



The Future of Athlete Agreements in Canada by AthletesCAN

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AthletesCAN, the association of Canada's national team athletes, will be releasing *The Future of Athlete Agreements in Canada*, a system wide evaluation of the Athlete Agreement's efficacy in reflecting both the needs and obligations of high performance athletes and National Sport Organizations (NSOs) this October. Prior to its official release, the paper has been presented to athlete leaders from more than 50 sports at the 2015 AthletesCAN Forum, the largest gathering of Olympic, Paralympic and World Championship athlete representatives outside of competition on September 26th in Mississauga, ON.

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AthletesCAN has had a long history of advocacy initiatives which have identified areas in need of change to support and uphold the rights of Canada's high performance athletes. Athlete Agreements in particular have undergone a drastic change since the 1980s and no longer meet the needs of the parties carrying out both sides of the contractual agreement.

After doping, the majority of disputes in the Canadian sport system flowing out of the construction or enforcement of Athlete Agreements are team selection and carding eligibility cases. These 'Athlete Agreements', between athletes and NSOs, adopted systemically in Canada, govern the daily relationships and mutual obligations between athletes and their sport organizations.

Disputes related to Athlete Agreements, like any formal or informal dispute in Canadian sport, are distractions to the performance of Canada's athletes and, ultimately, to reaching the goals of the Canadian Sport Policy. These disputes need to be minimized to optimize interactions between athletes and their NSOs and create high performance relationships that add value to the sport system and enhance the athlete experience.

It is for these reasons that in 2014 the AthletesCAN Board of Directors struck a working group to assess the current state of the Athlete Agreement in the Canadian sport system and, where necessary, propose possible interventions. This paper, entitled *The Future of Athlete Agreements in Canada*, is a summary of that research and findings.

"The goal of this project is to raise awareness of the challenges that modern Athlete Agreements create for athletes and NSOs", says Josh Vander Vies, President of AthletesCAN. "The paper aims to begin a national conversation on tangible changes to help both NSOs and athletes better understand how to use the Athlete Agreement to improve their relationship, and in turn, performance both on and off the field of play. After extensive research and consultation, we have established four recommendations for NSOs and athletes to implement as part of a risk management strategy which would address both capacity and financial implications of appeals, disputes and possible breaches in contract."

The first section of the paper discusses how the Athlete Agreement has changed as Canadian sport has evolved into a more sophisticated high performance system. In the second section, four particular issues within the AA were identified: provisions regarding self-funded athletes, the



integration of anti-doping provisions into AAs, use of social media clauses and relocation requirements. In particular and through these issues, the commentary focuses on an increasing power imbalance between the parties that has made the enforcement of Athlete Agreements difficult to predict and has restricted athlete input into these and other pertinent matters. Concrete examples from the archives of the AthletesCAN Sport Solution Legal Clinic and SDRCC decisions illustrate how particular instances of these issues have affected athletes and NSOs.

“Although relatively few disputes brought before the SDRCC are strictly about the Athlete Agreement, those agreements are regularly invoked by parties in SDRCC proceedings and they often inform decisions of arbitrators” notes Marie-Claude Asselin, CEO of the SDRCC. “Because the Athlete Agreement may equally serve to deny an athlete’s appeal or to overturn a decision of the NSO, its thoughtful crafting should be intended to protect the rights of both the NSO and the athlete.”

Section three explores the structures and experiences in other similarly situated jurisdictions, including the United States, Australia, New Zealand and the United Kingdom. The final section proposes specific solutions to identified issues, including separating commercial obligations from the main agreements, developing meaningful reciprocal obligations within the AA, facilitating negotiation, and annotating agreements in order to help both NSOs and athletes better use the Athlete Agreement to meet their respective and mutual needs.

The Future of Athlete Agreements in Canada, to be followed by additional resources for NSOs and sport system stakeholders to support the change process, aspires to promote best ever performances across a thriving Canadian sport system, through a targeted and measured modification of existing practices. ■