

IN THE NEUTRAL ZONE

News and Events of the Sport Dispute Resolution Centre of Canada



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The Future of Athlete Agreements in Canada (Phase II): Redefining the Relationship

by Rachel Islam & James Sifakis, Sport Solution Program Managers



Athlete Agreements are legal documents – contracts – that define and govern the relationship between athletes and National Sport Organi-

zations (NSOs). They are the cornerstone of a healthy, mutually beneficial relationship between athletes and NSOs. They outline the responsibilities of both parties and guide athletes and NSOs through any conflicts. But, despite their importance, they are often treated as administrative afterthoughts, leaving both the athletes and the NSOs vulnerable.

In 2015, AthletesCAN began a three-phase project to revolutionize Athlete Agreements. In phase one, AthletesCAN and Sport Solution undertook a review of the challenges existing in modern Athlete Agreements and published their findings as *The Future of Athlete Agreements in Canada*. The project found that Athlete Agreements were full of ambiguities that could pose a risk to NSOs, and, because athletes have to sign Agreements to receive funding, they could create a power imbalance disadvantaging the athlete.

“Athlete Agreements [...] are the cornerstone of a healthy, mutually beneficial relationship between athletes and NSOs.”

NSOs and Athlete Agreements

NSOs are caught in a perpetual balancing act. They have to produce world class athletic performances while managing the regulations of their international federation, the IOC, IPC, COC, CPC, and their relationship with Canadian funding partners and sponsors. But that’s not all. While managing all of those external stakehold-

ers, NSOs have to meet the needs of their most valuable assets – their athletes.

The question is, how can they reconcile these sometimes competing needs? The answer so far has been to incorporate policies and clauses that define strict limitations in order to ensure compliance with the rules, while staying broad enough to remain sufficiently flexible to adapt to various situations. An in-depth analysis found that the Athlete Agree-

ment is primarily used as a risk management tool, and, consequently is onerous for athletes and potentially creates more risk.

Athlete Agreements constitute an unconventional type of contract and therefore merit thoughtful attention and consideration if NSOs wish to mitigate risk from legal action. Of course, the legality and

(continued on page 2)

In this issue:

SDRCC Roster Member Profile: Julie Duranceau	3
SDRCC News and Announcements	4
Notable Dates	4



The Future of Athlete Agreements in Canada (Phase II) *(continued)*

(continued from page 1)

non-negotiable portions of Athlete Agreements are inherent, but the idea of a partnership between NSOs and their athletes, rather than an imposed list of obligations from one party to the other, must prevail for Canadian sport to evolve.

Currently, some NSO members of a working group comprised of athletes, NSOs, MSOs and Sport Canada, have offered to pilot the project and adopt the final standardized Agreement recommendations. Their enthusiasm for the project is exciting for those who understand the importance of a mutually beneficial, respectful, and fair relationship and can hopefully serve as an example to other NSOs to review and ameliorate their respective Agreements.

Athletes and Athlete Agreements

Athletes are often unaware of what their Athlete Agreement requires of them. They are usually excited to have made “*the team*” or feel pressure to sign the Agreement without taking the time to digest their contractual rights and obligations. However, even if an athlete reads their Athlete Agreement, the language tends to be legalistic and confusing.

Many athletes surveyed by AthletesCAN have said they have trouble comprehending the contracts and what’s required of them. This can lead to unnecessary breaches and appeals. As noted in *The Future of Athlete Agreements in Canada*, the other major problem with Athlete Agreements is the NSO’s accountability. While the repercussions for an athlete in breach of contract are well documented and explained - they can either lose their funding, in part or in whole, or be excluded from the national team altogether - there are no similar sanctions for NSOs. For example, if an athlete fails to report to a training camp without reason, the NSO is within their rights to discipline that athlete. However, if accommodations are not made for that same training camp according to the prescribed timelines, athletes have no real recourse. The common means for resolving NSO-athlete issues, i.e. appeals, are not well-suited to such breaches.

But athletes, like NSOs, would rather avoid appeals. Appeals are an important part of a fair and transparent dispute resolution process, but they take up time, resources and energy that could best be used elsewhere. Appeals are

also retroactive and often come too late to rectify the consequence of the breach.

If the athletes can understand the realities in which NSOs operate, and if NSOs value how critical transparency and a fair process are to athletic performance many unwanted situations can be avoided altogether. To that end, each section of the standardized Athlete Agreement will be annotated with clear language that will alleviate misunderstandings and ambiguity.

What’s next?

The conversation around *The Future of Athlete Agreements in Canada* has grown. It has become abundantly clear that both NSOs and athletes recognize that change is necessary. The second phase, spearheaded by the working group, will produce a standardized, customizable athlete agreement template that will mitigate legal risks for NSOs and address the power imbalance between athletes and NSOs. Once the template is finished, phase two’s educational component will introduce the agreements to sport community through a comprehensive educational plan.

A working copy of a standardized Athlete Agreement, created and vetted by NSOs, athletes and Sport Canada and that can be fine-tuned to suit the differing needs of each NSO, will be ready in the coming months.

The educational element of phase two, in which the NSOs and athletes are walked through the Agreement, will begin shortly. The ultimate goal is for NSOs to adopt the standardized agreement and, while tailoring it to fit their needs, include their athletes in the process. The result will be that athletes and NSOs will have an independent, annotated document written with mutual obligations in mind to ensure that the Agreement is fair and transparent.

Sport Solution, is in the midst of synthesizing its findings with the input from the NSO, athlete and MSO members of the working group, to create a comprehensive document.

Phase three, unrolling in 2017, will focus on the implementation of the Agreement across the Canadian sporting landscape. A change we believe will mitigate risk for NSOs and athletes and strengthen the bonds of trust and collaboration that are the bedrock of any winning partnership. ■

“Athletes [...] feel pressure to sign the Agreement without taking the time to digest their contractual rights and obligations.”



