

The Sport Dispute Resolution Centre of Canada: An Innovative Development in Canadian Amateur Sport

ANIK L. JODOUIN
University of Windsor

Sport law is a field of legal study and practice that has emerged in the last three decades and recently, the Canadian Government contributed to the innovative and interesting developments occurring within this field. On June 18, 2002, the House of Commons passed Bill C-12, an Act to Promote Physical Activity and Sport, and it received royal assent in March 2003 (Canadian Federal Government, 2003).¹ This bill represents an important step in the development of recreational and amateur sport in Canada. The Act has the general goal of making Canadian sport more ethical, fair, accessible and transparent. Also, it specifically addresses the issue of high performance amateur sport disputes. Section 4(1) of the Act, which outlines the Canadian Sport policy principles states the following, "[t]he Government of Canada's policy regarding sport is founded on the highest ethical standards and values, including. . .the fair, equitable, transparent and timely resolution of disputes in sport" (Canadian Federal Government, p.2). The Canadian sport community has realized that "[c]onflict itself is not the problem. Unresolved conflict is" (Slaikeu & Hasson, 1998, p.4). The Federal Government has taken steps to provide an effective remedy by implementing the Sport Dispute Resolution Centre of Canada (SDRCC).

The SDRCC was launched on April 1, 2004 and represents a novel service in Canada. Prior to Bill C-12, a few amateur sport dispute resolution mechanisms had been established in Canada, but there was no national or centralized system. A 1998 survey conducted for the Federal-Provincial-Territorial Sport Committee by the Centre for Sport and Law Inc. determined that, while there existed common needs across all jurisdictions of Canada in

1. Royal assent is the final step in the Canadian legislative process. royal assent is the procedure by which the representative of the Crown (the Governor General or one of his/her deputies) gives consent to the enactment of the bill. At this time, the bill becomes an Act of Parliament. Bill C-12 has been in force since March 2003 and has replaced its predecessor, the Fitness and Amateur Sport Act which was passed in 1961.

regard to sport dispute resolution, no "champion" had emerged to lead the efforts (Canadian Heritage, 2000a, p.5).

In light of its significance, the merits of the SDRCC will be analyzed through a two-step process. First, the history that preceded the Centre's proposal will be outlined by exploring the challenges within the Canadian amateur sport system and by outlining the resources that existed prior to the launch of the SDRCC to handle sport disputes. Secondly, the success of the project will be forecasted by investigating the alternative dispute resolution (ADR) concept, which represents the underlying concept of the Centre, and by comparing the Centre's structure and characteristics to Slaikeu and Hasson's (1998) dispute resolution model.

CURRENT CHALLENGES WITHIN THE CANADIAN AMATEUR SPORT SYSTEM

Conflict is an unavoidable part of life. When individuals operate in close proximity and interact on a daily basis, opinions, values, personalities and philosophies will eventually collide. This inevitable interaction between people is visible in all spheres of life, and sport is no exception. Sport conflicts occur at the professional level as well as at the amateur level. Collective bargaining agreements have facilitated conflict resolution in the professional setting but amateur sport is still struggling to find an effective dispute resolution system. The following scenarios outline the potential for a dispute and the value of a resolution system.

- After celebrating a successful World Championship at a restaurant, two swimmers from Canada's National Swim Team returned to the hotel by taxi and were delayed in traffic. They missed a 9:30 p.m. curfew by five minutes. As a consequence, the two athletes were suspended from the team and sent home the next day. They were neither given any justification for the seriousness of the punishment nor an opportunity to explain themselves. The swimmers did not challenge the suspension because they were not aware of the possible courses of action (Mew & Lyons, 1999).

In this case, a dispute resolution system would provide a source of education from which the athletes would know their rights to natural justice as well as an avenue to pursue recourse. Natural justice requires a decision maker to act in a fair manner. It has been described as "what a reasonable man would regard as fair procedure in particular circumstances" (*Ridge v. Baldwin*, 1963 at 71).

In the next scenario, the lack of a centralized dispute resolution mechanism and the reliance on the judicial system resulted in an unsatisfactory outcome for all parties involved.

- A provincial rugby team imported a coach from England after receiving verbal authorization from the Provincial union and confirmation of his eligibility. However, the Board of Directors of the union later decided that the proposed coach did not have the required certification since the union had a rule requiring all coaches at the Provincial top division to have formal national coaching certification. This decision was made after the deadline passed for the team to have an eligible coach and as a result, the team was downgraded to a lower division. The rugby team unsuccessfully sought a court injunction against the Provincial rugby union. The judge stated the team should redress the situation internally and therefore, a special general meeting was called. As a result of this meeting, the team was reinstated to the senior league by the member clubs of the Provincial union. However, due to the lack of a timely decision, the team had to play a season in the lower division. The president of the Provincial rugby union also resigned due to these events (Mew & Lyons, 1999).

As these real life examples illustrate and as Haslip (2001) indicates, "conflict in sport is 'inevitable,' regardless of how well the sporting enterprise is conducted" (p.248). The growing issue of sport conflicts within the Canadian elite amateur sport system can be traced to the 1970s. Since that time, elite sport has become increasingly commercialized and as the business of sport emerged, the level of incentive for athletes changed. In addition to the commercialization of sport, the commodification of the 1984 Los Angeles Olympics, which grossed a then record profit of \$225 million, solidified the concept of sport as a means to an end (Amateur Athletic Foundation of Los Angeles, n.d.). High performance amateur sport has now become a vehicle to achieving fame and fortune. For example, participation in international events can now represent important economic benefits; in 1989, losing the opportunity to compete at the Olympics was judicially valued at \$20,000 Canadian (*Gilmour v. Laird*, 1989). Due to this recognition, athletes began to increasingly challenge adverse decisions and they "began to assert their rights based on the law" (McLaren, 1998, p.2). However, the problem is not simply due to a large number of disputes. The unsuitability of the traditional judicial system in resolving amateur sport disputes contributes to the undesirable situation.

