

Running head: THE MERITS OF THE PROPOSED SPORT DISPUTE RESOLUTION
CENTRE OF CANADA

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Sport law is an emerging field of legal study and practice. Recently, the Canadian Government has contributed to the innovative and interesting developments taking place within this field. The House of Commons passed Bill C-12, an Act to promote physical activity and sport, on June 18, 2002, which represents an importance step in the development of sport in Canada. This Act has the general goal of making Canadian sport more ethical, fair, accessible and transparent. It also, specifically, addresses the issue of high performance sport disputes. The Canadian sport community has realized that "Conflict itself is not the problem. Unresolved conflict is" (Slaikeu & Hasson, 1998, p.4) and it is striving to efficiently tackle the matter by proposing a Sport Dispute Resolution Centre of Canada (Canadian Federal Government, 2002).

If this project is completed, it will represent a novel service in Canada. To date, there are a few sport dispute resolution mechanisms established in Canada but there is a lack of a national or centralized system. A 1998 survey conducted for the Federal-Provincial-Territorial Sport Committee by the Centre for Sport and Law determined that while there existed common needs across all jurisdictions of Canada in regards to sport dispute resolution, no "champion" had emerged to lead the efforts (as cited in Canadian Heritage, May 2000, p.5). Furthermore, it is important to acknowledge that athletes and coaches have the right to "due process" and "natural justice" like every other Canadian. Their rights cannot be periodically ignored or violated by the private organizations that control sport, even though they are placed in situations that most other Canadians dream of - extraordinary opportunities where they can express their exceptional talents.

In light of its significance, the merits of the proposed Sport Dispute Resolution Centre of Canada will be analyzed through a two-step process. First, I will outline the history that has led up to the Centre's proposal by exploring the present difficulties within the Canadian sport system and by outlining the current resources that exist to handle sport disputes. Secondly, I will attempt to forecast the success of the project by investigating the alternative dispute resolution (ADR) concept, since it represents the underlying concept of the Centre, and by comparing the Centre's structure and characteristics to relevant literature.

Current Difficulties within the Canadian 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 clash and collide. This inevitable interaction between people is visible in all spheres of life, and sport is no exception. Turner (1996, p.14) effectively illustrates the current situation within the elite sport community, stating "there is more law to be found in today's newspapers in the sporting columns than on any other pages". Sport conflict occurs at the professional level as well as at the amateur level. In regards to the former, labour guidelines have facilitated conflict resolution but amateur sport is still struggling to find an effective sport dispute resolution system. Some examples of amateur sport disputes are as follows.

- § 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 held up in traffic. They miss a 9:30 p.m. curfew by five minutes. As a consequence, the two athletes were suspended from the team and sent

home on an early morning flight the next day. They were neither given any justification nor an opportunity to explain themselves. The swimmers did not react to the suspension because they were not aware of their rights and possible courses of action (Mew & Lyons, 1999).

§ A provincial rugby team imports a coach from England after receiving verbal authorization from the provincial union and confirmation of his eligibility. However, the union had a rule that required all coaches at the provincial top division to have formal national coaching certification and the Board of Directors of the union later decided that the proposed coach did not have the required qualifications. This decision was made after the deadline passed for the team to have an eligible coach, and thus the team was downgraded to a lower division. In reaction, the rugby team sought a court injunction against the provincial rugby union and lost. The judge said that 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 the events (Mew & Lyons, 1999).

As the above real life examples illustrate and as Haslip (2001, p.248) indicates, "conflict in sport is 'inevitable', regardless of how well the sporting enterprise is conducted". The growing issue of sport conflicts within the Canadian amateur sport system can be traced back to the 1970's. 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 record profit of \$225 million, solidified the concept of sport as a means to an end (Amateur Athletic Foundation of Los Angeles). Participation in international events can now represent important economic benefits; losing the opportunity to compete at the Olympics has been judicially valued at \$20,000 (Barnes, 1996, p.76). Due to this recognition, athletes began to demand more rights within the larger social order 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 ineffectiveness of the current dispute resolution system contributes to the current, undesirable situation.

