitations on a federal ombuds while providing valuable services to a broad swath of the Canadian sport community. The program would therefore offer distinct services depending on the origin and nature of the complaint. “Tier 1” services would be available to members and employees of sport organizations funded by Sport Canada and would include referral of users to an existing service; compelling of these organizations to cooperate in investigations; and recommendations on specific complaints. “Tier 2” services would be offered when complaints originate from a provincial/territorial, municipal, or club level. The ombuds office would act more as an information, advice and referral service. Tier 1 services may be made available in certain regions subject to funding from provincial/territorial governments.

The Committee recommends a two-stage implementation: over the short term, through an interim program offered under the auspices of the Centre, followed by a permanent ombuds program created through amendments to the *Physical Activity and Sport Act* (S.C. 2003, c.2).

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## 2. INTRODUCTION

The Canadian amateur sport community has long recognized the pressing need for an alternative to the haphazard, piecemeal and expensive dispute resolution mechanisms available through the court system. In general, courts are not equipped to handle these kinds of disputes - many of which are time-sensitive, technical, and sport-specific. Further complicating the situation is the fact that court systems largely operate at the provincial/territorial level, while sports span the country and operate in multiple jurisdictions.

### Historical Background

In the late 1990s, the federal government tasked a work group with a mandate to assess the needs of the sport community and develop a model for alternative dispute resolution (ADR) that could be applied at a national level. The resulting report, *A Win - Win Solution*, (*“Win-Win Report”*) was made public in May 2000.

Amongst the key recommendations were the creation of a national alternate dispute resolution (ADR) program - now embodied by the Sport Dispute Resolution Centre of Canada (the “Centre”) - along with other complementary mechanisms to prevent disputes and monitor the impact and effectiveness of the recommendations. The report recommended<sup>1</sup> that the monitoring function be effected through the creation of an ombuds<sup>2</sup> for amateur sport.

The traditional role of the ombuds is to ensure that people are treated fairly, to give a voice to those who may be lost in a broader system, and to use various techniques to resolve the concern. Where this is not possible, the ombuds may make recommendations or publish reports.

In the context of Canadian amateur sport, the role of an ombuds, as described in the *Win-Win Report*, was to complement - not duplicate - an ADR system by enhancing services already offered by national sport organizations (NSOs) and a dispute resolution centre. A year later, the Implementation Committee tasked with recommending a critical path for the implementation of the report’s recommendations identified six components to the national ADR system in Canada: “i. Canadian Sport ADR Council; ii. Sport Policy Resource Centre; iii. the Disputes Secretariat; iv.) the Arbitration and Mediation Codes of Procedures; v. the Ombuds Office; and vi.) enabling

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<sup>1</sup> Recommendation 8 of the *Win-Win Report* states: “*That the Secretary of State (Amateur Sport) establish a federally legislated and funded appointment of an ombudsperson for the national amateur sport system, and [t]hat the ombudsperson follow a traditional model with traditional powers. That the ombudsperson be accessible to all participants in National Sport Bodies. The ombudsperson operate in conjunction with the ADR system but that it be housed separately.*”

<sup>2</sup> Members of the *ad hoc* Committee expressed a range of views on the appropriate name for the Canadian program. For the purposes of this report, the term “ombuds” refers to the individual in the role while “ombuds office” and “ombuds program” are used interchangeably to refer to the entity.

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federal legislation.”<sup>3</sup> Its report (“*Implementation Report*”) envisioned the creation of the ombuds office in December 2002, about a year after the establishment of what was known as the ADRsportRED program.

A few years after the publication of the *Win-Win Report*, the *Canadian Strategy for Ethical Conduct in Sport Action Plan 2003-04* (“*Action Plan*”) identified a priority need for an ombuds office for amateur sport, which would serve as a central point for public complaints and concerns.<sup>4</sup> Meanwhile, federal legislation created the Centre with a mandate to help NSOs and others within the system avoid protracted disputes by better managing their own processes in a fair and just manner.

Through a proactive approach to dispute resolution, the Centre’s primary focus is on education and prevention, delivered in part through a robust, online resource centre and a series of educational workshops and webinars that are helping to reduce the number and severity of disputes. Conflicts are being resolved more quickly and efficiently, which is particularly important in situations where an athlete’s ability to compete is at stake. Where the parties involved cannot resolve a dispute, the Centre offers world-class resolution facilitation, mediation, med/arb and arbitration services. Avoiding a court battle means a quicker resolution at less cost and, in most cases, a better result for everyone involved.

In March 2004, the Steering Committee of the ADRsportRED program reiterated<sup>5</sup> the importance placed in the *Win-Win Report*, the *Implementation Report* and the *Action Plan* of creating an ombuds office as a critical component of Canada’s ADR system. Notwithstanding these reports, a sport ombuds program was never established in Canada.

### Reviving the Proposal

In early 2016, the Centre’s Board of Directors adopted a new strategic plan that included, as a main priority, working with the sport community towards the establishment of a sport ombuds program. Concurrently, and with encouragement from the Canadian Olympic Committee (COC), the Centre struck an *ad hoc* committee (the “Committee”) to evaluate and assess this opportunity. Committee members were selected with an eye to gender and linguistic balance and to reflect a broad cross-section of the potential user community.

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<sup>3</sup> **Report of the Implementation Committee to the Secretary of State (Amateur Sport)**, August 2001.

<sup>4</sup> The Action Plan was “*guided by the Policy Framework of the Canadian Strategy for Ethical Conduct in Sport, which was adopted by Federal-Provincial/Territorial Ministers responsible for sport, fitness and recreation in April 2002.*” Priority action #8 was to “*Assess the value and investigate the feasibility of an Ombuds office, and develop proposal for F-P/T consideration*” and to be led jointly by the Canadian Centre for Ethics in Sport and the University of Western Ontario.

<sup>5</sup> **ADRsportRED Program Report**, March 31, 2004.

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Committee members brought decades of relevant experience with a range of prominent organizations in the sport community, including the COC, the Canadian Paralympic Committee (CPC), the Canadian Association for the Advancement of Women and Sport and Physical Activity (CAAWS), the Centre, and Sport Canada along with two experienced ombudsmen. A list of Committee members is attached as Appendix A.

The Committee's terms of reference did not dictate where or how such an ombuds program might be initiated, so the Committee sought simply to identify the most effective and efficient means to deliver on its mandate. The Committee started with a high-level understanding of a sports ombuds as someone who would assist in facilitating fair outcomes and managing conflict, real or perceived, while acting as an information resource and, where appropriate, an investigator.

### 3. HIGHLIGHTS FROM STAKEHOLDER CONSULTATIONS

Through a comprehensive consultation process, the Committee sought to clarify the needs and expectations of the sport community, develop recommendations about the scope of services through an eventual ombuds program, and determine the resources required to establish such an office.

Feedback was generated through an environmental scan (see Section 4: *Environmental Scan*), two sessions staged during meetings of the COC, a nationwide online survey, focus group discussions as well as individual consultations. Several hundred participants included athletes, coaches, volunteers, parents, officials, sport organization staff, administrators and board members, as well as Canadians involved at all levels of sport from community and school-based programs, to college and university competition, all the way through the provincial/territorial, national and international sport communities.

