



The Future of Athlete Agreements in Canada (Phase II): Redefining the Relationship

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Athlete Agreements are legal documents – contracts – that define and govern the relationship between athletes and National Sport Organizations (NSOs). They are the cornerstone of a healthy, mutually beneficial relationship between athletes and NSOs. They outline the responsibilities of both parties and guide athletes and NSOs through any conflicts. But, despite their importance, they are often treated as administrative afterthoughts, leaving both the athletes and the NSOs vulnerable.

In 2015, AthletesCAN began a three-phase project to revolutionize Athlete Agreements. In phase one, AthletesCAN and Sport Solution undertook a review of the challenges existing in modern Athlete Agreements and published their findings as *The Future of Athlete Agreements in Canada*. The project found that Athlete Agreements were full of ambiguities that could pose a risk to NSOs, and, because athletes have to sign Agreements to receive funding, they could create a power imbalance disadvantaging the athlete.

NSOs and Athlete Agreements

NSOs are caught in a perpetual balancing act. They have to produce world class athletic performances while managing the regulations of their international federation, the IOC, IPC, COC, CPC, and their relationship with Canadian funding partners and sponsors. But that's not all. While managing all of those external stakeholders, NSOs have to meet the needs of their most valuable assets – their athletes.

The question is, how can they reconcile these sometimes competing needs? The answer so far has been to incorporate policies and clauses that define strict limitations in order to ensure compliance with the rules, while staying broad enough to remain sufficiently flexible to adapt to various situations. An in-depth analysis found that the Athlete Agreement is primarily used as a risk management tool, and, consequently is onerous for athletes and potentially creates more risk.

Athlete Agreements constitute an unconventional type of contract and therefore merit thoughtful attention and consideration if NSOs wish to mitigate risk from legal action. Of course, the legality and

non-negotiable portions of Athlete Agreements are inherent, but the idea of a partnership between NSOs and their athletes, rather than an imposed list of obligations from one party to the other, must prevail for Canadian sport to evolve.

Currently, some NSO members of a working group comprised of athletes, NSOs, MSOs and Sport Canada, have offered to pilot the project and adopt the final standardized Agreement recommendations. Their enthusiasm for the project is exciting for those who understand the importance of a mutually beneficial, respectful, and fair relationship and can hopefully serve as an example to other NSOs to review and ameliorate their respective Agreements.

Athletes and Athlete Agreements

Athletes are often unaware of what their Athlete Agreement requires of them. They are usually excited to have made “*the team*” or feel pressure to sign the Agreement without taking the time to digest their contractual rights and obligations. However, even if an athlete reads their Athlete Agreement, the language tends to be legalistic and confusing.

Many athletes surveyed by AthletesCAN have said they have trouble comprehending the contracts and what's required of them. This can lead to unnecessary breaches and appeals. As noted in *The Future of*



Athlete Agreements in Canada, the other major problem with Athlete Agreements is the NSO's accountability. While the repercussions for an athlete in breach of contract are well documented and explained - they can either lose their funding, in part or in whole, or be excluded from the national team altogether - there are no similar sanctions for NSOs. For example, if an athlete fails to report to a training camp without reason, the NSO is within their rights to discipline that athlete. However, if accommodations are not made for that same training camp according to the prescribed timelines, athletes have no real recourse. The common means for resolving NSO-athlete issues, i.e. appeals, are not well-suited to such breaches.

But athletes, like NSOs, would rather avoid appeals. Appeals are an important part of a fair and transparent dispute resolution process, but they take up time, resources and energy that could best be used elsewhere. Appeals are also retroactive and often come too late to rectify the consequence of the breach.

If the athletes can understand the realities in which NSOs operate, and if NSOs value how critical transparency and a fair process are to athletic performance many unwanted situations can be avoided altogether. To that end, each section of the standardized Athlete Agreement will be annotated with clear language that will alleviate misunderstandings and ambiguity.

What's next?

The conversation around *The Future of Athlete Agreements in Canada* has grown. It has become abundantly clear that both NSOs and athletes recognize that change is necessary. The second phase, spearheaded by the working group, will produce a standardized, customizable athlete agreement template that will mitigate legal risks for NSOs and address the power imbalance between athletes and NSOs. Once the template is finished, phase two's educational component will introduce the agreements to sport community through a comprehensive educational plan.

A working copy of a standardized Athlete Agreement, created and vetted by NSOs, athletes and Sport Canada and that can be fine-tuned to suit the differing needs of each NSO, will be ready in the coming months.

The educational element of phase two, in which the NSOs and athletes are walked through the Agreement, will begin shortly. The ultimate goal is for NSOs to adopt the standardized agreement and, while tailoring it to fit their needs, include their athletes in the process. The result will be that athletes and NSOs will have an independent, annotated document written with mutual obligations in mind to ensure that the Agreement is fair and transparent.

Sport Solution, is in the midst of synthesizing its findings with the input from the NSO, athlete and MSO members of the working group, to create a comprehensive document.

Phase three, unrolling in 2017, will focus on the implementation of the Agreement across the Canadian sporting landscape. A change we believe will mitigate risk for NSOs and athletes and strengthen the bonds of trust and collaboration that are the bedrock of any winning partnership. ■