When faced with a conflict, elite athletes must confront the officials of the Canadian sports administration system and are bound by an ongoing contractual relationship defined by rules, agreements and customs (Barnes, 1996). Since most sport organizations are private and voluntary, the current sport dispute resolution system is based on the traditional judicial system. The large majority of sport disputes land in the courts when a conflict has not been solved internally or when the rules of natural justice are not respected. As stated in a report to the Secretary of State (Amateur Sport), caseworkers at Sport Solution, one of the resolution mechanisms that will be discussed later, dealt with 137 sport dispute cases and this was only within a nine-month period. Furthermore, 31% of these cases were pursued through to an appeal and almost all through litigation (as cited in Canadian Heritage, May 2000). The sport disputes that

reach litigation are usually related to disciplinary powers, team selection, eligibility rules, financial entitlement, doping, and harassment issues (Barnes, 1996).

There is an abundance of sport conflicts seeking solutions within the traditional court system and in most situations the outcome is fruitless. The major problems with the courts in dealing with sport disputes are the reluctance of the courts to interfere, the lack of flexibility, the lack of timely decisions, the frequent delays, the adversarial approach and its high costs (Holman, Mowrey & Bondy, 2001). In terms of the financial demands, the courts set a high price tag on justice and the burden placed on the parties involved is overwhelming. The average total legal bills to all parties in a typical Ontario Court General Division lawsuit, including those that settle before trial, were estimated by judges in 1993 to be in the \$40,000-\$50,000 range (Silver, 1996).

The case of *Garrett v. Canadian Weightlifting Federation* is a classic example of the courts failing 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 removed from the national team and sent home. The national team coach, who was also the President of the CWF, made this decision. He decided that a reserve athlete would replace Garrett on the team. The predicament was 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 the remaining directors of the CWF learned of the replacement they 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). 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, and therefore was not subject to the order and chose not to follow the order. This example clearly illustrates the court's lack of timely decision, and therefore the unjust penalties that athletes must suffer (Findlay & Corbett, 2001).

The sport community must realize that sport disputes are particular, and they require a different approach than the usual civil cases. McLaren (1998) elaborates 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 is meaningless. Third, the sport community is characterized by close relationships and the adversarial system of the courts does not serve to protect these relationships. The court system almost certainly guarantees a complete breakdown in the relationship between the parties.

Current Resources to Handle Sport Disputes

In light of the above discussion it is evident that the Canadian sport community desperately needs an alternative and innovative dispute resolution system. This idea has been contemplated since the early 1990s and since then, some initiatives have been taken by the Canadian government and other groups to provide an efficient alternative to the courts (Haslip, 2001). If a member of the sport community has an unresolved issue, there are presently three major courses of action that could be taken: the Centre for Sport and Law Inc., the Sport Solution, and the Alternative Dispute Resolution Program (ADR Sport RED).

The Centre for Sport and Law is a private consulting company. The Centre opened its doors in 1991, after the founders realized that 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. The Alternative Dispute Resolution Committee subsequently created by the Canadian Sport Council selected the Centre for Sport and Law in 1996 to develop and manage an alternative dispute resolution (ADR) program (Haslip, 2001; Canadian Heritage, January 2000; Canadian Heritage May 2000). The Centre for Sport and Law received \$19,000 from Sport Canada to assist in a two-year pilot project (Canadian Heritage, January 2000). However, the project was short-lived and was disbanded in 1997 due to federal government cutbacks (Haslip, 2001; Canadian Heritage, May 2000). Today, the Centre for Sport and Law still operates as a consulting company that offers

arbitration/mediation services and support services (Centre for Sport and Law Inc., www.sportlaw.ca/services.htm).

Its team is small but well balanced. The three individuals that run the Centre for Sport and Law 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 of the members was an Alpine Ski racer, a level IV Alpine coach and a National Coaching Certification Program (NCCP) 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., <http://www.sportlaw.ca/profiles.htm>)

A second course of action in sport disputes 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 discussed above, and the Dispute Resolution Centre at the Faculty of Law at the University of Western Ontario. The result is a not-for-profit program that provides a full range of services to handle issues of selection, funding, carding, discipline, harassment and sports related legal concerns. However, this program is only available to high performance Canadian amateur athletes that are members of Athletes CAN, as well as provincial athletes in certain circumstances. The services are not available to coaches, officials and other members of the sport community. Also, it is important to note that Sport Solution will only counsel and advocate on behalf of athletes so they may take

appropriate actions regarding sports related legal issues. The program is run by non-licensed lawyers and therefore, they cannot provide legal advice. However, if an athlete requires legal assistance, an Ottawa based law firm is affiliated with Sport Solution and will help pro bono (Athletes Can, www.athletescan.com/e/sport_solution).