The key findings of the consultations are summarized below and an executive summary of the results can be found in Appendix B. Overall, the feedback suggests that the sport community strongly supports the initiative, defined by strict parameters and supported by a lean administrative structure.

#### **Strong Need but no Duplication**

An overwhelming 97% of survey respondents supported, to varying degrees, the creation of an ombuds program for sport. They endorsed an office with a far-reaching mandate but with a clear scope of work that does not interfere or overlap with existing programs and resources, such as grievance, dispute resolution or appeal processes. Respondents emphasized the need to focus on fairness and ethical issues - such as conflict of interest, corruption, harassment, abuse and other threats to participant safety - and to complement existing services.

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### **Independence yet no New Structure**

Sport community consultations underlined the importance of independence, but at a reasonable cost. Respondents discouraged the creation of yet another new entity within the sport system, insisting instead that the program be closely affiliated with an existing organization. To ensure independence, it was suggested that any personnel working in the Ombuds Office should be selected by, and report to, an entity apart from the “host” organization’s staff or board members.

### **Government Funding but no Government Oversight**

Respondents identified the federal government as the most favoured source of funding, followed by provincial/territorial governments, although there was decidedly less support for government oversight (i.e., appointments, reporting, etc.). Respondents further suggested that broader sources of funding would be necessary if the ombuds program were to provide its services at all levels of the sport system.

### **Confidentiality with Powers to Investigate and Report Publicly**

Respondents emphasized that if program users are to feel safe in coming forward, then the ombuds program needed to be confidential. While the ability of the office to publicly report its findings and recommendations was identified as a strong deterrent to unethical conduct, respondents also noted that some reports could be redacted or shared with a limited audience so that issues could be addressed while still protecting the identity of both victims and whistleblowers.

### **Wider Reach, Limited Mandate**

Respondents suggested that an ombuds program operating at all levels of the sport system would be fraught with challenges related to scope, jurisdiction and resourcing. While most felt that all members of the sport community would benefit from such a program, they also made it clear that it would be incumbent on all constituent levels of the sport sector to buy into the program’s concept and contribute funding to access a larger array of services. Nonetheless, there was strong support for services in education, resource materials and referrals to be widely accessible to all, as long as they do not duplicate current offerings.

## **4. ENVIRONMENTAL SCAN**

### **What does the Sport Ombuds Environment look like? <sup>6</sup>**

An ombuds program is generally concerned with the fair treatment of members of its constituency by the bureaucracy or agency it oversees. An ombuds is generally characterized as being an independent, impartial, and neutral advocate, neither for the agency nor the complainant, but rather for the principles of administrative fairness.

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<sup>6</sup> Frank Fowlie, **Prospects for a Sports Ombudsman for Canada**, Laws 2017, 6(1), 5. (reproduced in part with the author’s permission)

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### Types

Ombuds programs generally fall into one of three categories: *classical or legislative*, *organizational* or *executive*. The table below summarizes the main similarities and differences.

Type	Appointed By	Mandate	Powers
<i>Classical or Legislative</i>	Federal, provincial/territorial or municipal legislative body	Ensures fair treatment of the population by the government administration. Receives complaints from external users of agency services.	Can investigate complaints, produce reports and make recommendations.
<i>Organizational</i>	Created by a specific agency or organization	Receives internal complaints (i.e., from staff, patients, students) about perceived fairness within an organization.	Informal resource only. May conduct informal investigations, produce reports and/or make recommendations.
<i>Executive</i>		Internal dispute resolution resource for complaints generated by an external community. Examples include banks, insurance companies, newspapers, and consumer protection agencies.	Can investigate complaints, produce reports and make recommendations.

### Advantages

One of the advantages of an ombuds program is confidentiality. This feature makes it an appealing alternative to the court system and arbitration. The results of an ombuds process are not shared, except with consent. This fact may encourage individuals who are concerned about others becoming aware of embarrassing circumstances, or concerned about facing retaliation, to come forward.



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Secondly, an ombuds office does not charge fees for the services it offers, which is particularly appealing for athletes and small or local sporting organizations. Typically, the office is funded by the government, agency, or organization as part of its operating budget. The absence of service fees also helps to promote the ombuds' independence, neutrality and impartiality.

Thirdly, the ombuds program is not a legal process; rather, it is an informal, private and confidential approach that does not require legal representation. Lastly, the ombuds approach can be quite nimble, with an ability to respond to pressing issues on short notice.

### Canadian Examples

In Canada, there are many existing ombuds-type programs, although none meets all of the specific needs identified during the Committee's consultative phase. Significant gaps continue to exist across different jurisdictions, sports and user-groups.

At the high performance level, the COC, the CPC, and Commonwealth Games Canada all have volunteer ombuds or athlete advocates as part of a Team Canada mission staff. Generally speaking, this individual provides guidance and counsel for members of Team Canada with the aim of quickly and effectively resolving disputes and issues. If necessary, and with the Team member's consent, the ombuds or athlete advocate may arrange for representation at any hearing, dispute resolution and/or appeal process during the Games.

For its employees, the Coaching Association of Canada (CAC) has created a *Third Party Ombudsman* as an alternative to first contacting the Chief Operating Officer, Chief Executive Officer or the Chair of the Board. The CAC has contracted with a neutral outside entity that is available to employees and Board members who would prefer to seek advice and counsel outside the organization. To ensure independence is maintained, the *Third Party Ombudsman* has no other official duties or roles on behalf of the Association. The *Third Party Ombudsman* reports directly to the Chair of the Board of Directors and has no responsibility to report any matters to CAC senior management. The role of the *Third Party Ombudsman* is to listen to an employee or Board Member's complaint and, with consent, to attempt to resolve it by seeking an equitable solution between the complainant and the CAC. The *Third Party Ombudsman* works cooperatively with both sides but has no authority to finalize a settlement.

The Sport Solution, a program of AthletesCAN situated at Western University Law School, provides information, guidance and assistance for national team athletes on legal issues such as team selection, carding, harassment and anti-doping. It is a valued resource for national team athletes and other community members, but does not fulfill the mandate of an ombuds, nor does it address the gaps and concerns raised during the consultation phase.

Provincially, Sport Manitoba offers a Support Line that provides guidance and counsel to people dealing with suspected incidents of abuse, harassment, bullying and hazing. They do not conduct investigations, but do provide individuals with guidance on their options, such as

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contacting police or the league/association president. The Support Line also offers contact information for further support or counselling along with written resources for organizations to help them respond to these kinds of situations.

In Saskatchewan, a program called RespectEd provides free advice and support for anyone experiencing abuse and harassment or other such unethical behaviour in sport. In partnership with the Saskatchewan Red Cross, the program also offers education and training opportunities for groups and organizations.

In Quebec, Sport'Aide provides support and resources for all participants in the Quebec sport system (athletes, parents, coaches, sport organizations, officials and volunteers) who may be victims or witnesses of abusive behaviour, or who may have questions about these kinds of issues in a sporting context.