When faced with a conflict, athletes must confront the officials of the Canadian sport administration system and are bound by ongoing contractual relationships defined by rules, agreements and customs (Barnes, 1996). Most sport organizations are private and voluntary, and rely on traditional judicial system as their means to settle disputes. Sport disputes land in the courts when a conflict has not been solved internally or when the rules of natural justice are not respected. The sport disputes reaching litigation are usually related to disciplinary powers, team selection, eligibility rules, financial entitlement, doping, and harassment issues (Barnes, 1996); and in most situations, the outcome is unsatisfactory since it is not based on the merits of the case but rather determined by a number of obstacles that the judicial system presents.

The major problems with the courts in dealing with amateur sport disputes are the reluctance of the courts to interfere, the lack of flexibility, the lack of timely decisions, the backlogs in the system, the adversarial approach, and its high costs (Holman, Mowrey & Bondy, 2001). In terms of the financial demands, the burden placed on the parties can be overwhelming. In Canada, amateur sport draws limited attention and participants and national sport organizations most often do not have the means to legally pursue a matter. Similarly, the legal aid system is virtually of no assistance. For example, Ontario Legal Aid only provides financial assistance if the net household income for one individual is less than \$7212 (CAD) (Legal Aid Ontario, n.d.a). If the net income is more than this amount, Legal Aid assumes that the applicant has the means to pay his own legal services. However, based on the lawyers' fees recovered under the Ontario *Rules of Civil Procedure*, a lawyer who has been called to the bar for less than ten years can charge up to \$300 an hour. Further, the Canadian legal aid system is intended to assist individual facing public law disputes such as immigration issues, and employment insurance, it does not cover the type of disputes that normally occur within amateur sport.

The case of *Garrett v. Canadian Weightlifting Federation* (1990) is a classic example of the courts unsuitability to effectively resolve a sport dispute. As a weightlifter, Garrett was a member of the Canadian Weightlifting Federation (CWF) and was selected as a member of the national team for the 1990 Commonwealth Games in New Zealand. However, during the team's final training camp, Garrett was arbitrarily removed from the national team and sent home. The national team coach, who was also the President of the CWF, made this decision. He replaced Garrett with a reserve athlete. The perceived injustices were that Garrett had defeated this reserve athlete throughout the selection process, and the national team coach was the personal coach of the reserve athlete. When they learned of the replacement

the remaining directors of the CWF ordered the coach to reinstate Garrett to the team, but the coach disregarded this order and took the reserve athlete to New Zealand. In response, Garrett sought a court order to reinstate him to the team (Findlay & Corbett, 2001).

"Due to the shortness of time and the urgency of the matter, the court granted the order, having found that the decision to remove Garrett from the team was made arbitrarily and without proper authority" (Findlay & Corbett, 2001, p.116; *Garrett v. Canadian Weightlifting Federation*, 1990). The court also noted that the replacement decision was biased, since the national coach was also the personal coach of the reserve athlete. In spite of the court order, Garrett was not able to compete in New Zealand. The Commonwealth Games Association of Canada (CGAC) had already constituted the national weightlifting team, based on the recommendations from the CWF. To further complicate the matter, the CGAC had not been named in the court's order, therefore was not subject to the order, and chose not to follow the order (Findlay & Corbett, 2001). This example clearly illustrates the court's limitations in effectively dealing with sport disputes. Although the court order was granted in favor of the athlete, the stringent procedures and time consuming process of court proceedings lead to an unjust penalty for the athletes in question.

The uniqueness of amateur sport disputes must be appreciated, and the value of an alternative to the civil justice system must be recognized. McLaren (1998) elaborated on the specific needs of sport disputes as follows. First, sport-related disputes tend to rest on issues of fact rather than on complex issues of law. Consequently, a specific knowledge of sport is required, which is frequently lacking in the traditional courts. Second, sport disputes tend to require a fast decision. If an athlete is forced to abide by a suspension while waiting for a court date, the litigation becomes moot. Third, the amateur sport community is characterized by close relationships and the adversarial system of the courts does not serve to protect and maintain these relationships. Litigation most often creates an antagonistic atmosphere which can effect the professional and personal relations of parties.

CURRENT RESOURCES TO HANDLE SPORT DISPUTES

In light of the uniqueness of sport disputes it is evident that the Canadian sport community could benefit from an alternative and innovative dispute resolution system rather than relying on the traditional judicial system. This idea has been contemplated since the early 1990s, and some initiatives have been taken by the Canadian Government and other groups to provide an

efficient alternative to the courts (Haslip, 2001). Prior to the SDRCC, there were two major resources available to the sport community: the Centre for Sport and Law Inc., and the Sport Solution.

The Centre for Sport and Law Inc.

The Centre for Sport and Law Inc. is a private consulting company. The Centre opened its doors in 1991, after the founders realized sport organizations needed the law to be more understandable and accessible. Throughout its history, the Centre has provided services to a variety of organizations including the Government of Canada. In 1994, the former Canadian Sport Council approved the concept of ADR at its Annual Congress. In 1996, the Alternative Dispute Resolution Committee, subsequently created by the Canadian Sport Council, selected the Centre for Sport and Law Inc. to develop and manage an ADR program (Canadian Heritage, 2000a; Canadian Heritage, 2000b; Haslip, 2001). The Centre for Sport and Law Inc. received \$19,000 from Sport Canada to assist in the two-year pilot project (Canadian Heritage, 2000 b). However, the project was short-lived and was disbanded in 1997 due to federal government cutbacks (Canadian Heritage, 2000a; Haslip, 2001). Today, the Centre for Sport and Law Inc. still operates as a consulting company offering arbitration/mediation and support services (Centre for Sport and Law Inc., n.d.a).

