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## Equality in Sport? Inadequate Maternity Policies for Female Professional Athletes

By Annie Garrett, J.D. Candidate 2024 | Queen's University

*This article is a condensed version of the author's paper written in December 2023 for her "Introduction to International Sports Law" class at Queen's University. The full version, with all references, can be found on the SDRCC website.*

*The opinions expressed are those of the author. They do not necessarily correspond to the SDRCC position on any of the issues.*

Women's sport has evolved dramatically in the last 50 years. It is nearly unimaginable to think women were prohibited from running in the Boston Marathon before 1972, yet over 10,000 women finished the Boston Marathon in 2022.<sup>1</sup> With more women participating in sports, especially at the professional level, it is natural that we are beginning to observe athletes navigate pregnancy and their return to sport postpartum. For many female athletes in the past, becoming pregnant would likely mark the end of their professional careers.<sup>2</sup> Considering the window of peak performance for many female athletes overlaps with the window of fertility, allowing athletes to continue with their sport and be a mother has been life-changing.<sup>3</sup> Sport organizations would benefit from implementing maternity and return-to-sport postpartum policies to best serve the athletes and in turn, the sport organizations themselves.

### **Maternity Policies in Sport Organizations**

Many sport organizations currently include pregnancy as an "injury" in their regulations. This inaccurate description creates serious issues for women who may face a legitimate injury following their return to sport. For example, Hilary Stellingwerff, a Canadian two-time Olympian for middle-distance running, lost her financial support after she was injured post-pregnancy.<sup>17</sup> Since she had already used her "injury card" when she took time off during her pregnancy, she lost her card status and financial support because athletes could not obtain more than one injury card.

Stellingwerff brought this decision to arbitration and won a ruling that the Sport Canada policy of preventing female athletes who have been pregnant from subsequently obtaining a medical card is discriminatory.<sup>18</sup> The arbitrator for the Sport Dispute Resolution Centre of Canada found this policy treated pregnant female athletes adversely to male athletes based solely on their pregnancy. Sport Canada changed its policy under the Athlete Assistance Program (AAP) following this decision. They removed the term "injury card" and replaced it with "health card," which allows athletes to be nominated for health card status due to pregnancy, injury or illness more than once.<sup>19</sup> Stellingwerff continues to be vocal about further secure policies being needed, as carding through the AAP is only one part of professional athletes' financial support.<sup>20</sup>

### **Medical Clearance**

Women are often advised to return to activity as early as six weeks postpartum, despite undergoing significant physical, physiological and psychological changes.<sup>32</sup> Many professionals note that six weeks is an arbitrary time for recovery and medical clearance does not account for broader factors such as fatigue, breastfeeding, hormonal changes or reduced exercise tolerance that can all contribute to an increased increased risk of injury.<sup>33</sup> Further, the timeline for returning to training and competitive levels after operative delivery or cesarian section differs significantly compared with a vaginal delivery with no complications.<sup>34</sup> Therefore, each female athlete's postpartum experience will be different, requiring individualized considerations and accommodations.

### **Public Awareness and Advocacy**

Many female athletes have been active in promoting awareness of the need for better resources and protections

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for pregnant athletes. Alysia Montaño, an American Olympic medalist and six-time USA Outdoor track champion, is the founder of “&Mother”, an organization that focuses on removing systemic barriers to allow full participation and success for mothers in sports.<sup>41</sup> Among being an elite runner, Montaño gained significant publicity after she ran the 2014 USA National Championships while eight months pregnant. Her participation in the race placed a spotlight on pregnant athletes and sparked conversations about the capabilities of pregnant women that have since promoted a change in maternity policies. &Mother provides model sponsorship contract provisions for pregnancy and parental leave, in addition to offering support for athletes returning postpartum, including childcare services and lactation support.<sup>43</sup> Organizations such as &Mother help change maternity policies for athletes by promoting awareness and offering concrete examples of beneficial changes that can be implemented.