While the Centre is not an ombuds program, its Resolution Facilitation process offers some similar features:

*“Resolution facilitation is an assistance process that allows the parties involved in a dispute to communicate more effectively and work towards an agreement. The resolution facilitator is a neutral “process manager,” whose role is to try to help the parties to better communicate with each other and to resolve their dispute through an amicable settlement. Should such a settlement not be possible, the resolution facilitator helps the parties understand the other options offered by the [Centre] to settle the dispute.”<sup>7</sup>*

Municipally, athletes, coaches, administrators, parents, sporting organizations, spectators, and others involved in sport in certain communities have access to an ombuds program (e.g., Winnipeg, Toronto, Montreal). These offices can deal with recreational leagues as well as sports held in municipal facilities and funded by local government. This may also include sports conducted at the school level where there is a municipal school board that falls under the jurisdiction of the municipal ombuds office. Similarly, most Canadian colleges and universities have an ombuds office that may offer services to students, athletes, coaches, staff and faculty.

Provincial and territorial ombuds offices consider the activities of all ministries including those responsible for sport. The types of issues that may be examined by the provincial/territorial ombuds include provincial/territorial carding programs and team selection. The 2015 Ontario Ombudsman’s Annual Report<sup>8</sup>, for example, indicates there were five complaints concerning the Minister responsible for the 2015 Pan and Parapan American Games and 25 concerning the Ministry of Tourism, Culture and Sport.

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<sup>7</sup> Sport Dispute Resolution Centre of Canada, **Resolution Facilitation**.

<sup>8</sup> Ombudsman Ontario, **Annual Report 2014-15**.

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The Sport Law and Strategy Group (SLSG) offers ombudsman-type services, described as “a mechanism by which employees, volunteers, or directors can confidentially submit concerns about the operation of the organization or the conduct of its leadership.” Among the services offered for a fee to Canadian sport organizations, the SLSG will: address internal complaints about administration malpractice, employee or volunteer harassment, and other instances of perceived wrongdoing; conduct a review of internal policies; investigate specific complaints and prepare detailed reports; and provide a comprehensive whistleblower policy.

### International Examples

There is a wide variety of ombuds programs around the world. For example, corruption and match fixing in the Indian Premier League led to the creation of the first ombuds office by the Board of Control for Cricket in India.<sup>9</sup> In the US, the National Collegiate Athletic Association started looking at an ombuds program following the 2012 Penn State Football sexual molestation crisis.<sup>10 11</sup>

USA Fencing has an Ombudsman for its refereeing commission as does the United Kingdom’s Football Association. The Austrian Fair Play Code Ombudsman serves as a first point of contact for athletes and others in sport who have information on past or planned match fixing activities.

The United States Olympic Committee (USOC) Athlete Ombudsman was created in 1999 as a product of federal law<sup>12</sup> and is widely considered a “best in class” example of a sport ombuds program. The purpose of the USOC Athlete Ombudsman is *“to serve athletes by offering cost-free, confidential and independent advice regarding opportunities and rights to participate in protected competition, and the various policies and procedures associated with participating in sport at an elite level.”*<sup>13</sup> The USOC Athlete Ombudsman deals with a wide range of issues including: athlete rights, team selection, anti-doping, access to services, athlete agreements, codes of conduct, direct athlete support agreements, commercial terms, citizenship and other eligibility concerns, athletes’ voice in the governance of sport, informally resolving disputes with coaches, administrators or other athletes, and pursuing a formal grievance.<sup>14</sup>

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<sup>9</sup> The Times of India, **BCCI Begins Operation Clean Up, Appoints Ombudsman.**

<sup>10</sup> Huffington Post, **It’s Time for an NCAA Ombudsman.**

<sup>11</sup> NCAA, **Report of the NCAA Executive Committee April 24, 2014.**

<sup>12</sup> John Ruger, **From the Trenches: The Landscape of Sports Dispute Resolution and Athlete Representation.**

<sup>13</sup> Team USA, **Athlete Ombudsman.**

<sup>14</sup> *ibid*

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## 5. SCOPE

Although sharing some similar characteristics, the proposed ombuds program does not completely fall within the typical definition. The recommended approach is a creative and progressive hybrid service that aims to meet the unique needs of the Canadian sport system.

Key pillars governing the program's creation and implementation would include independence, impartiality, neutrality, confidentiality and accessibility. It must also be seen by potential users as objective and non-judgemental, as a credible conduit, and as a safe space for a fair and respectful opportunity to be heard.

The survey and stakeholder consultations revealed a clear desire for a far-reaching mandate; however, the nature of our federal system makes this challenging, certainly over the short term. The reality is that a federal ombuds program would not have jurisdictional authority to reach into organizations regulated by provincial/territorial or municipal entities. While preference would be given to designing a joint federal - provincial/territorial sport ombuds program, achieving such a broad, multi-party agreement may prove difficult and time-consuming, which may delay the implementation of the proposed services.

For these reasons, the Committee has recommended a hybrid model that would see the ombuds offering a two-tiered approach, with distinct services dependent on the origin and nature of the complaint. Under the proposed model, requests for assistance would flow into the Ombuds Office through a formal triage process. The Committee envisions the use of an online technology application to conduct the triage of incoming requests; telephone screening would serve as a secondary mechanism.

The goal would be to ensure that, as much as possible, program resources are allocated to "Tier 1" complaints. These services would be available to athletes, coaches and support personnel involved in national team programs as well as staff and volunteers of NSOs, multisport service organizations (MSOs), and Canadian Sport Institutes and Centres (CSICs). The Ombuds Office would have the authority to exercise the powers of a classical ombuds, with full authority over organizations funded by Sport Canada. Where appropriate, the office would: 1) refer users to an existing service, where applicable; 2) exercise its authority to compel these organizations to cooperate in investigations, produce documents, and submit to interviews; and, 3) make recommendations on specific complaints.

"Tier 2" offerings would apply when complaints originate from a provincial/territorial, municipal, or club level. The Ombuds Office would act more as an information, advice and referral service, modelled after the Centre's resource centre where users can make extensive use of online resource materials, outreach and education services, as well as occasional telephone support. Lacking many of the powers available for Tier 1 cases, the ombuds program could still provide information, links to other dispute resolution services and resources, and other forms of

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assistance. Such assistance may include general guidance on how to formulate a complaint, directing the complainant to the appropriate body, and follow up to verify that the complaint is being addressed. Akin to the role of an executive ombudsman, use of these “softer” powers would also allow the Ombuds Office to flag certain concerns in its annual report, especially where systemic issues and/or disturbing trends are identified around specific sports, types of complaints, or locales.

What the Committee describes as a “two-tier” service would recognize the jurisdictional limitations on a federal ombuds while providing valuable services to a broad swath of the Canadian sport community. Thinking longer term, this approach could also pave the way for expansion through an additional fee-for-service option and/or formal agreements with some or all of the provinces and territories (and potentially internationally). The latter option recognizes the clear alignment between the proposed mandate for the Ombuds Office and certain priorities recently identified by Federal/Provincial-Territorial (F/P-T) Ministers responsible for sport, physical activity and recreation,<sup>15</sup> namely:

1. Support introduction to sport programming with a focus on traditionally under-represented and/or marginalized populations; and
2. Introduce initiatives to improve safety and anti-harassment in all contexts of sport participation.