Its team is small but well balanced. The three individuals who operate the Centre are each qualified in a specific area of expertise and as a whole, they compliment each other. Their areas of expertise range from business and commercial issues to recreation and non-profit management. The members are also well connected to the sport community. One member was an Alpine Ski racer, a level IV Alpine coach and a National Coaching Certification Program Master Course Conductor. Another is the Chair of the Department of Sport Management at Brock University. In addition, the team has the proper legal education to effectively handle legal issues. Two members of the team are licensed lawyers (Centre for Sport and Law Inc., n.d.b).

The Sport Solution

A second resource is the Sport Solution program, which was created in 1996 and is housed at the University of Western Ontario. This program is the product of a joint initiative between Athletes CAN, the Centre for Sport and Law Inc. discussed above, and the Dispute Resolution Centre at the Faculty of Law at the University of Western Ontario. Athletes CAN is a corporation representing Canada's National Team Athletes. It is the only fully independent

and inclusive athlete organization in Canada (Athletes CAN, n.d.a). The Sport Solution is a not-for-profit program providing a full range of services to handle issues of selection, funding, carding, discipline, harassment and sport related legal concerns (Athletes CAN, n.d.b; Athletes CAN, n.d.c). However, this program is only available to high performance Canadian amateur athletes who are members of Athletes CAN, as well as Provincial athletes in certain circumstances (Athletes CAN, n.d.b; Athletes CAN, n.d.c). The services are not available to coaches, officials and other members of the sport community. Also, it is important to note that Sport Solution only counsels and advocates on behalf of athletes so they may take appropriate actions regarding sport related legal issues. The program is run by law students and therefore, they cannot provide legal advice (Athletes CAN, n.d.b; Athletes CAN, n.d.c). However, if an athlete requires legal assistance, a national law firm affiliated with Sport Solution will help pro bono.

THE ADR CONCEPT

All of the initiatives presently available to settle sport disputes are based on ADR principles. This concept is also the basis for the SDRCC, which is intending to become the major actor in resolving Canadian sport disputes (Canadian Federal Government, 2002). Since ADR has clearly started to play a larger role in sport, it is important to understand the concept.

The current ADR concept is based on old ideas and practices and "they are products of the premises that people should first try to solve their own problems, if necessary seek the assistance of a neutral third person, or call on the community that is affected by the problem to reach a solution that satisfies everyone" (Yates, Yates & Bain, 2000, p.129). In a nutshell, ADR refers to resolving disputes in ways other than going to court. There are three basic ADR mechanisms: negotiation, mediation, and arbitration (Yates et al., 2000). Initially, negotiation is characterized by direct communication between disputing parties, an informal format, maximum control for disputants, no facilitator in the decision process, consensus building and win/win results (Weiller, 1996). Mediation represents a step-up on the "stairway of conflict management" (Weiller, 1996, p.A-5). Its characteristics include the intervention of a neutral third party who facilitates discussion, a reduction in control by the affected parties, and the goal of reaching an agreement. Arbitration is the final method. It involves a neutral panel of experts, a structured process, minimal control by the affected parties and a binding decision. These three techniques represent merely the fundamentals of ADR (Weiller, 1996).

In Canada, ADR mechanisms can be traced to pre-industrial cultures like those of First Nations people prior to European contact (Yates et al., 2000). However, ADR's modern emergence occurred in 1980 when "the Canadian Bar Foundation commenced research into the issue of costs and delays in the administration of justice" (Huberman, 1996; Tannis, 1989, p.19). This study, coupled with funding from the Donner Canadian Foundation, established the Windsor-Essex Mediation Centre, which was introduced to test mediation and conciliation techniques in resolving minor civil disputes (Tannis, 1989). The project was initiated in November 1981 and closed in 1984 since no government funding was available after the three year pilot project. However, according to Tannis (1989), "it remains the most important experiment and model in Canada" and it was the model other centres used extensively to develop their methodology and objectives (p.16).

Another significant element in the emergence of ADR in Canada was the "enormous amount of activity taking place in the United States in this field," which heightened the Canadian interest in ADR (Tannis, 1989, p.18). In 1981, when Canada was introducing its first ADR program, the United States already had established 141 active dispute resolution programs. At the time, a review of these programs suggested that mediation projects resolved cases rapidly, were viewed favorably by disputants, were more effective in resolving disputes and improved access to justice (Tannis, 1989). This prompted Canada to explore the alternatives but in general, the developments were modest and slow-moving. This tentative approach can possibly be explained by the lack of government involvement. Unlike the United States, where the federal Department of Justice played a leading role, there was no involvement by the Canadian Government in the exploration of alternative techniques in the early years. However, ADR has now evolved to encompass a variety of mechanisms and implementations in Canada.

In general, ADR strategies have become important conflict management tools in a wide variety of fields and have sparked creative alternatives to traditional justice. The ADR concept is used to resolve disputes in almost every field possible and it is the main method to resolve disputes in some countries such as Japan (Davis, 1996). It is employed in family disputes, labour disputes, hospital disputes, professional sport, commercial and corporate situations, intellectual property disputes, construction industry disputes, and in the court system in some provinces like Ontario (Newman, 1999; Tannis, 1989; Yates et al., 2000; *Rules of Civil Procedure*, Rule 24.1.04(1)(a)). Even though this list is lengthy, it is far from exhaustive.