### **Recent Improvements**

A recent success for female professional athletes is the Women’s National Basketball Association’s (WNBA) 2020 Collective Bargaining Agreement (CBA). The 2020 CBA provides benefits for mothers at every stage, from planning and becoming pregnant to new mothers and returning to sport postpartum. Players receive full salary while on maternity leave and players who are unable to play due to their pregnancy will receive one hundred percent of their salary.<sup>44</sup>

The Ladies Professional Golf Association (LPGA) also introduced a new maternity policy in 2019. The policy allows players to freeze their status for up to two years to focus on their pregnancy and recovery.<sup>46</sup> The policy additionally allows players to choose when to stop competing in events while they are pregnant. Before this update, players were required to play in a specific number of events, or their status would suffer.<sup>47</sup> The LPGA further introduced free childcare services at each event, a landmark program for professional sports organizations. They support new mothers by having a

travelling childcare centre that provides services to athletes and staff on tour.<sup>48</sup> While these are beneficial changes for LPGA athletes, the maternity leave offered is unpaid, putting some women in difficult financial positions should they choose to take the leave.<sup>49</sup>

*“Sport organizations would benefit from implementing maternity and return-to-sport postpartum policies to best serve the athletes and in turn, the sport organizations themselves.”*

### **Further Recommendations**

The lack of evidence-based research surrounding female professional athletes and pregnancy is currently a barrier to developing maternity and return-to-sport policies. There is an urgent need to develop return-to-sport protocols that reflect the unique considerations athletes face during pregnancy and postpartum.<sup>56</sup> Coaches and healthcare providers have stated that general timelines for all athletes to follow concerning pregnancy and return-to-sport are unsuitable given the variance in each athlete’s pregnancy and postpartum experience.<sup>57</sup> A better policy is to use benchmarks and milestones as mere guidelines for athletes, coaches and healthcare providers to use.<sup>58</sup> Conducting specific research on pregnant athletes and their return-to-sport postpartum will assist in implementing the most supportive and productive maternity policies.

In connection with the demand for research, an increase in education surrounding professional female athletes and pregnancy should be a focus within sport organizations and the wider community to help stimulate change. Female professional athletes have continuously proven their ability to return to pre-pregnancy competition levels. While it may be surprising to some, recent studies have shown childbirth can have a positive impact on an athlete’s professional career.<sup>59</sup> The forced break may have physical and mental health benefits, and the shifting of priorities to focus on motherhood in addition to their sport has shown to alleviate stress on performance outcomes.<sup>60</sup> By shifting the narrative towards acceptance that professional athletes can become pregnant, give birth, and successfully return to elite sport, sports organizations will be more inclined to make maternity policies a priority. ■

To read the full version of this article, with references, click [HERE](#).



## SDRCC Roster Member Profiles: Learning More About Our Arbitrators and Mediators

They come from every region of Canada and beyond, 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 63 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 present **James Oakley, K.C.**, mediator/arbitrator from **St. John’s, Newfoundland and Labrador**.



### What led you to a career in ADR?

In my early litigation and labour law practice, I observed the benefit of settlement as an alternative to going to court. I became interested in serving as an ADR neutral in labour arbitration.

Following completion of an arbitration training course, I was placed on a roster used for arbitrator appointments by the

provincial Minister of Labour.

I was also selected for cases by mutual agreement of the parties, and listed in rosters in collective agreements. I also served as a part time vice-chairperson and chairperson of the Newfoundland and Labrador Labour Relations Board.

Although my initial focus in ADR was arbitration, I would often serve as mediator when the parties agreed to a mediation process. I completed mediation training and developed a practice as mediator. To enhance my ADR knowledge, I completed a Master of Laws Degree specializing in ADR, from Osgoode Hall Law School.

I have always believed in contributing to the profession, and I have developed and presented arbitration training courses and mentored arbitrators and mediators.