### Service Offerings

In general terms, some of the subject issues that could be addressed by the ombuds program include:

- Ethical conduct;
- Disrespectful conduct;
- Corruption;
- Governance;
- Conflict of interest;
- Harassment and abuse;
- Discrimination;
- Health and safety concerns;
- Other barriers to full participation in sport;
- Incompetent administration; and
- Access to information.

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<sup>15</sup> In **Federal-Provincial/Territorial Priorities for Collaborative Action 2012-17**. Federal-Provincial/Territorial (F-P/T) Ministers responsible for sport, physical activity and recreation are scheduled to meet this July prior to the Winnipeg 2017 Canada Summer Games to review the 2012-2017 list and to agree on priorities for the next quadrennial.

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Other, broader areas that could fall within the office's purview include:

- Fair administrative policies/process;
- Disciplinary matters; and
- Violence.

Where appropriate, depending on the nature of the issues, the Ombuds Office may also refer the complainant to the relevant law enforcement authorities. Evidence suggests that for each criminal offence reported to the police in Canada, ten go unreported.<sup>16</sup> The Ombuds Office would not be expected to solve alleged criminal acts, but would be required to report cases affecting child protection or where there is a threat of imminent harm. The ombuds may have a role to play in encouraging otherwise reluctant complainants to come forward and file a complaint with law enforcement, and may also provide guidance or counselling to ensure the individual understands the process. Perhaps just as importantly, the Ombuds Office can also use its annual report to raise the issue of unreported criminal complaints.

It is proposed that the Ombuds Office use a wide array of offerings and techniques appropriate to each particular situation, including, but not limited to:

- Listening in an impartial and supportive manner;
- Facilitating discussions;
- Referrals to appropriate resources and authorities;
- Negotiating;
- Issuing evaluation and feedback;
- Providing information and offering advice on next steps;
- Conducting investigations and publishing reports on findings when necessary;
- Providing outreach and education;
- Collecting performance data and client feedback that can be leveraged for system improvements; and
- Offering recommendations supporting due process and procedural fairness.

The potential user community is quite extensive and includes:

- NSOs/MSOs/CSICs, their board members, managers, employees and volunteers;
- Athletes, coaches, managers and officials;
- Board members, employees and volunteers of sport clubs;

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<sup>16</sup> The Fraser Institute, **The Cost of Crime in Canada: 2014 Report**, published October 16, 2014.

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- Provincial/territorial sport organizations, their board members, managers, employees, volunteers; and
- The broader sport community.

### Defining the Mandate

As noted earlier in this section, the Committee favours the classical ombudsman model at the national level, with an important complementary role through education, guidance, and reporting in response to requests from the provincial/territorial, municipal or club levels. As a designated neutral or impartial dispute resolution practitioner, the ombuds' main functions would be to: informally resolve conflicts and other issues; investigate complaints and make recommendations; monitor trends and emerging issues; and, manage the Ombuds Office.

The consultation phase identified several specific issues and areas of unfairness and complaint that are not consistently addressed by existing entities in the sport system and that should be considered for the sport ombuds program:

- For participants, there is a risk of discrimination, harassment and inequitable treatment created by both systemic barriers and individual circumstances that victimize under-represented groups such as people with disabilities, Indigenous peoples, the LGBTQI2S<sup>17</sup> community and new Canadians. There are cases of harassment and abuse by people in positions of authority, whether they be elected volunteers (e.g., officials, board members), paid supervisors (e.g., managers and directors), or where there may be a conflict of interest (e.g., parents of athletes). Moreover, there have been a number of criminal cases in recent years involving the abuse of athletes by coaches, as well as other serious instances that would have warranted the intervention of an ombuds, ideally in a pre-emptive manner.
- Stakeholders have flagged other unique challenges for women in the sport system that would benefit from the intervention of an ombuds office; for example: pregnancy equated to an injury for carded athletes; preferential access for boys' teams to community sport facilities; and inconsistent municipal subsidies for boys' and girls' sports.
- Emerging issues such as LGBTQI2S phobia in sport, as well as the participation of transgender athletes, demand consistent and thoughtful responses across the sport system - situations that would benefit from the guidance of an ombuds.
- There is a pressing need for the curation of relevant, sport-specific resources and best practice policies from across the Canadian sport system and from leading international sources. There is a general sense that valuable materials exist, but are not available

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<sup>17</sup> Lesbian, Gay, Bi-Sexual, Transgender, Questioning, Intersex, or Two-Spirited.

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through an established, well-promoted single point of contact - a gap that could be filled through an ombuds office.

- At the community level, there is likely a higher risk of conflict of interest issues where the parents of registered athletes typically occupy positions of influence and decision making within sport clubs (e.g., coaches, administrators, board members). Focus group participants shared the view that because of these widespread perceptions, parents and athletes sometimes do not trust that their complaints will receive a fair hearing.
- Other issues that could form part of the mandate for an ombuds program include the absence of proper administrative policies, poor governance practices, team selection, bullying, concerns about playing time, and abusive language and behaviour. Early involvement by a qualified ombuds in these types of issues could prevent them from growing into much larger disputes requiring more formal resolution (and the consequent delays and costs).

An ombuds office could play a constructive role in aligning dispute resolution from the club level through the provincial/territorial and national associations. Eventually, it is hoped an effective ombuds program would also have a deterrent effect at all levels of the sport system, capturing systemic issues that are not easily addressed through existing mechanisms.

### **Client Experience**

For the sport Ombuds Office to be successful, it must be user-friendly, which means a nimble, responsive, and accessible customer service model. As confirmed through the stakeholder consultations, the program must complement, not duplicate, those services already available to the sport community, such as the internal appeal mechanisms of NSOs and MSOs, the dispute resolution services of the Centre, the Support Line of Sport Manitoba, RespectEd in Saskatchewan or Sport'Aide in Quebec. Where appropriate and relevant, the ombuds program would redirect enquiries to these existing resources as part of its referral services.

Essential service elements would include both online and person-to-person (telephone) options. To encourage early adoption and positive word-of-mouth referrals, interactions with the Ombuds Office must be simple and straightforward, with timely and valued responses to user enquiries. The ombuds would use discretion to determine when it would be appropriate for face-to-face meetings, or to conduct site visits.

There must be an efficient triage system in place to ensure that all requests are answered within a prescribed timeframe, even if that is simply an acknowledgement that the enquiry has been received. The office would act as an intake triage with the objective of ensuring that no enquiry goes unanswered. Given the Canada-wide reach of the service, the Ombuds Office staff must possess the ability to communicate effectively and equally well in both official languages.



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The proposed sport Ombuds Office would strive to fill current gaps in the system while enhancing those services presently available. Initiating the office as an “interim program” would mean quicker implementation while also permitting parallel work to finalize the details around future legislative amendments. It would also be an effective way to ensure ongoing evaluation, feedback and adaptation.

## 6. STRUCTURE AND GOVERNANCE

### Options Analysis

When considering where an ombuds office might be situated and how it might be governed, the Committee studied a number of options, including, but not limited to:

1. As a public office within Sport Canada;
2. As a separate agency;
3. Within the Canadian Centre for Ethics in Sport (CCES) structure; or
4. Within the Centre’s structure.