The success of ADR can be attributed to the numerous benefits it provides. Over time, these benefits have been comprehensively documented

and the ADR system is described as a flexible option fostering personal satisfaction and enhanced relationships while resolving disputes affordably over a reasonable time period. Hence, based on the unique characteristics of amateur sport disputes outlined below, the emergence of the ADR concept within the amateur sport community makes sense. The versatility of the ADR concept is more suited to resolve amateur sport disputes than the traditional judicial system. In light of this, the next step is to ensure the ADR concept is developed within a proper structure (Buntzman, 1990; Ministry of Justice and Attorney General of Canada, 1998; Slaikeu & Hasson, 1998; Weiler, 1996; Yates et al., 2000).

THE STRUCTURE AND CHARACTERISTICS OF THE SPORT DISPUTE RESOLUTION CENTRE OF CANADA

The development of the SDRCC is divided into two phases: the interim program and the permanent Centre. The interim phase of the project began in November 2001 in the form of the Alternative Dispute Resolution Program (ADRsportRED program). The program was a revival of the 1996 pilot project with the Centre for Sport and Law Inc. and the now defunct Canadian Sport Council (Haslip, 2001). The revival can be traced to a report entitled, "A Win-Win Solution: Creating a National Alternative Dispute Resolution System For Amateur Sport in Canada" (Canadian Heritage, 2000a). This report was filed in May 2000 by the Alternative Dispute Resolution Work Group, which was created by the Secretary of State for Amateur Sport with the goal of developing an ADR program that could be applied to the national amateur sport community.² The Secretary of State for Amateur Sport is a political appointee to the portfolio of amateur sport at the federal government level. In October 2000, the former Secretary of State for Amateur Sport, the Honourable Dennis Coderre, created a new committee responsible for proposing a critical path for implementing the recommendations of the first report. This second report was submitted in August 2001. In October 2001, the Secretary of State for Amateur Sport endorsed the recommendations and asked the Canadian Centre for Ethics in Sport (CCES)³ to accommodate the interim

2. The Secretary of State for Amateur Sport is a federal political appointment by the Prime Minister of Canada. The Secretary provides support to the Minister of Health and the Minister of Canadian Heritage in carrying out their responsibilities for physical activity and sport. The goal is to provide a strategic and integrated governmental approach to promoting healthy living, physical activity and sport. Further information on the Secretary of State for Amateur Sport can be found on the Department of Canadian Heritage website at http://www.pch.gc.ca/index_e.cfm.

3. The CCES is an independent, national, non-profit organization with the goal of helping build a fair and ethical sport system. The organization grew out of the merging of the Canadian Centre for Drug-free Sport and Fair Play Canada. CCES' purpose is to promote ethical conduct in all aspects of

ADRsportRED program until the permanent Centre could be implemented. The CCES accepted and in November 2001 the project begun. The ADRsportRED program was funded by financial contributions from Canadian Heritage, the Secretary of State for Amateur Sport, the Honourable Paul DeVillers and his predecessor the Honourable Dennis Coderre (ADRsportRED, n.d.b).

In April 2004, the second phase of the project was initiated and the permanent Centre was established. A non-for-profit corporation was created to replace the CCES and govern the SDRCC (ADRsportRED, 2004). At this time, the interim program was fully absorbed into the Centre. The report to the Secretary of State for Amateur Sport outlined specific recommendations for the transition (Canadian Heritage, 2000a).

The services provided by the SDRCC are available to all members of the sport community and are divided into two distinct sections: the Dispute Resolution Secretariat and the Resource and Documentation Centre. The former provides arbitration and mediation services on issues relating to selection, carding, discipline, contract, and harassment. Two co-chief arbitrators, who have respectable experience in the field of the sport law, govern the Secretariat. Together, their credentials include member arbitrators of the Ad Hoc Division of the Court of Arbitration for Sport during various Olympic Games, chair of a law firm and Director of Sport Solution (ADRsportRED, n.d.d). Additionally, the Resource and Documentation Centre helps national sport organizations to strengthen their internal structure and informs the sport community regarding sport related legal developments. The resources are accessible via the internet to everyone, including amateur sport fans. A comparison between Slaikeu and Hasson's conflict resolution model indicates that the Centre has the potential of becoming a "win-win solution."

Slaikeu and Hasson's (1998) model emerged from the business sector as a solution to a perceived 'systemic' reliance on higher authority, power play and avoidance, and weak or only partial use of collaborative options when managing conflict. The model serves as a template for all types of organizations and has previously been imported into the amateur sport context to explain the ADR approach (Holman, Mowrey & Bondy, 2001).

Conflict resolution model

In *Controlling the Costs of Conflict*, Slaikeu and Hasson (1998) describe a conflict resolution model comprised of "The Cost Equation" and a comprehensive system template. The model is simple but pertinent to the Canadian sport community in helping decrease the high cost of unresolved conflict. First, the equation indicates that predictable conflicts plus weak systems equal high costs (Slaikeu & Hasson). Secondly, the system template provides a framework to develop a strong conflict resolution system. When comparing the Centre to Slaikeu and Hasson's model, it appears the Centre has all of the necessary components to be a strong system (1998, p.56). Slaikeu and Hasson's (1998) recommended template has four components: 1) Site-Base Resolution; 2) Internal Support; 3) External ADR; and 4) External Higher Authority.

