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February 2010

## Arbitration at Olympic Speed by Richard W. Pound, Arbitrator



The Olympic Village will open on 8 February 2010 as athletes, coaches and team officials begin to gather in Vancouver and in the satellite villages in and around Whistler. This begins the Olympic period, which will end at the Closing Ceremony of the Games on 28 February.

Part of the services rendered to the Olympic participants comes from the Court of Arbitration for Sport (CAS), the arbitral body established in 1984 by the International Olympic Committee (IOC), now governed by the International Council of Arbitration for Sport (ICAS), a multi-layered organization consisting of representatives from the IOC, international sports federations (IFs), national Olympic committees (NOCs), Olympic athletes and international experts familiar with arbitration.

Considerable experience has been developed in the specialized field of arbitration in sports related arbitration over the years and an international list of arbitrators established to hear the cases brought before CAS. By agreement among the Olympic parties, disputes are brought before CAS, including those arising from decisions taken by the IOC, IFs and NOCs, and CAS decisions (subject to very limited recourse to the Swiss Federal Tribunal on jurisdictional or procedural issues) are final and binding on the parties. The process before CAS generally reflects what parties would expect in normal arbitration and there are few procedural peculiarities worthy of comment.

On occasions such as the Olympic Games, however, the pace of normal arbitration is not sufficient. Decisions on disputed matters during the Games must be made on an urgent basis, particularly if competitions in progress may be affected by the outcome of a dispute.

This exigency has led to the creation of a special subset of arbitration of disputes within CAS, namely the *ad hoc* Division of CAS. CAS selects a small number of arbitrators with special expertise and brings them to the host city of the Games for the entire Olympic period, where they are available to decide on any disputes resulting from or which may affect the Games. There will be 8 arbitrators available, from 2 - 28 February 2010: Yves Fortier\* (CAN), Henri Alvarez (CAN), Olivier Carrard (SUI), Liu Chi (CHN), Michael Geistlinger (AUT), Ulrich Haas (GER), David Grace (AUS) and José Juan Pinto (ESP). The coordinator of the CAS activities in Vancouver is Canadian Tricia Smith\*, a member of ICAS and vice-president of the Canadian Olympic Committee.

*"The ad hoc Division operates under the motto 'Fair, Fast and Free'."*

The *ad hoc* Division operates under the motto "Fair, Fast and Free." Fairness is guaranteed by ensuring that rights to due process are respected and that the decision will be made by arbitrators completely independent from the parties. Fast results from the rendering of a decision within 24 hours of filing the appeal. The proceedings are entirely free for the parties: there is no filing fee, costs are not filing fee,

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*\* Yves Fortier and Tricia Smith are both arbitrators with the SDRCC.*

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## Ombudsperson for Team Canada at the 2010 Winter Paralympic Games by Jeff Palamar



I am excited once again to have the opportunity to be part of Team Canada. My experience in Beijing in 2008 helped define for me what the Ombudsperson really does.

I help solve problems.

These can be classification appeals or challenges, field of play disputes or protests, harassment allegations, interaction conflicts, doping issues, or anywhere things are not running as they should.

I am here to help in anyway I reasonably can, to make the Games better for individual members of Team Canada, and Team Canada as a whole. Some examples of my work in Beijing may help explain;

- ◆ I acted as a sounding board in some cases of conflict where people were not getting along, and needed a safe way of dealing with frustrations, to allow a return to a focus on achieving the best possible performance;
- ◆ I was the strategic advisor and advocate in some field of play protests launched by other countries against us, to ensure our athletes' interests were protected;
- ◆ I dealt with a frustrated athlete who had perceived a violation of the rules by a competing athlete, but after consulting with his coach had decided not to pursue any formal protest. The athlete later had second thoughts, and we had to solve the problem not just by pursuing the protest, but also by resolving the damage to the relationship with the coach;
- ◆ I served as the calming influence and advocate for an athlete who "failed" a classification test (his vision was too good on that particular day) and so in the days before the Games were to start, found himself potentially outside looking in and not able to compete;
- ◆ I had trouble shooting sessions with the head of one of the sports, who had concerns about changing policy by the Organizing Committee, which led to further discussion about internal politics and different philosophies of the various coaches in the sport;
- ◆ I helped calm a troubled athlete who was worried about some potential conflict with a roommate, and unsure how to address these worries without embarrassing anyone or causing a scene;

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- ◆ I worked with the Friends and Family Program to help supporters of Team Canada, who had traveled so very far, find their way to accommodation, food, competition, special events and tours; and
- ◆ I helped move equipment, track down missing luggage, and fulfilled whatever "other duties as assigned" came up.