Pursuing option 1 would mean the creation of a public servant position which, in turn, would require a political and administrative process that would undoubtedly incur delays. Furthermore, housing the Ombuds Office within Sport Canada could risk perceptions of conflict of interest given the funding and oversight roles that the federal agency plays with most national and multisport services organizations.

While independence would be a clear advantage of creating a new agency (option 2), going this route would likely generate significantly higher costs than housing the Ombuds Office within an existing structure.

When considering the CCES option (option 3), some of the stakeholders involved in the consultation process voiced a concern that the “prosecutorial” role of the CCES in doping-related matters could give rise to a perceived lack of independence.

The Committee recommends housing the Ombuds Office within the Centre. First, the Ombuds Office is a logical expansion of the Centre’s mandate as defined by the *Physical Activity and Sport Act (S.C. 2003, c.2)* with regards to dispute resolution and education. Second, the program must demonstrate both a real and perceived independence from Sport Canada, which is already the case for the Centre. Thirdly, the Centre’s current legislative mandate is broad enough to accommodate the launch of an ombuds office without legislative amendment<sup>18</sup>. Finally, this approach would avoid the need to incorporate a new body with a new set of bylaws.

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<sup>18</sup> Article 11(1): “In carrying out its mission, the Centre has the capacity and powers of a natural person, including the power to [...] (d) do any other things that are conducive to the fulfilment of its mission [...]

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### Ensuring Independence

To properly fulfill its mandate, the Ombuds Office must be seen to be independent, impartial, and neutral, offering complete confidentiality to anyone seeking support. Its independence from the sport system must be safe-guarded by a reporting mechanism that minimizes influence or potential manipulation from any active member of the Canadian sport community.

With those parameters in mind, the proposed governance model allows for the following:

- Full authority to administer the office in the most efficient manner, with its own dedicated operational budget;
- The physical, logistical and administrative needs of the Ombuds Office would be met by the Centre (i.e., office space, admin services, accounting, information technology, etc.); and
- The ombuds would report to an independent advisory committee of no more than six people:
  - A majority of the advisory committee members would be independent of the Canadian sport system, meaning they have not been affiliated with any of the following organizations for the previous two-year period: Sport Canada, the Centre, the CCES or other MSOs, an NSO, a CSIC, an international federation, or a P/TSO, as an athlete, coach, employee, board member, or volunteer.
  - A minority (maximum of two) would be representatives from the sport community, with one being a former<sup>19</sup> national team athlete and one being a member of the Centre's Board. The Chair of the Centre's Board and the CEO of the Centre would sit as *ex officio* members.
  - The advisory committee member designated by the Centre's Board of Directors would act as chairperson.

The advisory committee members would serve four-year terms. Beyond ensuring the effective operations of the Ombuds Office, the advisory committee would make recommendations to the Centre and Sport Canada on the resources necessary to deliver on its mandate. An outline of the proposed terms of reference for the advisory committee can be found at Appendix C.

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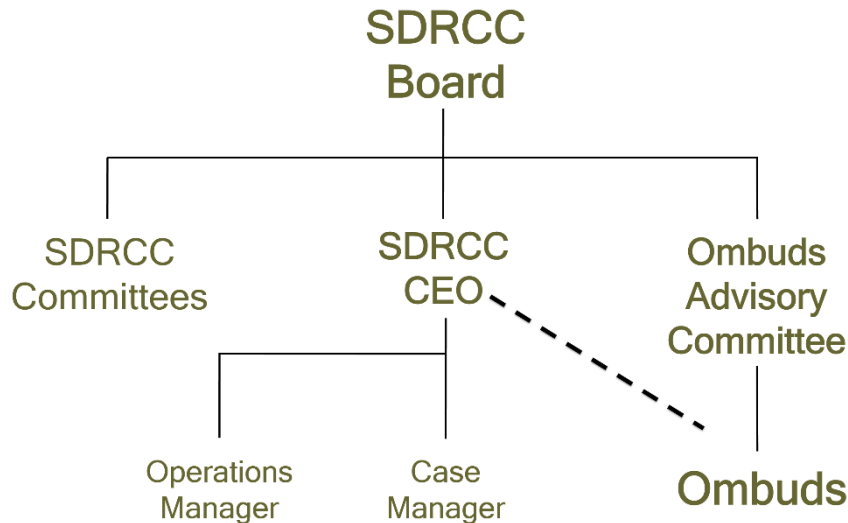
<sup>19</sup> "Former" to be defined in consultation with AthletesCAN, based on the number of years since retirement as an athlete.

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### Ombuds Organizational Chart



#### **The Centre and Ombuds Office Activities**

Implementing the proposed structure would make it necessary to clearly define the administrative roles between the Centre and the Ombuds Office. Notwithstanding the close working relationship required on an administrative level, including financial oversight by the CEO of the Centre and routinely sharing information on trends and best practices, there would be no information sharing on specific cases without the express consent of the parties involved.

Furthermore, the Centre would in no way be involved with any matter before the ombuds unless it were the subject of a complaint or it had been asked by the Ombuds Office for material in support of an investigation. The Centre and the Ombuds Office would share information only to avoid duplication and to ensure that matters brought before either service were addressed within the proper jurisdiction.

#### **Staffing**

It is recommended that the Ombuds Office consist of a single, full-time Ombuds appointed by the advisory committee. Initially, the Ombuds would be the primary investigator of all complaints. Once the office is established and its needs fully assessed, the Ombuds could make recommendations to the Minister and the Centre on the number of staff members required to properly fulfill its mandate. It is further recommended that the Ombuds be given sole authority to hire consultants and staff, as required, within the limits of the allocated budget.

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For subsequent years, the following structure is contemplated, subject to the volume of work and available budget:

- An Ombuds (permanent staff);
- A Deputy Ombuds (permanent staff - possibly located in a different region); and,
- A roster of contracted investigators.

### Stakeholder Engagement

The Ombuds Office would interact with the Canadian sport system in several ways, including, but not limited to:

1. A website offering information of interest to potential users such as an overview of its mandate and services, the toll-free support line, as well as reports and publications;
2. An online case intake system to allow the Ombuds Office to conduct its business as a virtual environment. The system would enable complaints to be directed promptly to the appropriate external resource or, where applicable, to be prioritized for follow up and investigation by the Ombuds Office; and
3. An Annual Report, as well as case specific reports, some of which would be shared only with the individuals and organizations involved, while others could be made public.

### Performance Measurement

The performance of the Ombuds Office would be evaluated regularly for its relevance, management, program delivery, and cost effectiveness around the following factors:

- increased understanding of its role within the sport community;
- success rate in resolving complaints;
- sound management of resources; and
- formal and informal feedback from service users.

### Predicting Case Volumes

Stakeholder feedback suggested that the establishment of an ombuds office could trigger a deluge of unresolved complaints, which may not be a reliable predictor of future workload. It is recommended that the Ombuds Office consider establishing a specific timeframe outside of which unresolved complaints would not be reviewed; the office would, however, make every effort to provide guidance and relevant resource materials to assist the complainant in these cases. Close monitoring would be necessary to identify fluctuations in the number of cases brought forward and to determine what factors may influence medium and longer term trends, including the Office's own promotion and awareness efforts.