The first component of the template, Site-Base Resolution, is beyond the scope of the Centre. Site-Base Resolution refers to the collaborative options available within a department, business unit or organization. It represents the chain of command within a hierarchical organization or in the case of a flat hierarchy; it is a group's capacity to resolve their own problems (Slaikeu & Hasson, 1998, p.54). The Centre is limited in terms of this component since site-base resolution must occur within the sport organizations and as mentioned earlier, these organizations are private and voluntary. However, the government is presently working to control this aspect of the conflict resolution system by establishing criteria within the Sport Canada Athlete Assistance Program (AAP). All Canadian national sport organizations (NSOs) receiving funding through the AAP are required to have an internal appeal process to hear disputes between the organization and its athletes (Sport Canada, n.d.). Also, under its standard rules, the ADRsportRED program was only accessible to members of the national sport community after exhausting all available internal dispute resolution mechanisms (ADRsportRED, 2002). However, now that the SDRCC is implemented and being developed, these policies could complicate the system as demonstrated in the example below. Previous experience demonstrates that sport disputes desperately require timely decisions since parties involved are faced with stringent deadlines and lifetime opportunities can be easily missed. Internal appeal processes can hinder the possibility of a timely resolution.

The issue of team selection by Swimming/Natation Canada (SNC) for the 2002 Commonwealth Games clearly illustrates the difficulties that can arise from internal appeal processes. The resolution of disputes arising from their team selection decisions proved to be extremely complex. This was

demonstrated in two separate cases in the ADRsportRED program (Rolland v. NSC and Piere/Veldman/Wake v. SNC), leading to two separate cases in the traditional judicial system (Rolland v. SNC and Wake v. SNC). However, the relevant issue at this time is the negative impact the SNC internal appeals panel had on the resolution process. In the case involving swimmers Piere, Veldman and Wake, all were selected for the 2002 Commonwealth Games by the SNC Selection Committee. However, due to internal appeals by other athletes, their status changed a total of five times before the issue was finally settled by the ADRsportRED program (ADRsportRED, 2002). This entire process by the SNC Appeals Panel took approximately 45 days, and in the end, it proved to be pointless since the disputes ultimately had to be settled by an external mechanism.

In light of the SDRCC, the decisions made by internal appeals panels are not binding and have no finality as all decisions may now be reviewed by the Dispute Resolution Secretariat. Therefore, the necessity for internal appeal processes demands review. Sport Canada should alternatively require all NSOs receiving government funding to utilize the SDRCC as their central dispute resolution mechanism. This would simplify the system and could prevent any possible internal animosity within the NSOs. Canadian NSOs are most often small close knit bodies in which one person plays multiple roles. By eliminating internal appeals it would remove the disputes from an environment in which there can be a high risk of conflict of interest and bias.

The need for the second component of Slaikeu and Hasson's (1998) model, Internal Support, is especially relevant to the sport community; and is satisfied by the SDRCC's Resource and Documentation Centre and an Ombudsperson (Canadian Heritage, 2000a). This aspect of the system addresses the issue of prevention and education, which is much needed. The ombudsperson will act as a watch dog for the sport community, while the Resource and Documentation Centre serves as a prevention tool by collecting and disseminating information and providing training to volunteers and professionals. Although these support services are not generated within the sport organizations, they are internal to the sport community. Canadian NSOs are generally small and limited in their resources and it is not feasible for them to effectively fulfill this component of the dispute resolution system. Therefore, the SDRCC, which will be internal to the sport community, will play a crucial role. The need for these types of preventive measures is clearly illustrated in a study conducted in 1998 by Sport Canada (Mew & Lyons, 1999). The study found that one of the major factors contributing to the escalation of disputes within sport organizations is a lack of knowledge on how to handle a dispute and the process of dispute resolution. These findings

were also echoed in the report to the Secretary of State for Amateur Sport (Canadian Heritage, 2000a).

As for the third component, External ADR, it corresponds to the Centre's Dispute Resolution Secretariat. As discussed in the first portion of this paper, there is a need for an alternative to the traditional judicial system and prior to Bill C-12, there had not been a national viable alternative. Further, the flexibility of the ADR concept renders it a logical choice. To date, the Dispute Resolution Secretariat has a roster of 23 arbitrators and mediators, and operates under the ADR-sport-RED Code (ADRsportRED, n.d.d.). It has the jurisdiction to adjudicate any high performance amateur sport disputes including doping-related disputes (ADRsportRED, n.d.e.). Taking into account the work conducted during the interim phase of the project, the Secretariat (formally known as the ADRsportRED Tribunal) has presided over 50 disputes (ADRsportRED, n.d.c.).

The final component of Slaikeu and Hasson's (1998) model, External Higher Authority, is satisfied by the possibility of seeking the assistance of the courts in specific situations. Although the SDRCC's intended purpose is to remove amateur sport disputes from the traditional judicial system, it is a fact that the Centre cannot operate within a vacuum and ADR processes are inherently limited in some respects compared to the powers of the courts. Therefore, judicial courts remain an essential part of a comprehensive system. This necessity in the system was illustrated in the complex resolution of SNC's team selection disputes for the 2002 Commonwealth Games, discussed earlier. *Rolland v. SNC* was one of the disputes resulting from the team selection (ADRsportRED, 2002). After being adjudicated by the ADRsportRED program, the dispute progressed to the traditional judicial system. Ms. Rolland used the court process to enforce the decision of the ADRsportRED arbitrator. A report by the Steering Committee of the Centre soundly justified her actions, stating:

Although parties who have chosen to proceed by way of arbitration are prevented from going to court with respect to adjudication of that decision, enforcement of a decision usually proceeds to court because the arbitrator had limited powers to sanction the offending party. . . It is important that people understand that resort to the court is part of the ADRsportRED process and not a failing of the ADRsportRED program. (ADRsportRED, 2002, p.19)

By addressing all four components of the Slaikeu and Hasson (1998) model, the SDRCC has the potential to negate the effect of the "The Cost Equation" - predictable conflicts plus a weak system equals high costs. The

Centre serves to eliminate the "weak system" factor of the Equation, and therefore reduces the costs of conflict. In addition, the SDRCC has numerous valuable characteristics which create a package that is not only sound in its structure, but also complete.