Interestingly, the one comment I heard repeatedly throughout the Games from athletes, other team members and family alike, was that everyone was really happy I was there, as they felt assured that if something happened, I could offer the necessary help. This assurance and confidence gave those participating the opportunity to focus on their jobs, and not worry, and so perform at a higher level than otherwise likely would have been the case. Athletes and team members could work on performance. Family and other supporters could enjoy the experience. Everyone had the comfort of knowing that whatever happened, their interests and needs would be taken care of by me and Team Canada.

I am approaching the Vancouver/Whistler Games in a similar way. I am there to make things better. I am there to do whatever I can to allow others to succeed and have the best possible experience, whatever that means to them. This particularly will be important in the pressure of the "Home Games". IF a drug test went awry, IF an athlete was being overly stressed by having 50 family and friends right there and watching, IF a coach/athlete situation were boiling

over because of a conflict over training time vs. "experiencing the Games" time, etc., I'll be there to help.

In part it's about comfort, in part it's about ensuring that people know their rights and are reassured that their interests and rights will be protected as need be. Overall, it's about working as part of Team Canada and providing the necessary support and help wherever and whenever it is needed.

It's a 24-7 job, that means I will be available and accessible all the time. I'll be dividing my time between Whistler and Vancouver, in the Villages and at the competition sites and wherever else I am needed. I'm also available before the Games and would be delighted to talk to anyone who needs some help, has some questions, or simply wants to shoot the breeze.

I am very proud to be back, and part of the amazing group of Canadians who make up Team Canada. You really are the best of the best, and I'll do whatever I can to help you achieve your best in Vancouver and Whistler. ■

### On the Sidelines

- The SDRCC would like to welcome three new Board members: Frank Fowlie, John F. Reid, and Judith Ann Tutty.
- A new bilingual mediator, Roger Beaudry, joined the SDRCC roster of ADR professionals in December 2009.



## Ombudsperson for the 2010 Winter Olympic Games: Sports Law in Action

By Yann Bernard



During the Olympic Games, the athletes and their entourage must deliver the performances of their lives. Many elements could prevent them from performing to the best of their ability, however, and interpersonal conflicts within the team and unethical or even dishonest behaviour on the part of competitors are not the least of them.

For the past several years, the Canadian Olympic Committee (COC) has adopted a strategy that has proven to be successful in reducing the risk of such occurrences: integrating a lawyer and mediator within the team as ombudsman.

The COC has done me the great honour of entrusting me with this role among the Canadian contingent that will go to Vancouver for the 2010 Olympic Games. It's an exciting job for a lawyer who has devoted part of his life to sports and the ideal opportunity to place one's profession at the service of one's passion.

The ombudsman has both an internal and an external role to play within the Canadian team. Internally, he lives with the team in the Olympic village, participates in their daily lives, and helps resolve any internal disputes that may arise either among the delegation members or between them and the COC. In such cases, he may serve as mediator or advisor to ensure that the fairest and most appropriate decisions are made. The speed and efficiency demanded by the context of the Olympic Games, the short time frames involved, and the need to make decisions with a huge impact on the rights and aspirations of the athletes make this a critical, high-pressure job.

Externally, the ombudsman represents the Canadian contingent as spokesman or attorney before various authorities such as the Court of Arbitration for Sport (CAS) in disputes with external actors such as international federations or foreign delegations, whose interests may conflict with those of Canada.

Seen from this perspective, the ombudsman's role is to help ensure that Olympic rules and values are respected and that Canadians reap the full benefits of their performance without undue or unfair interference. In this context, the ombudsman is part of a larger team composed of coaches, delegation officials, and COC staff members whose aim is to ensure the athletes deliver their best possible performances.

What prepared me for this role was primarily my twenty-five years of fencing competition at the national and international levels and my fifteen years of practice in administrative, labour, and sports law.

In sports, I experienced the highs and lows of an athlete's life while representing Canada for many years on the World Cup circuit in the foil and then the épée. Four world championships, extensive traveling, and the many international tournaments in which I participated taught me about the life of an athlete, a team member, and a competitor. The psychological, behavioural, and social pressures that can lead to interpersonal or even legal problems must be understood if we are to prevent and resolve conflicts that can arise within a team as competitive and successful as the Canadian Olympic team. The many possible sources of stress and conflict can not all be anticipated and prevented, of course, but understanding how they can arise and the various ways people react to them is a basic prerequisite for the role of ombudsman.