### Field of specialization/Area of expertise:

I provide services in the area of labour and employment ADR, in particular arbitration and mediation of grievance disputes between unions and employers. I have also assisted the parties in collective bargaining disputes by serving as an interest arbitrator, conciliation board chairperson or mediator to help settle the terms of the collective agreement.

My other areas of ADR work have included estate and lawyer/client fee disputes as Master of the Supreme Court, commercial, Indigenous land claims, human rights and sport disputes.

### As a member of the SDRCC roster, I...

...have enjoyed serving as mediator, arbitrator and med/arb neutral with the SDRCC.

As an arbitrator, it is important to provide a fair process so that everyone can be heard. The SDRCC has an extensive collection of jurisprudence available online, which is helpful to the parties when presenting their case, and facilitates a consistency of approach by arbitrators when writing awards. I believe the reasons in the award should clearly explain to the parties how the arbitrator reached the decision.

As a mediator, I attempt to listen carefully to ensure that I understand the objectives of each party. I believe that communication is a key part of the mediation process. My approach as a mediator of sport disputes is to encourage creative problem solving.

### Favourite sport(s):

My favourite sports include golf, running, squash and downhill skiing. I enjoy attending sports events, such as hockey and baseball.

### Dispute prevention tips for athletes:

I would encourage athletes to resolve conflicts early. It is important to be familiar with any rules or policies applicable to the dispute, such as a team selection policy, athlete contract or discipline procedure. Ask questions if you need clarification. Discuss the situation with someone you trust, and seek legal advice when appropriate.

Try to understand the point of view of the other persons involved in the dispute and look for a solution that will benefit everyone. Effective communication is essential, and includes careful listening and respectful conversations. ■

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



## New SDRCC Staff Members



**Trusha Dash** joins the SDRCC as Case Manager. She recently graduated with her Juris Doctor from the University of Manitoba. After interning with the SDRCC, she was able to see first-hand the value of ADR methods and the intersection of law and the Canadian sports system. She has a particular interest in human rights and international law and is committed to increasing access to justice. Trusha is a hands-on and sociable person, and she looks forward to joining the team and expanding her knowledge and contribution to the Canadian sport system.



**Rachel Leblanc-Bazinet** joins the SDRCC as Case Manager. An athlete on the national weightlifting team since 2016, Rachel participated in several major games including the 2018 and 2022 Commonwealth Games, the 2019 Pan-American Games and the 2020 (2021) Olympic Games. Then, from 2020 to 2024, she was involved on the Board of Directors of the Weightlifting Federation of Canada as an athlete representative, which helped her gain a better understanding of sports federation management. Rachel is now a retired athlete and ready to start a new chapter in her life at the SDRCC. ■



## Launch of the 2024-25 Abuse-Free Sport Webinar Series!

- **December 18, 2024 | Session 1** - Cultural Shift and Organizational Buy-in: Best Practices for Sport Organizations
- **January 15, 2025 | Session 2** - Preserving Relationships When Safe Sport Disputes Arise
- **March 5, 2025 | Session 3** - Abuse-Free Sport Policy Templates for Sport Organizations of all Levels

[REGISTER HERE!](#)

### Notable Dates:

- **January 7 & 14, 2025:** Virtual presentations to coaches from INS Québec – Advanced Coaching Diploma;
- **January 9 & 16, 2025:** Virtual presentations to coaches from CSI-Calgary – Advanced Coaching Diploma;
- **January 21–23, 2025:** Kiosk and panel at the Sport for Life Summit, Gatineau, QC;
- **Dates to be determined:** 2025 SDRCC Webinar Series – *stay tuned!*

### SAVE THE DATE!

February 24 – 25, 2025: Abuse-Free Sport Research Symposium in Winnipeg, MB;

April 24 – 26, 2025: SDRCC Mediator and Arbitrator Conference in Moncton, NB. ■



6400 Auteuil ave, Suite 245, Brossard, Quebec, J4Z 3P5  
Tel.: 514-866-1245 Toll Free Numbers: 1-866-733-7767  
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