The Centre's Characteristics.

The Centre, as proposed in the recommendation report, includes a number of important characteristics (Canadian Heritage). The Centre has the goal of being formally linked to the Court of Arbitration for Sport (CAS) (Canadian Heritage, 2000a). CAS was created in 1983 and currently serves as the international sport dispute resolution system (Court of Arbitration for Sport, 1994). By 2002, CAS had decided 221 cases (Court of Arbitration for Sport, n.d.) and in general, it has been a very successful initiative. Its most visible accomplishments have been through its Ad Hoc Division. The Atlanta Games in 1996 were the first experiment with the CAS Ad Hoc Division, which was implemented to resolve any sport disputes arising during the Games (McLaren, 1998). Since then, the Ad Hoc Division has facilitated the resolution of numerous Olympic sport disputes.

The link between the SDRCC and CAS was initiated early in the process as CAS was consulted in the development of the report to the Secretary of State for Amateur Sport, which recommended the development of the Centre. The Code governing the ADRsportRED program was also based on the Code of Sports-Related Arbitration developed by CAS. Active members of CAS have also served as arbitrators in the Canadian Ad Hoc Division that was established by the ADRsportRED program to adjudicate disputes that arose from the Canadian team selection process for the 2002 Olympic Winter Games (ADRsportRED, 2002; Canadian Heritage, 2000a). If this link continues and is further fostered, it will bring credibility to the Canadian project.

Another constructive characteristic of the Centre is the emphasis on its independence. The recommendation report states the Centre should be independent from any agency by means of an "independent, free-standing council" that would govern the Centre (Canadian Heritage, 2000a, p.17). The interim phase of the project was governed by the CCES and its Steering Committee reported that the "Secretary of State DeVillers maintained a hands-off approach and allowed the system to do its job. . . [it] thanks the Secretary of State for demonstrating confidence in the program and for remaining 'hands off' despite the attendant pressure," and stresses the importance of the project's independence (ADRsportRED, 2002, p.22). This independence is crucial to

the Centre's credibility and its ability to ensure a fair, transparent, effective system.

The history of CAS illustrates this point. At first, the International Olympic Committee (IOC) acted as the parent organization of CAS and it funded its operations. This created a perception of bias and led "to a constitutional challenge to the independence of the CAS" by an equestrian athlete who appealed CAS's decision on the grounds of bias (McLaren, 1998, p.3). Although the athlete lost the case, Switzerland's highest court recommended that CAS reduce its dependency on the IOC. The recommendation was respected and in 1993 the IOC created a new body to govern CAS: the International Council of Arbitration for Sport (McLaren, 1998).

Despite the need for the Centre's independence and the achievements of the ADRsportRED program, Bill C-12 contains a clause that jeopardizes the goal of independence. It states that the chairperson and the directors of the Centre will be appointed and removed by the Secretary of State (Canadian Federal Government, 2002). The role the Minister is given does not translate into a system independent of government. The chairperson and directors will be powerful individuals within the system and if their appointments are political, the Centre's credibility and effectiveness would be compromised. Therefore, the Centre's independence could be questioned in the future due to the Minister's role in the project.

Further, the resolutions of the Centre will be binding and final upon the parties, the services will be available in both official languages and the process will not necessitate legal counsel (Canadian Federal Government, 2002; Canadian Heritage, 2000a). The finality of the decisions is essential, otherwise encumbering delays and multiple appeal routes would frustrate the SDRCC's intended purpose. Bill C-12 does not seek to re-create the judicial system within the amateur sport sphere, but rather to create a true alternative that meets the unique nature of amateur sport disputes. However, as mentioned the courts will periodically have to intervene since arbitrators and mediators are limited in their powers to sanction an offending party and, due to the private nature of the agreements, decisions are only binding on the parties participating in the arbitration or mediation (ADRsportRED, 2002; Newman, 1999).

The Centre's ability to offer services in both French and English is also an essential characteristic, since the Centre strives to be a national system. Canada has two official languages and the sport community has previously had difficulties in accommodating the two languages. Bill C-12 states that the Centre must comply with the principles of the Official Languages Act and the

interim phase of the project was able to fulfill this mandate (ADRsportRED, 2002; Canadian Federal Government, 2002).

Finally, the idealistic suggestion that the system will operate in such a clear and straightforward manner that participants will not feel the need to seek legal counsel needs to become a reality. This is essential if the Centre is to become a true alternative to the traditional court system. The interim phase of the project has been able to fulfill this mandate but there needs to be a strong emphasis on this goal in the development of the SDRCC. Without this quality, the Centre will resemble the traditional court system with all of its impediments.

Recommendations.

As illustrated, the proposal is sound but one aspect of the Centre need further scrutiny. First, the confidentiality policies of the Centre, which are not clearly addressed in government documentation, should be reassessed (Canadian Federal Government, 2002; Canadian Heritage, 2000a). The issue of confidentiality can be divided into two phases: one relating to the ADR process and the other to the decision reporting. The ADR process of the interim phase of the project has been confidential, which is essential. Publicizing the process could attract media attention, hindering the ADR process and negatively affecting an athlete who has not yet been found liable (McLaren, 1998).