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## 7. IMPLEMENTATION

There are a number of possible courses of action available to the Minister of Sport and Persons with Disabilities to create an ombuds program for sport in Canada:

1. An interim program under the Centre until a permanent service is created;
2. An Amendment to the *Physical Activity and Sport Act* (the “Act”) to create the permanent service;
3. As an alternative to option #2, a new regulation under Section 36 of the *Act*, or
4. An Order in Council (OIC) pursuant to paragraph 127.1(1)(c) of the *Public Service Employment Act*.

There are two key factors distinguishing the various options:

1. How quickly and easily an ombuds office could be created: options 1 and 4 are likely the most expedient. The scope of the *Act* is broad enough to establish an interim program and there is precedent for the use of an Order in Council to create the Veterans’ Ombudsman.
2. Whether it would be funded as a member of the Public Service, as an employee of the Centre, or through an alternative model. The *Act* provides the legislative authority to pursue options 1 to 3, with option 2 offering the greatest assurance of longevity and funding, and option 1 offering the least.

A sport ombuds program established by an OIC through option 4 would be a public servant subject to Public Service standards for classification and remuneration. This may attract more highly qualified candidates but would also require consultations with the Public Service Commission of Canada to determine whether or not it is possible to have a Public Servant appointed to work under the auspices of the Centre. Using a regulation as a chartering document under option 3 may also allow the Minister to define whether or not the Ombuds is a public servant.

The Committee recommends a two-stage implementation: over the short term, through an interim program offered under the auspices of the Centre, followed by a permanent ombuds program created through amendments to the *Act*.

The Committee further recommends establishing the interim program as quickly as possible, even while deliberations take place around a possible amendment to the *Act*. Moreover, it is recommended that the hiring process reflect the presumption that the individual named to lead the interim office would remain in the post once the permanent office has been established. Beyond the advantages of having continuity through the two phases, it is the Committee’s view that such an approach is likely to attract a greater number of well-qualified candidates and allow the program to start without the need to wait for legislative amendment.

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While extensive legislative changes would not be necessary to add a third arm to the Centre's mandate, enshrining the ombuds program in law would underline the importance of such an entity to Canadian sport and provide credibility and authority to the role. The *Act* mandates the Centre to pursue the fair, equitable, transparent and timely resolution of disputes in sport by offering a national alternative dispute resolution service as well as expertise and assistance in alternative dispute resolution. It does not restrict the Centre from expanding its operations in delivering on its statutory mandate. Should the additional funding be made available, the Committee recommends that the Centre establish an interim program based on the features outlined in Section 6: *Structure and Governance*.

As another essential element of the interim program, the Centre would be obliged to develop and implement a targeted communications strategy to keep the sport community informed and engaged at all stages of program development and execution. It should be noted that during the interim phase (prior to legislative amendments), absent a directive from Sport Canada, the ombuds would lack the ability to compel NSOs and others to participate in an investigation. However, the Committee does not see this as a major impediment during the interim phase as the ombuds would still have the ability to publish a report to Sport Canada and/or the Minister, detailing that organization's lack of cooperation in the face of a compelling request. It is expected that such an approach would be sufficient, at least during the interim phase.

## 8. FUNDING

### Cost Analysis

The Committee is preparing a separate submission with a four-year budget estimate and recommendations on a funding model that involves Sport Canada and other potential contributors.

In preparing the budget submission, and in the absence of a suitable point of comparison elsewhere, the Committee is relying heavily on the experience of the USOC Athlete Ombudsman Office. The comparison takes into consideration key differences between the two programs such as the population served, the range and scope of services, as well as existing processes and resources in Canada.

Below is a short overview of the USOC Athlete Ombudsman Office with comparisons to the situation in Canada:

- **Fully funded by the Olympic Committee:** The USOC's role is substantially different from the Canadian Olympic Committee and closer to that of Sport Canada. In the United States, the Olympic Committee is the primary funder to all recognized national sport governing bodies. It also funds the Athlete Ombudsman Office. The proposed Canadian ombuds program model, in addition to federal funding, could also be partially funded by

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sport organizations or other levels of government, although the Committee recognizes there is unlikely to be much appetite among national sport organizations to contribute funds to such a program given current financial pressures.

- **Housed within the USOC Offices:** At first, the program was located in a separate facility, but fully funded by the USOC. After a few years, it became evident that providing space to the Athlete Ombudsman Office within the USOC building was more practical and efficient. The current Athlete Ombudsman and Associate Athlete Ombudsman work out of offices at the USOC headquarters in Colorado Springs. The proposed Canadian model would have the advantage of allowing the independent Ombuds Office to be housed within an established neutral body (the Centre) with an accountability framework that sits at arm's length from the Centre's structure. As a single person office, the incumbent would be able to work from a home office, which mitigates any relocation and demonstrates independence from day-to-day activities of the Centre.
- **Legal Representation:** Sport arbitrations in the United States are conducted by the American Arbitration Association (AAA) on a fee-for-service basis. Approximately 20% of the USOC Athlete Ombudsman Office budget is allocated to a fund to support its mission, in particular for outside services for athletes. This fund is occasionally used to support cases before the AAA (paying for lawyers or arbitration fees), cases before the Court of Arbitration for Sport, or for outside legal advice where appropriate. The proposed Canadian model would not require this element of funding because the Centre is already funded by Sport Canada to offer arbitration services at the national level at no cost to the parties; moreover, parties to arbitration, mediation and resolution facilitation procedures of the Centre can also benefit from access to *pro bono* legal representation.
- **One-person Operation:** The USOC Athlete Ombudsman operated the office alone for the first ten years, before hiring a part-time assistant which evolved into a full-time role two years later. Occasionally, the Ombudsman would seek clerical support from the USOC Legal Department. The Canadian proposal is a single ombuds with office space, IT infrastructure and administrative support from the Centre. When necessary and appropriate, and in consultation with the Centre's CEO, the Ombuds could also seek occasional clerical assistance from Centre's staff.
- **Remuneration:** The USOC Athlete Ombudsman's remuneration was comparable to that of the associate general counsel of the USOC. In a Canadian context, the comparison would have to be made with in-house counsel in Canadian multisport organizations or comparable national not-for-profit organizations outside of sport.
- **Working Conditions:** From its inception, the USOC Athlete Ombudsman position required full-time attention. The Ombudsman conducted most of the investigative work and, in certain cases, additional expertise was acquired through the outsourcing budget. The Committee suggests that the same conditions would apply to the proposed Canadian model.

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- **Travel:** It is expected that the Ombuds would require a travel budget to regularly engage and educate key stakeholders in the sport system and, as required, to conduct investigative work.

### Funding Options

The Committee recommends that the funding of the ombuds program come from diversified sources. For example, a proposed split could see approximately 70% of the funding from governments and 30% from multisport organizations.

Federal Government: As confirmed through an extensive consultation process, sport community stakeholders view Sport Canada as the logical and most appropriate funding source for a sport ombuds program. The level of funding should be sufficient to cover remuneration, maintain an office, and support a defined menu of services to members of all funded NSOs, MSOs and CSICs. It is further recommended that other federal grant programs be thoroughly investigated to diversify the sources of revenue.