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While no member of the Canadian Olympic management team wants to have to turn to a court or other authority to settle a dispute in which Canadians are involved, the team must be fully prepared for such a possibility so that no injustice that could prevent Canada or any of its athletes from claiming their rightful place is tolerated. It's up to the ombudsman to help ensure that the team is prepared to act as effectively and efficiently as possible to represent Canadian interests should there be a need for litigation during the Games. The procedures employed by the CAS (of which an ad hoc division will be established at the site) are similar to those of administrative tribunals before which

many Canadian labour and administrative law practitioners appear every day. My current professional practice has thus prepared me well for many of the challenges I will face in Vancouver.

The COC has wisely decided to involve the ombudsman in the daily lives of the athletes and their entourage at Vancouver's Olympic Village. As was the case when I held the same position at the 2007 Rio Pan American Games, this strategy helps build a relationship of trust between the ombudsman and those most likely to need his advice and assistance: the athletes, the coaches, and the delegation heads. The ombudsman must therefore be one of the easiest people in the village to locate and contact.

The direct impact of this presence, particularly among the athletes, allows the ombudsman to ensure that conflicts likely to interfere with the athletes' performance are quickly resolved.

It is vital that the athletes know exactly who the ombudsman is and how to find him and that they do not hesitate to communicate with me the moment a problem arises. Any other member of the support team may also serve as a communication channel in requesting the services of the ombudsman.

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costs are not awarded and all procedural costs are borne by ICAS. Parties are, however, responsible for their own costs.

Once a complete application is filed at the CAS office, the arbitration proceeds. Normally panels of three arbitrators will hear the appeal, but there may be cases of particular urgency in which a sole arbitrator, by exception, will be appointed.

Hearings are scheduled on very short notice and the parties, plus any (legally) interested third parties are summoned to the hearing, where they have the opportunity to present their positions and produce any witnesses or documents on which they wish to rely. In complex cases, the panel can order further steps to be taken before rendering a decision, such as specific expert evidence or a further hearing.

Any person accredited for the Games in Vancouver and any sport organization subject to the Olympic Charter which is present in Vancouver may refer a dispute to the *ad hoc* Division by filing a signed written application at the CAS office in Vancouver, located at the Renaissance Hotel on West Hastings Street. Standard applications for the purpose are available at the CAS office or can be downloaded from the CAS web site ([www.tas-cas.org](http://www.tas-cas.org)).

Applications must include a brief statement of the facts, the legal arguments raised and the relief sought. The decision being challenged, as well as any other relevant documents are to be attached to the application. All internal remedies of any organization must first have been exhausted before the dispute may be brought before the *ad hoc* Division. For example, if the applicable rules of an IF require that a decision must first be appealed to a Jury of Appeal, an aggrieved party may not short-circuit that step by appealing directly to the *ad hoc* Division.

Parties may be assisted by a lawyer or other representative of their choice. There will be volunteer lawyers available and the CAS office will have a list available to the parties.

The arbitration rules are those established for the Olympic Games and copies are available at the CAS office in Vancouver or on the CAS web site identified above. In cases of extreme urgency, the *ad hoc* Division may immediately issue and order for preliminary relief, such as an order staying the decision being challenged, until the panel rules on the application. Proceedings are conducted in English or French and parties may ask for the assistance of an interpreter at the hearing. Additional information on the process and requirements is available from the CAS office.

Decisions are final and binding as soon as they are communicated to the parties. The decisions, subject to certain exceptions, are not confidential and are released to the media in full text, together with a summary of the case.

CAS officials ensure that all delegations at the Games are aware of the availability of the *ad hoc* Division. The Secretary General of CAS attends the meeting of the *chefs de mission* immediately prior to the Games and distributes informational materials regarding the availability of the fast-track arbitration process.

The Olympic experience, especially for athletes, is strengthened by the knowledge that there is an independent arbitral process available for all parties, and which can respond in real-time to resolve disputes arising in the course of the most important and pressure-ridden of all sports competitions. ■

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It is a real honour for me to contribute to the success of Canadian athletes and thus continue my long commitment to amateur sports by exchanging my fencing gear for my law books.

Many Canadian lawyers practice their profession among athletes and members of the sports community in various capacities.

The arbitrators at the Sport Dispute Resolution Centre of Canada and those who appear before them are well-known examples. I am pleased to think that I will also be representing that community of lawyers when I participate in the Games.

See you in Vancouver! ■

## Upcoming Event

- **February 28, 2010:** Presentation at the Ontario Coaches Conference, Guelph, ON.



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