The ADRsportRED program is a third course of action for sport disputes. The program is a revival of the 1996 pilot project with the Centre for Sport and Law and the now defunct Canadian Sport Council (Haslip, 2001). The revival can be traced back to a report entitled, “A Win-Win Solution: Creating a National Alternative Dispute Resolution System For Amateur Sport in Canada”. This report was filed in May 2000 by the Alternative Dispute Resolution Work Group, which was created by the Secretary of State (Amateur Sport) with the goal of developing an ADR program that could be applied to the national sport community. In October 2000, following the first report, the former Secretary of State (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 (Amateur Sport) endorsed the recommendations and asked the Canadian Centre for Ethics in Sport (CCES) to accommodate an interim ADRsportRED program until a permanent program could be created. The CCES accepted and in November 2001 the project was under way. Today, the interim ADRsportRED program is available to the public due to financial contributions from Canadian Heritage, the Secretary of State (Amateur Sport), the Honourable Paul DeVillers and his predecessor the Honourable Dennis Coderre (ADRsportRED,

www.adrsportred.ca/history.html). In general, its goal is to provide timely resolution of sport conflicts and its programs resemble the Sport and Law Centre but on a larger scale.

The services provided by the ADRsportRED are available to all members of the sport community and they can be divided into two clear sections: the dispute resolution centre 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 sport dispute resolution, govern the centre. 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 president of Innovative Dispute Resolution (Canadian Heritage, Brochure). On the other hand, the resource and documentation centre helps NSOs to strengthen their internal structure and informs the sport community about legal developments related to sport issues. The resources are accessible via the internet to everyone, including amateur sport fans. The ADRsportRED program intends to eventually become permanent and its permanent phase will represent the Sport Dispute Resolution Centre of Canada, which will be discussed later (ADRsportRED, <http://www.adrsportred.ca/history.html>).

The ADR Concept

While various groups have taken some steps toward providing an alternative for sport disputes, the quest to have a handle on this issue is far from over. All of the initiatives presently available to settle sport disputes are based on alternative dispute resolution (ADR) principles. This concept is also the basis for the proposed Sport Dispute Resolution Centre of Canada, which is presently in its interim phase but is planning on

becoming 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 and useful to know the impact it has had in other fields.

In Canada, ADR mechanisms can be traced back to pre-industrial cultures like those of First Nations people prior to European contact (Yates, Yates & Bain, 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" (Tannis, 1989, p.19; Huberman, 1996). 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 the resolution of minor civil disputes. 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, p.16), "it remains the most important experiment and model in Canada" and it was the model that other centres used extensively to think out their methodology and objectives.

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, at the same time that Canada was introducing its first ADR program, the United States had already 141 active dispute resolution programs. A review of these programs suggested that mediation projects processed cases rapidly, were viewed favorably by disputants, were more effective in resolving disputes and improved access to justice. This pushed Canada to

explore the alternatives but in general, the developments were modest and slow in coming. 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 has been no involvement by government in the exploration of alternative techniques in the early years. Today, ADR has evolved to encompass a variety of mechanisms and implementations.

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 et al., 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). First, negotiation is characterized by direct communication between dispute parties, an informal format, maximum control for disputants, no facilitator in the decision process, consensus building and win/win results. Second, 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. Third, arbitration is the final step on the stairway. It involves a neutral panel of experts, a structured process, minimal control by the affected parties and a binding decision. These three techniques represent the fundamentals of ADR; the possibilities within the ADR concept are endless.

Since the first Canadian ADR program in 1981, ADR strategies have become important conflict management tools in a wide variety of fields and have sparked creative alternatives to traditional justice. Today, ADR 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, hospitals disputes, professional sport, commercial and corporate situations, intellectual property disputes, construction industry disputes, and the existing court system in some provinces like Quebec (Newman, 1999; Yates et al., 2000; Tannis, 1989). Even though this list is lengthy, it is far from being exhaustive. One of the most significant uses of ADR can be found in professional baseball.