As for the reporting of decisions, the interim phase has not been confidential. Once a case is settled, the ADRsportRED program is publicizing every detail of the situation (ADRsportRED, n.d.c). It is recognized that the need for decision reporting is vital for educational purposes and also to the creation of a transparent, consistent and accountable system. However, on the other hand, a party to a dispute has the right to privacy. Also, a lack of confidentiality could deter a party from seeking assistance from the Centre. A creative reporting technique must be found to balance the need for a transparent decision-making system and the need for confidentiality (Haslip, 2001).

SUMMARY

Albert Einstein once said, "We can not solve our problems with the same level of thinking we used when we created them" (Silver, 1996, p.E-19). This succinctly captures the current mentality within the Canadian amateur sport community. Stakeholders have realized that the sport community has evolved over the past four decades and the need for an effective dispute resolution

system is long overdue. Prior to Bill C-12, there were few mechanisms in place that lead to a dependency on the traditional court system, which is not suited to handle the particulars of amateur sport disputes.

Bill C-12 has proposed a national alternative based on ADR and prevention. This alternative has all of the necessary components to be a strong system, which is essential in avoiding the high costs of unresolved conflict. The ADRsportRED program showed the project to be promising and if the development of the SDRCC echoes the experience of the interim program and the recommendations to the Secretary of State for Amateur Sport, the final outcome will be meaningful. If this is achieved, the Centre will prove to be a valuable addition to the Canadian amateur sport culture and will project a responsible image to the global sport community. Canada has been a leader in the war against sport doping,⁴ and now it has the opportunity to do the same in the area of sport dispute resolution.

ABOUT THE AUTHOR

ANIK JODOUIN completed this research at the University of Windsor, as part of her Honours Bachelors of Human Kinetic with a major in Sport Management. She is now pursuing her studies at Osgoode Hall Law School in Toronto, Canada. Anik was the recipient of the 2003 Undergraduate Student Essay in Sport Studies Competition, sponsored by the Research Centre for Sport in Canadian Society. She also presented this research in October 2003 at the North American Society for the Sociology of Sport Conference in Montreal, Canada and in March 2004 at the Sport and Recreation Law Association Conference in Las Vegas.

REFERENCES

- ADRsportRED. (2004, April 8). *New centre to prevent and resolve sport disputes*. Retrieved May 7, 2005, from http://www.adrsportred.ca/about/press_releases/pdf/2004-04-08_e.pdf.
- ADRsportRED. (2002). *Report on the major games team selection cases [Report]*. ADRsportRED Steering Committee: Author.
- ADRsportRED (Ct). (n.d.a). *Frequently asked questions*. Retrieved June 14, 2005, from http://www.adrsportred.ca/faqs/index_e.cfm.

4. Canada was a founding member of the International Anti-Doping Arrangement (IADA), an inter-governmental agreement. The governments of the IADA countries have successfully developed a quality management system in compliance with ISO 9002:1994 for their domestic anti-doping programs. Canada was one of the first countries in the world to achieve this ISO quality management standard. (Brown, 2002)

- ADRsportRED (Ct). (n.d.b). *History*. Retrieved January 12, 2003, from http://www.adrsportred.ca/about/history_e.cfm.
- ADRsportRED (Ct). (n.d.c). *Jurisprudence database*. Retrieved June 27, 2005, from http://www.adrsportred.ca/resource_centre/jurisprudence_database_e.cfm.
- ADRsportRED (Ct). (n.d.d.). *Dispute resolution secretariat (tribunal): Arbitrators and mediators*. Retrieved May 7, 2005 from http://www.adrsportred.ca/tribunal/tribunal_e.cfm.
- ADRsportRED (Ct). (n.d.e.). *Doping*. Retrieved June 27, 2005, from http://www.adrsportred.ca/doping/index_e.cfm.
- Amateur Athletic Foundation of Los Angeles (Ct) Olympic Primer. (n.d.). *VIII. Past Olympic Games in the United States*. Retrieved April 19, 2003, from <http://www.aafla.org/6oic/OlympicPrimer/la1984.htm>.
- Athletes CAN. (n.d.a). *About Athletes CAN*. Retrieved November 17, 2003, from <http://www.athletescan.com/e/about/index.htm>.
- Athletes CAN (Ct). (n.d.b) *Sport solution information*. Retrieved, January 3, 2004, from http://www.athletescan.com/e/sport_solution/index.htm.
- Athletes CAN (Ct). (n.d.c) *Sport solution program: Questions and answers*. Retrieved, January 3, 2004, from http://www.athletescan.com/e/sport_solution/ques_answers.htm.
- Barnes, J. (1996). *Sport and the law in Canada* (3rd ed.). Toronto/Vancouver: Butterworths.
- Brown, A. (2002, December). ISO/PAS for doping control in sports demonstrates its value in Canada. [Electronic Version]. *ISO Bulletin*. Retrieved January 3, 2004, from <http://www.iso.ch/iso/en/commcentre/isobulletin/articles/2002/pdf/pas02-12.pdf>.
- Buntzman, G. F. (1990). Mediation and arbitration. In A. Rahim (Ed.), *Theory and research in conflict management* (pp.109-119). New York: Praeger.
- Canadian Centre for Ethics in Sport (Ct). (n.d.). *About CCES*. Retrieved August 17, 2005, from <http://www.cces.ca/forms/index.htm>.
- Canadian Federal Government. (2003). Bill C-12. Retrieved October 5, 2003, from www.parl.gc.ca/37/2/parlbus/chambus/house/bills/government/C-12/C-12_4/C-12_cover-E.html.
- Canadian Heritage. (2000a). *A win-win solution: Creating a national alternative dispute resolution system for amateur sport in Canada*. Retrieved June 14, 2005, from <http://www.pch.gc.ca/progs/sc/pubs/win-e.pdf>.