SDRCC Roster Member Profile: Learning More About our Arbitrators and Mediators

They come from every region of Canada and have extensive experience in alternate dispute resolution and sports-related issues, but how much do we really know about them? The SDRCC has an impressive list of 42 mediators and arbitrators and we will slowly be introducing you to some of them through our regular installments of “SDRCC Roster Member Profiles”. In this edition we would like to present, **Julie Duranceau, Mediator from Longueuil Quebec.**



What led you to a career in ADR?

I was very interested in sport law early in my legal career and looked to develop that niche. I attended conferences and sought to meet with the key players in this field. Ultimately, this led me to the SDRCC, which was then known as

ADRsportRED. I began with the organization as coordinator of the Resource and Documentation Centre. When the position of in-house Resolution Facilitator was created, I took on that role. It allowed me to be trained as a mediator and to launch my ADR career. I have since worked exclusively in this field because it's such a perfect fit with my legal career ambitions.

Specialization/Area of Expertise:

In recent years, my practice focussed on disputes in the area of labour relations, with a specialisation in workplace harassment.

As a mediator with the SDRCC, I...

...try to help participants identify what really matters to them, seek the underlying reason why they filed an arbitration or mediation request or why they answered to a request in a certain manner. It's only by looking beyond the obvious claim or expected reaction, and identifying the true

interests that it becomes possible to open this negotiation spectrum and respond to the wishes of all parties involved. The very actions of identifying and naming the interests bring parties to consider an infinite number of solutions and to see the possibility of resolving a matter that initially seemed to lead to a dead-end.

Favourite Sport(s):

I train almost daily by alternating sports based on the weather or the season: yoga, running, cycling, swimming, hiking and cross-country skiing are my favourite activities.

Dispute Prevention Tip for Athletes and Federations:

I believe that information and accountability are key to preventing disputes in the sport community, especially where athletes are concerned. Given their role, athletes often fall into a position of dependency on members of the organization that supports them. When doing their best to eliminate distractions so athletes can focus on developing their full athletic potential, these members sometimes forget that understanding and complying with rules is just as important as performance in an athlete's career. A responsible and informed athlete is definitely one step ahead of the game. ■

In our next edition, look for the profile
of an SDRCC arbitrator.

New Arbitrator and Mediator Tool Kit

Several resources, developed over time by the Centre and by its expert mediators and arbitrators, were recently collated into an online “tool kit”. These reference documents, mediation or arbitration-specific resources, forms and templates are now available to assist roster members in their sports-related dispute resolution work. ■



Follow us on LinkedIn Stay current on the publication of new decisions while keeping up with the Sport Dispute Resolution Centre of Canada's activities!



UPCOMING

Call for Applications for Arbitrators and Mediators

The Centre will issue a call for applications this Fall, for appointments to begin in the summer of 2017. For information or to receive the call for applications by email, please write to us at applications@crdsc-sdrcc.ca. ■

2017 Public Conference Announcement

The Centre will host its 2017 Mediator and Arbitrator Conference at Hôtel Le Concorde in Quebec City, Quebec, from May 4-6, 2017. The **public sessions** will take place on Friday, May 5th and registration information will be available on the Centre's website in November. Following a successful first edition in Vancouver in 2016, the **student pairing program** will be offered again to students registered for the 2017 conference and wishing to enhance the professional networking impact of their participation. ■

New Workshop Offered!

Sport gambling and match-fixing are now considered bigger threats to modern sport than doping, to the point where the International Olympic Committee and Interpol have partnered in the fight against corruption in sport. The Centre, as part of its education efforts for the prevention of sports-related disputes, now offers an eye-opening workshop to those who think Canadian sport is not vulnerable to unethical manipulation of sport competitions and other forms of corruption in sport. First developed and delivered in collaboration with Coaches Association of Ontario and the Canadian Sport Institute - Ontario in early 2016, the new workshop brings participants to recognize the signs, resist insidious influences and report unacceptable behaviors.

To book this workshop or any other SDRCC workshop, visit: <http://www.crdsc-sdrcc.ca/eng/book-a-workshop>. ■

Updated version of the Annotated Code

The annotated version of the Canadian Sport Dispute Resolution Code was updated and recently published on the Centre's website. New annotations arising from the Centre's most recent jurisprudence have been added to this annotated Code for the benefit of parties, legal representatives as well as arbitrators and mediators. ■

Notable Dates:

- **October 5-6, 2016:** SDRCC workshops for the Edmonton Sport Council and Alberta Sport Connection (Edmonton, AB);
- **October 13, 2016:** SDRCC workshop for the Canadian Olympic Committee (Montreal, QC);
- **October 21-23, 2016:** SDRCC kiosk at 2016 AthletesCAN Forum (Mississauga, ON);
- **November 3-5, 2016:** SDRCC kiosk at the 2016 Petro-Canada Sport Leadership Conference (Vancouver, BC);
- **November 9, 2016:** SDRCC presentation for the Bar of Montreal (Montreal, QC);
- **November 26, 2016:** SDRCC workshop for Sport New Brunswick (Fredericton, NB);
- **December 2-4, 2016:** SDRCC workshop at the 2016 CanoeKayak Canada Summit (Ottawa, ON);
- **January 24-26, 2017:** SDRCC kiosk at the 2017 Sport for Life Canadian Summit (Gatineau, QC). ■



1080 Beaver Hall, Suite 950, Montréal, Québec, H2Z 1S8

Tél: (514) 866-1245 Fax: (514) 866-1246
1-866-733-7767 1-877-733-1246

www.sdrcc.ca

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