The impact of ADR in professional baseball is noteworthy. In the nineteenth century, major league baseball was plagued with management abuse and labour conflicts. The practice of blacklisting players who engaged in unapproved conduct was used as a labour control device and the courts provided a fruitless avenue of redress for players. "Players resorted to legal proceedings more frequently than most followers of the sport realize, [but] a lawsuit was a costly and time-consuming way for a player to obtain remedy" (Hylton, 2001, p.176). The case of Charles Wesley Jones in 1879 illustrates the problems within the major league organization. As an outfielder, Jones was a superior player but he was embroiled in a dispute with his team, the Boston Red Sox, over unpaid salary. When the team owner learned of Jones' actions, he ordered him suspended and fined him unfairly. Faced with this situation, Jones had limited options. He could give up his claim for unpaid salary and plead with his team to reinstate him, he could appeal to the League's executive committee or he could file a lawsuit against his employer. Jones

sought redress by appealing the decision internally and then by filing a lawsuit, but both the internal and external system failed him. He missed the 1881 and 1882 seasons because he was blacklisted and played a tainted career until 1888 (Hylton, 2001).

His experience, and those of other blacklisted players, led to the creation of the 1885 organization of the Baseball Players Brotherhood, the nation's first professional sports union. This organization eventually evolved into the 1954 Major League Baseball Players Association, following four other attempts to create an effective players' union. The most significant contribution of the Players Association came in the 1970s, when it finally structured a meaningful and successful grievance arbitration system. Since then, this program has been a major source of power for baseball players in their dealing with team owners and the Commissioner's Office (Hylton, 2001). In recent times, the system's effectiveness is illustrated through the infamous John Rocker case.

In 1999, John Rocker, Atlanta's relief pitcher, trashed immigrants in a Sport Illustrated interview. His comments earned him the title of "Mouth from the South" and they "brewed a national firestorm" (Abrams, 2001, p.167). The Commissioner reacted by suspending him and fining him an exorbitant amount of money, \$20,000. However, Rocker sought justice through the Players Association labour arbitration program and succeeded. Neutral arbitrators significantly reduced his fine to \$500 and lessened his suspension. The decision was based on the following facts: the incident did not happen in the workplace, and the discipline procedure was administered by the Commissioner who was not Rocker's employer and only had the power to impose a \$500 fine. Although some people believe that the punishment was trivial and unjust, the Players Association arbitration program was actually fair and effective in handling this dispute. Under the

circumstance and in keeping with the League's constitution, Rucker did receive a just punishment for his actions. A more severe sanction could have been given, but it would have had to be administered by Rucker's team, not the league (Abrams, 2001).

The above case is only one example of the immense versatility and usefulness of ADR. It represents the tip of the iceberg. The success of ADR in the early periods of society and in modern times can be attributed to the numerous benefits that ADR provides. Over time, these benefits have been comprehensively documented and the ADR system is described as a flexible option that fosters personal satisfaction and enhanced relationships while resolving disputes within affordable means over a reasonable time period. Hence, the emergence of ADR concepts within the sport community makes sense, since it is more suited to solve sport disputes than the traditional court system. In light of this, the next step is to ensure that the concept is developed within a proper structure to ensure its success (Buntzman, 1990; Ministry of Justice and Attorney General of Canada, 1998; Slaikou & Hasson, 1998; Yates et al., 2000; Weiler, 1996).

The Structure and Characteristics of the Sport Dispute Resolution Centre of Canada

The development of the Sport Dispute Resolution Centre of Canada is divided into two phases: the interim phase and the permanent phase. As indicated previously, the interim phase of the project has already begun in the form of the ADRsportRED program. The program was launched on January 17, 2002 and is governed by the Canadian Centre for Ethics in Sport (CCES). The permanent phase of the project will occur when a new organization is created to replace the CCES and it will serve as the national sport dispute resolution system (ADRsportRED, <http://www.adrsportred.ca/history.html>). This transition is also pending the enactment of Bill C-12, in which the permanent Centre is

outlined. However, the concrete recommendations for the development of the Centre are found in a report to the Secretary of State (Amateur Sport) entitled, "A Win-Win Solution: Creating a National Alternative Dispute Resolution System for Amateur Sport in Canada (Canadian Heritage, May 2000). This report is appropriately titled, since through its recommendations and the experience of the interim phase, it is clear that the project is a "win-win solution". If the permanent phase of the Centre is completed according to the recommendations and considers the experiences of the interim phase, it will most definitely be successful because it has the necessary structure and characteristics.