- Canadian Heritage. (2000b). *News release: Denis Coderre creates a work group to develop a national dispute resolution system for amateur sport*. Retrieved December, 23, 2002, from http://www.canadianheritage.gc.ca/newsroom/news_e.cfm?Action=Display&code=9NR130E.
- Canadian Heritage. (n.d.). *ADRsportRED: Alternative dispute resolution for sport* [Brochure]. Canadian Centre for Ethics in Sport.
- Centre for Sport and Law Inc. (Ct). (n.d.a). *What's your issue*. Retrieved February 12, 2003, from <http://www.sportlaw.ca/services.htm>.
- Centre for Sport and Law Inc. (Ct). (n.d.b). *Who we are*. Retrieved February 12, 2003, from <http://www.sportlaw.ca/profiles.htm>.
- Court of Arbitration for Sport. (1994). *Guide to arbitration* [Booklet]. Switzerland.
- Court of Arbitration for Sport. (n.d.). *Statistics*. Retrieved January 3, 2004, from <http://www.tas-cas.org/en/stat/frmstat.htm>.
- Davis, J. W. S. (1996). *Dispute resolution in Japan*. Netherlands: Kluwer Law International.
- Department of Canadian Heritage (n.d.). Retrieved, August 22, 2005, from http://www.pch.gc.ca/index_e.cfm.
- Findlay, H. A., & Corbett, R. (2001). The rights of athletes, coaches, and participants in sport. In M. Holman, D. Moriarty & J. Forsyth (Eds.), *Sports, fitness and the law: North American perspectives* (pp.237-246). Toronto: Canadian Scholars' Press Inc.
- Garrett v. Canadian Weightlifting Federation, 18 January 1990 Unreported Alta Q.B. (Edmonton), Case No. 9003-0122.
- Gilmour v. Laird, [1989] B.C.J. No. 15 (S.C.).
- Haslip, S. (2001). International sports law perspective: A consideration of the need for a national dispute resolution system for national sport organizations in Canada. *Marquette Sports Law Review*, 11(2), 245-274.
- Holman, M., Mowrey, R., & Bondy, D. (2001). Turning conflict into cooperation: Alternative dispute resolution. In M. Holman, D. Moriarty & J. Forsyth (Eds.), *Sports, fitness and the law: North American perspectives* (pp.101-119). Toronto: Canadian Scholars' Press Inc.
- Huberman, M. J. (1996). Pre-trial conferences and alternative dispute resolution techniques: Maximizing settlement potential. In R. J. Weiler (chair), *An ADR Primer: Department of Continuing Legal Education* (pp.F1-F57). Toronto: The Law Society of Upper Canada.

- Legal Aid Ontario. (n.d.a). *Getting Legal Help: Financial eligibility*. Retrieved May 6, 2005, from <http://www.legalaid.on.ca/en/getting/Financial.asp>.
- Legal Aid Ontario. (n.d.b). *Getting Legal Help: Finding a Community Legal Aid Clinic*. Retrieved May 6, 2005, from <http://www.legalaid.on.ca/en/getting/clinic.asp>.
- McLaren, R. (1998). A new order: Athletes' rights and the Court of Arbitration at the Olympic Games. *Olympika: The International Journal of Olympic Studies*, 7, 1-24.
- Mew, G., & Lyons, S. (1999). From little league to Ben Johnson: Alternatives for resolving sports disputes. [Electronic Version]. Presented at the Arbitration and Mediation Institute of Ontario (AMIO) Annual Luncheon, May 6, 1999. Retrieved Oct 21, 2002, from <http://www.sportlaw.ca/articles/other/article7.html>.
- Ministry of Justice and Attorney General of Canada. (1998). *Resolving disputes: Think about your options* [Booklet].
- Newman, P. (1999). *Alternative dispute resolution*. Hertfordshire: CLT Professional Publishing Ltd.
- Ridge v. Baldwin, [1963] 2 All E.R. 66 (H.L.).
- Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
- Silver, M. P. (1996). Mediation of litigious disputes. In R. J. Weiler (chair), *An ADR primer: Department of Continuing Legal Education* (pp.E1-E19). Toronto: The Law Society of Upper Canada.
- Slaikue, K. A., & Hasson, R. H. (1998). *Controlling the costs of conflict*. San Francisco: Jossey-Bass Publishers.
- Sport Canada (Ct) Athlete Assistance Program: Policies, Procedures and Guidelines. (n.d.). Retrieved April 13, 2003, from (n.d.). Retrieved April 13, 2003, from http://www.pch.gc.ca/progs/sc/prog/paa-aap/paa-aap_e.pdf.
- Tannis, E. G. (1989). *Alternative dispute resolution: That works*. York: Captus Press Inc.
- Turner, J. N. (1996). A history of sport and law in Australia. *Sporting Traditions*, 2(2), 176-190.
- Weiler, R. J. (1996). "Right", "interest", "power" and the stairway of conflict management. In R. J. Weiler (chair), *An ADR primer: Department of Continuing Legal Education* (pp.A1-A15). Toronto: The Law Society of Upper Canada.

Yates, R. A., Yates, R. W., & Bain, P. (2000). *Introduction to law in Canada* (2nd ed.). Scarborough: Prentice-Hall Canada Inc.