Multisport Services Organizations: The COC, for example, has expressed its support for the ombuds program and a willingness to contribute funds, provided that Sport Canada and other sport organizations are willing to do the same. The Committee recommends that funding from MSOs, such as the COC or CPC, be earmarked for education and referral programming to facilitate responses to Tier 2 requests; in this way, federal government funding can be focused on Tier 1 cases involving national-level complainants. This type of separation also removes some risk of a perception of bias on the part of the ombuds in handling Tier 1 cases which may involve some of these organizations. The Centre is prepared to support the ombuds program by providing in-kind services such as office space, IT services, and various administrative functions.

Provincial & Territorial Governments: Realistically, provincial and territorial funding is a longer term objective that would see a subsequent expansion of the ombuds program to encompass provincial/territorial jurisdictions. It is further recommended that accessibility to Tier 1 services by sport participants at the provincial/territorial level should be contingent on a province or territory's financial contribution over-and-above a pre-defined minimum.

The Private Sector: Given the longstanding challenges of attracting private sector funding for Canadian amateur sport, it is highly doubtful that corporate sponsorship or donations are a viable option for the proposed ombuds program. The initiative is unlikely to generate the kind of visibility to be of interest to sponsors or private investors. Moreover, as is the case for the Centre already, private sector funding may undermine the office's independence.





## 9. SUMMARY OF RECOMMENDATIONS

### A. An ombuds program for Canadian sport would fill an existing gap and meet the needs of a broad section of the sporting community.

As a designated neutral or impartial dispute resolution practitioner, the ombuds' main functions would be to: informally resolve conflicts and other issues; investigate complaints and make recommendations; monitor trends and emerging issues; and, manage the office. The program must complement, not duplicate, those services already available to the sport community.

### B. The program should be a hybrid model offering a two-tiered approach with distinct services dependent on the origin and nature of the complaint.

Tier 1 services would be available to athletes, coaches and support personnel involved in national team programs as well as staff and volunteers of NSOs, MSOs, and CSICs. For this part of the community, the Ombuds Office would have the authority to exercise the powers of a classical ombuds, with full authority over organizations funded by Sport Canada.

Where appropriate, the office would: 1) refer users to an existing service; 2) exercise its authority to compel these organizations to cooperate in investigations, produce documents, and submit to interviews; and, 3) make recommendations on specific complaints.

Tier 2 offerings would apply when complaints originate from a provincial/territorial, municipal, or club level. The Ombuds Office would act more as an information, advice and referral service, modelled after the Centre's resource centre where users can make extensive use of online materials, outreach and education services, as well as occasional telephone support.

### C. The Ombuds Office should be housed within the Centre.

The rationale for this recommendation is as follows:

- It is a logical expansion of the Centre's mandate as defined by the *Physical Activity and Sport Act* (S.C. 2003, c.2) with regards to dispute resolution and education;
- The program must demonstrate both a real and perceived independence from Sport Canada and the CCES (doping violations), which is already the case for the Centre;
- The Centre's current legislative mandate is broad enough to accommodate the launch of an Ombuds Office without legislative amendment; and

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- This approach would avoid the need to incorporate a new body, with a new set of bylaws, and separate governance processes.

### **D. The governance model should feature the following core attributes:**

- Full authority to administer the office in the most efficient manner, with its own dedicated operational budget;
- The physical, logistical and administrative needs to be met by the Centre; and
- Reporting to an independent advisory committee of no more than six people (for further details see Section 6: *Structure and Governance*).

### **E. The office should consist of a single, full-time Ombuds appointed by the advisory committee.**

Initially, the Ombuds would be the primary investigator of all complaints. Once the office is established and its needs fully assessed, the Ombuds could make recommendations to the Minister and the Centre on the number of staff members required to properly fulfill its mandate. It is further recommended that the Ombuds be given sole authority to hire consultants and staff, as required, within the limits of the allocated budget.

### **F. The Ombuds Office should be implemented in two stages: over the short term, through an interim program offered under the auspices of the Centre, followed by a permanent ombuds program created through amendments to the *Physical Activity and Sport Act*.**

The Committee further recommends establishing the interim program as quickly as possible, even while deliberations take place around a possible amendment to the *Act*.

### **G. Funding should come from diversified sources based on a proposed split where approximately 70% comes from governments and 30% from multisport organizations.**

Any funding from MSOs, such as the COC or CPC, should be earmarked for education and referral programming to facilitate responses to Tier 2 requests; in this way, federal government funding can be focused on Tier 1 cases involving national-level complainants. This model allows the funding of the Ombuds Office's Tier 1 services to be independent from the MSO contributions, hence maintaining the program's independence from the sport system.

Accessibility to Tier 1 services by sport participants at the provincial/territorial level should be contingent on a province or territory's financial contribution over-and-above a pre-defined minimum.

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## 10. CONCLUSION

While the details around a made-in-Canada sport ombuds program have yet to be finalized, there is widespread agreement that such a service is long overdue. Members of the *ad hoc* Committee are hopeful that this report will serve as a catalyst for serious deliberation and eventual decision making.

Committee members would like to express their appreciation for the valuable contributions of many stakeholders and interested parties across the Canadian sport system. This report is a direct reflection of the sophisticated and thoughtful insights received from across the country and throughout the sport community. The sustained interest in this issue and the undisputed desire to address longstanding gaps should serve as a strong foundation for action going forward.

The Centre also appreciates Sport Canada's continued interest in this initiative as well as the encouragement from the Canadian Olympic Committee. The Centre remains committed to seeing the concept of a sport ombuds program become a reality in Canada.

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## APPENDIX A

### *Ad hoc* Committee Members

Chairman:

**David de Vlieger**, Chairman of the Board of the Centre

Members:

**Sylvie Bernier**, Olympian (diving), 2008 Olympic Chef de mission (Team Canada)

**Michael Bruni**, former Chairman of Hockey Canada, Board member of the Centre

**Jocelyn East**, Senior Policy Officer and Researcher (Ethics in Sport), Sport Canada

**Frank Fowlie**, former Board member of the Centre, professional ombudsman, 2000 Olympic Chef de mission (Independent Olympic Athletes)

**Peter Lawless**, Vice-President of the COC, Paralympic Team Ombudsman

**Karin Lofstrom**, former Executive Director of CAAWS

**John Ruger**, Olympian (biathlon), former USOC Athlete Ombudsman

**Anthony Wright**, Olympian (field hockey), Board member of the Centre

Ex officio:

**Marie-Claude Asselin**, Chief Executive Officer of the Centre

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## APPENDIX B

### Executive Summary of the 2016 Ombuds Survey

#### Profile of Survey Respondents

Total number of respondents: 271.

Those who checked only one identifier:

- 50 staff (84% at the provincial/territorial or national level);
- 23 board members (95% at the provincial/territorial or national level).

Of those involved in several roles, there were many whose secondary role(s) were solely in community sports (as a coach, parent or official). The majority of them were staff members of a sport organization (50%) or volunteer board members (15%) at a higher level in the sport system.