In *Controlling the Costs of Conflict*, Slaikeu and Hasson (1998) describe a conflict resolution model that is comprised of "The Cost Equation" and a comprehensive system template. The model is simple but pertinent to the Canadian sport community in order to avoid the high cost of unresolved conflict. First, the equation indicates that predictable conflicts plus weak systems equal high costs. Secondly, the system template provides a framework to build a strong conflict resolution system. When comparing the Centre to Slaikeu and Hasson's (1998, p.56) model, it appears that the Centre has all of the necessary components to be a strong system. The recommended template has four components: 1) Site-Base Resolution, 2) Internal Support, 3) External ADR and 4) External Higher Authority. In analyzing the Centre's structure, the first component of the model is beyond the scope of the Centre, but the remaining three correspond to the following: 2) the Policy Resource Centre and an Ombudsperson, 3) the National ADR program and 4) the possibility to seek assistance from the courts (Canadian Heritage, May 2000).

The Centre is limited in terms of the first component, site-based resolution, because this phase of the model must take place within the sport organizations and as mentioned earlier, these organizations are private and voluntary. However, the government is presently controlling this aspect of the conflict resolution system by establishing criteria within the Sport Canada Athlete Assistance Program (AAP). All NSOs that receive funding through the AAP are required to have an internal appeal process to hear disputes between the organization and its carded athletes (Sport Canada, http://www.pch.gc.ca/progs/sc/prog/paa-aap/paa-aap_e.pdf). Also, under its standard rules, the current ADRsportRED program is only accessible to members of the national sport community after exhausting any internal dispute resolution mechanisms (ADRsportRED, 2002). However, now that a national sport dispute resolution system is being developed, these policies are not necessary and could uselessly complicate the system. Internal appeal processes can hinder the possibility of a timely resolution and previous experience demonstrates that sport disputes desperately require timely decisions because parties involved are faced with stringent deadlines and lifetime opportunities can be easily missed. 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 the disputes arising from the team selection decisions proved to be extremely complex since the process involved internal appeals, two separate cases in the ADRsportRED program (Rolland v. NSC and Pierse/Veldman/Wake v. SNC) and finally two separate cases in the traditional judicial system (Rolland v. SNC and Wake v. SNC) (ADRsportRED, 2002). However, the relevant issue at this time is the negative

impact the SNC internal appeals panel had on the resolution process. Pierse, Veldman and Wake were all selected for the 2002 Commonwealth Games by the SNC Selection Committee but 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. In light of the new system, internal appeals panels' decisions are not binding and have no finality; they can simply extend the time required to resolve a dispute. Therefore, in the transition to the permanent phase of the project the logic and necessity of internal appeal processes should be reviewed. Sport Canada should modify its policies to require all NSOs that receive government funding to utilize the present ADRsportRED program and in the future the permanent Center. This would simplify the system and possibly prevent internal animosity within the NSOs by eliminating internal appeals and removing the disputes from its home turf.

The second component of Slaikeu and Hasson's (1998) model is especially relevant to the current situation within the sport community. This aspect of the system addresses the issue of prevention and education, which is much needed. The current ADRsportRED program has a resource and documentation centre (ADRsportRED, <http://www.adrsportred.ca>) and when the permanent Centre is established it will include an Ombudsperson and a Policy Resource Centre (Canadian Heritage, May 2000). The ombudsperson will act as a watch dog for the sport community, while the Policy Resource Centre will serve as a prevention tool by collecting and disseminating information and providing training to volunteers and professionals (Canadian Heritage,

May 2000). The need for this type of preventive measure is clearly illustrated in a study conducted in 1998 by Sport Canada (Mew & Lyons, 1999). The study found that one of the major factors that contributes to the escalation of disputes within sports 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 (Amateur Sport) (Canadian Heritage, May 2000).

A final relevant aspect of Slaikeu and Hasson's (1998) model is the fact that it clearly identifies that external higher authorities, such as the courts, are an essential part of a comprehensive system. This necessity in the system was illustrated in the complex resolution of the SNC's teamselection dispute for the 2002 Commonwealth Games, discussed earlier. Rolland v. SNC was one of the disputes that resulted from the team selection and after being adjudicated by the ADRsportRED program, the dispute moved to the traditional courts. Ms. Rolland used the court process to enforce the decision of the ADRsportRED arbitrator and this was the correct progression. 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)

In addition to the structure of the Sport Dispute Resolution Centre of Canada, the Centre's proposal ensures that the final product has numerous valuable characteristics. This creates a package that is not only sound in its structure but also complete by having the required characteristics.

Some of the most important characteristics of the proposed system are the following. The Centre has the goal of being formally linked to the Court of Arbitration for Sport (CAS) (Canadian Heritage, May 2000). CAS was created in 1983 and it currently represents the international sport dispute resolution system (Court of Arbitration for Sport, 1994). By 1999, CAS had decided over 200 cases (Nafziger, 1999) 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) and since then, the Ad Hoc Division has facilitated the resolution of numerous Olympic sport disputes. The link between the Canadian Centre and CAS has already been initiated since CAS was consulted in the development of the recommendation report to the Secretary of State (Amateur Sport). As well, the Code that governs the present ADRsportRED program is 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 (Canadian Heritage, May 2000; ADRsportRED, 2002). If this link continues and is further established, it will bring credibility to the Canadian project.

Another constructive characteristic of the Centre is the emphasis on its independence. The recommendation report states that the Centre should be independent from any agency by means of an "independent, free-standing council" that would govern the Centre (Canadian Heritage, May 2000, p.17). At the present moment, the interim

phase of the project is governed by the Canadian Centre for Ethics in Sport and its Steering Committee reports 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 it continues by stressing 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, 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. Since then, CAS successfully conveys a credible and independent image to the international sport community (McLaren, 1998)

Despite the need for the Centre's independence and the current achievements of the ADRsportRED program, Bill C-12 contains a proposition that jeopardizes the goal of independence. It states that the chairperson and the directors of the Centre will be appointed and removed by the Minister (Canadian Federal Government, 2002). The role that 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 future independence is questionable if the permanent phase is implemented as outlined in Bill C-12.

Furthermore, 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, May 2000). The finality of the decisions are essential, otherwise the proposed system would resemble the courts with an infinite number of possible appeals. However, as mentioned above, 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 has to date been able to fulfill this mandate (Canadian Federal Government, 2002; ADRsportRED, 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 aims to be a true alternative to the traditional court system. To date, 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 transition to the permanent phase of the system. Without this quality, the Centre will resemble the traditional court system and all of its downfalls. As

illustrated, the proposal is sound but there are a few aspects that need to be further addressed.

The next few recommendations are in addition to the ones addressed above and are simply to tighten the screws on an already excellent system. First, all decisions of the Centre should be confidential. This aspect of the system is not clearly dealt with in government documentation and the interim phase of the project has not been confidential (ADRsportRED, 2002; Canadian Federal Government, 2002; Canadian Heritage, May 2000). CAS has a strict confidentiality rule and this is appropriate considering the already large media attention that sport receives (Court of Arbitration for Sport, 1994). If the ADR program cases are publicized, it could negatively affect an athlete that has not yet been found guilty and the media attention could hinder the ADR process (McLaren, 1998). On the other hand, the need for decision reporting is vital to the creation of a transparent, consistent and accountable system; maybe an innovative recording technique could find the balance between the need for confidentiality and the need for a transparent decision-making system (Haslip, 2001).

Secondly, doping cases should ultimately remain beyond the scope of the Centre. These cases are presently not included in the jurisdiction of the ADRsportRED program but the government documentation constantly mentions the possible future inclusion of doping cases (ADRsportRED, <http://www.adrsportreed.ca/history.html>; Canadian Heritage, May 2000). This inclusion should be reconsidered since doping cases involve different circumstances than other sport disputes. In non-doping related sport disputes, the parties are more likely to act in good faith since they want the truth to be heard. However, in doping cases this might not be the case. A guilty athlete would have motive

to withhold information from the decision makers and this would severely hinder the ADR process. For the ADR process to be successful, there must be enormous collaboration from the parties or the outcome will be meaningless (ADRsportRED, 2002; Holman et al., 2001; Newman, 1999).

Albert Einstein once said, "We can not solve our problems, with the same level of thinking we used when we created them" (as cited in Silver, 1996, p.E-19) and this succinctly captures the current mentality within the Canadian 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. The current system is inadequate because of its large dependency on the traditional court system and the large number of cases clearly illustrates the court's failure in 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 project has already been initiated in the form of the ADRsportRED program and so far it proves to be promising. The transition to its permanent structure must echo the experience of the interim phase and the recommendations to the Secretary of State (Amateur Sport) for the final outcome to be meaningful. If this is achieved, the Centre will prove to be a valuable addition to the Canadian sport culture and it will project a responsible image to the global sport community. Canada has been a leader in the war against sport doping, and now it has the opportunity to do the same in the area of sport dispute resolution.

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