The largest groups represented among respondents were:

- Community level coaches (34%);
- Community level parents (29%);
- Community level board members (28%);
- Community level athletes (23%);
- Staff members of sport organizations at the provincial/territorial level (21%).

#### Prior Knowledge of Respondent

More than 75% of the respondents knew that an ombuds program:

- Acts as a neutral;
- Is independent.

Fewer than half knew that an ombuds program does not charge a fee.

#### Support for a Sport Ombuds Program in Canada

62% were favorable to an ombuds program while 35% were uncertain.

3% were against and this is what they had to say about it:

- This is fraught with problems and should not be pursued.
- Of course an ombudsman is paid.
- Organizations should be responsible for incorporating mechanisms within their organization to ensure that the elements of an ombuds program are available.
- Perhaps better to create an ombuds program specific to each sport, created by and stewarded by NSOs.

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*Note: From this question on, the total number of respondents is 263.*

### Types of Services to Offer

More than 75% of respondents supported the ombuds program:

- Managing complaints;
- Resolving disputes;
- Publicly reporting unethical behavior.

The referral service received support only from 43% of the respondents.

### Type of Issues or Disputes to Handle

More than 75% of respondents believed the ombuds program needs to address:

- Ethical conduct or corruption;
- Conflicts of interest;
- Harassment and abuse;
- Discrimination (in any form).

More than 50% of the respondents also identified the following areas of possible intervention:

- Fair administration policies;
- Disciplinary matters;
- Sport governance;
- Violence.

The least supported areas were financial in nature:

- Scholarships (13%);
- Sponsorships (15%);
- Funding (23%).

### Sectors of Sport Where to Intervene

There was support for the ombuds program to operate:

- At the NSO level (88%) and MSO level (83%);
- At Canada Games (80%) and international multisport events (77%).

Less respondents agreed to the ombuds programme operating at all levels of the sport system.

### Reporting / Accountability

72% of respondents supported a completely independent ombuds program.

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Other schemes regarded favorably were:

- Personnel selected and appointed by an independent board (64%);
- A department of the Sport Dispute Resolution Centre of Canada (57%);
- Overseen by the Board of the Sport Dispute Resolution Centre of Canada (48%).

Models involving government oversight (federal act, federal minister of sport, or provincial/territorial governments) were the ones receiving the less support.

### Funding Sources

Federal government was the most favoured source of funding (85%), followed by funding from provincial/territorial governments (62%).

Other funding schemes received mitigated support (27% or less).

### Ombuds Qualifications

Overall data did not show any common thread as to which qualifications listed was more important to respondents.

When data was examined per groups, these differences were highlighted:

- Staff members and community board members preferred the “sports-related” qualifications to those “professional” qualifications;
- Board members ranked “experience as coach/official/sport administrator” higher than other groups;
- Athletes ranked “experience as athlete” 6 out of 7, just before “experience as coach/official/sport administrator”;
- Athletes attributed more importance to “advanced professional degree” than other groups.

The qualifications found most consistently in the top-4 were:

- Experience in sport dispute resolution;
- Experience in the Canadian sport system;
- Accreditation or certification as dispute resolution professional.

“Other qualifications” (open-ended) included the following characteristics (but not in large volume):

- Bilingualism;
- Independence;
- Credibility;
- Volunteer experience;
- Knowledge of governance and law;
- Communication skills.



## APPENDIX C

### Terms of Reference - Ombuds Advisory Committee

#### **I PURPOSE**

The purpose of the Ombuds Advisory Committee (the “Committee”) is to act at an arm’s length from the Ombuds Office to ensure that the operations of the office are carried out efficiently, fairly, and effectively, while maintaining independence, impartiality, neutrality, and confidentiality, and to make recommendations to the Sport Dispute Resolution Centre of Canada (the “Centre”) and Sport Canada with respect to the resources necessary for the Ombuds Office to carry out assigned activities and investigations.

#### **II AUTHORITY**

The Committee is created by the Board of Directors of the Centre (the “Board”), with operational reporting responsibility to the Board.

#### **III COMPOSITION AND OPERATIONS**

A The Committee shall consist of no more than six (6) persons:

- the majority of the Committee members (no more than 4) shall be independent members who represent the community at large; they shall not have not been part of Sport Canada, the Centre, a Sport Canada funded multisport services organization or national sport organization, a Canadian sport institute or centre, an international federation, or a provincial sport organization, as an athlete, coach, employee, board member, or volunteer for a period of two years.
- a minority of the Committee members (2) shall be representatives from the sporting community; at least one shall be a current or former athlete to be designated by AthletesCAN and one a Board member of the Centre.

B The member designated by the Centre’s Board of Director shall act as Chairperson of the Committee.

C The Chairman of the Board and the Chief Executive Officer of the Centre shall be *ex officio* members of the Committee.

D Committee members shall be appointed for 4-year terms, renewable for an additional 4 years only once; half of the inaugural Committee members shall be appointed for a 2-year term, renewable for a 4-year term only once.

E Members of the Committee shall together reflect Canadian diversity (gender, linguistic and geographical) and possess knowledge about the role and functioning of an ombuds operation, such as ombuds, lawyers, mediators, members of the judiciary, etc.

F A majority of voting members shall constitute the Committee’s quorum.





- G The Committee shall meet as often as necessary, which meetings may be conducted by teleconference, email or other appropriate means.

#### ***IV DUTIES AND RESPONSIBILITIES***

The Committee shall, under the authority delegated to it by the Board, be responsible for:

1. Ensuring the office of the Ombuds Office:
  - a) Is staffed by a knowledgeable incumbent;
  - b) Has adequate human resources to be able to respond to the volume of complaints;
  - c) Has adequate financial resources to conduct investigations, outreach and training, peer ombuds activities, and reporting;
  - d) Conducts its business within the allocated budget, in full compliance with funding obligations and conditions, and prioritizes accordingly.
2. Approving Ombuds Office's policies and procedures which are compliant with ombuds industry practice standards including, but not limited to, a results-based management and accountability framework necessary to exercise and stand accountable for its assigned duties.
3. Acting as an advisory group to the ombuds to provide advice on outreach, ombuds process development and issues in the sporting community.
4. Acting as a conduit for advice from the Centre's Board of Directors and for feedback from Sport Canada or the Minister's office.
5. Acting as an advisory voice from the ombuds to Centre's Board of Directors with respect to financial levels, ombuds remuneration, ombuds independence, trends, and other issues identified by the ombuds.
6. Ensuring that the ombuds is free from interference from the Centre's Board of Directors and staff.
7. Approving and supervising the production of the annual report of the Ombuds Office;
8. Advising the Centre's Board of Directors on the engagement, retention and remuneration of the ombuds.
9. Responding to queries or concerns with respect to the Ombuds Office operations, as directed to it by Sport Canada, the Board, a committee of the Centre, or the Chairperson of the Board.
10. In receipt of a complaint against the ombuds, appointing an independent investigator to review the complaint and to formulate recommendations to the Centre's Board of Directors.

# CLOSING THE LOOP:

## PROPOSAL FOR A SPORT OMBUDS IN CANADA

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## APPENDIX D

### References and Resources

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