



## Introduction

- Claimants:** Greg McAuley, Bryan Miki, Brent Pierce, Jody Sveistrup (Team McAuley)
- Respondent:** Canadian Curling Association (CCA)
- Type of Dispute:** Application for AAP Funding
- Arbitrator:** Prof. Richard H. McLaren, C.Arb
- Date of Decision:** April 7<sup>th</sup>, 2003



## Dispute Summary

Team McAuley appealed a decision by the Canadian Curling Association to recommend that Sport Canada athlete funding be discontinued.





## Background Facts

In 2000, Team McAuley won both the national men's curling championship (the Labatt Brier) and the World Championships.

These performances entitled the Team to become a member of the National Team and, with the CCA's recommendation, to participate in the Athlete Assistance Program (AAP).

Known as the "carding program" and funded by Sport Canada, the AAP helps to alleviate some of the financial burden incurred by Canada's elite athletes as they prepare for major international competitions.

The members of Team McAuley were carded for a two-year term beginning on July 1<sup>st</sup>, 2000. As a condition of carding, they were required to complete two documents:

1. National Team Athlete's Agreement, and
2. An AAP application to Sport Canada.



### Background Facts (cont'd)

On January 3<sup>rd</sup>, 2002, the Team changed the competitive program it had submitted with its AAP application by withdrawing from the 2002 provincial playdowns, the Nationals and the World Championships.

In place of these events, they proposed to compete in the new Grand Slam of Curling Tour. The organizer of this professional tour required the participants to sign an agreement prohibiting them from competing in CCA provincial and national playdowns as well as the World Championships.

By the beginning of the second year of the AAP carding, Team McAuley had a potential conflict between contracts: the Athlete Agreement with the CCA and an exclusivity agreement with the World Curling Tour.

On January 16<sup>th</sup>, 2002, Sport Canada advised the Team that the CCA had recommended they be removed from the 2001-2002 carding list because the athletes had chosen to withdraw from the National Team Program.

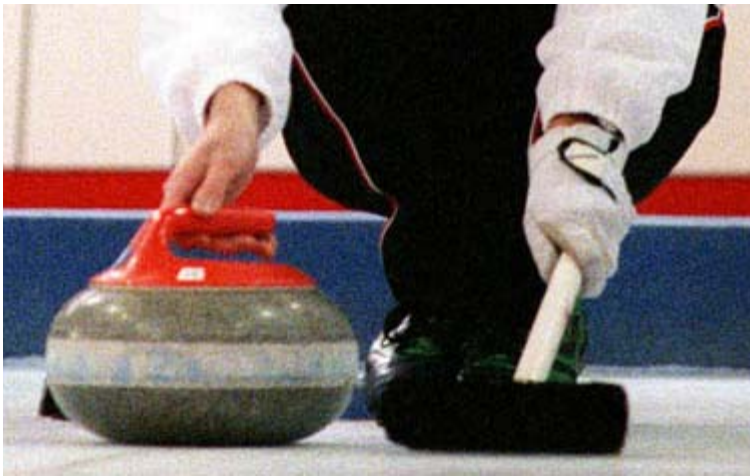
Team McAuley appealed that decision. The parties agreed to access the ADRsportRED program and by-pass any internal appeal procedure.



## Claimants' Position

Team McAuley's case was based on the following allegations:

- The CCA and Sport Canada made the decision to de-card at a meeting on June 5<sup>th</sup>, 2001 and merely implemented the decision in January, 2002 after the Team filed a revised competitive schedule; and,
- The CCA discriminated against Team McAuley because it treated an elite women's team differently, allowing them to opt out of provincial playdowns, but continuing their carded status.





## Respondent's Position

The CCA's case was based on the following arguments:

- The members of Team McAuley were fully aware that if they did not play in the national playdowns in the latter half of the 2001-02 season that they would no longer be on the National Team and would, therefore, lose their carded status;
- The CCA had the right to approve the Team's schedule along with the right not to approve schedules that did not include National Team events; and,
- In the absence of those events, it had the authority to recommend to Sport Canada that AAP funding be discontinued.





## Arbitrator's Analysis

In his ruling, Prof. Richard H. McLaren noted that the CCA did not have a formal appeal procedure in place to deal with potential complaints, as required under the Athlete Assistance Program.

Prof. McLaren further concluded that Team McAuley had provided the WCT with an exclusivity agreement which would preclude them from entering the provincial playdowns sponsored by the CCA. The two sporting sponsors were, in effect, competing for talented competitors to be exclusively part of their programs.

He concluded that when the Team advised of the schedule change so as to participate in the Grand Slams events, they were in breach of their Athlete Agreement with the CCA and the specific commitment to compete in the provincial playdowns.

With regards to the question of discrimination against Team McAuley, as compared to the treatment of an elite women's team, the arbitrator concluded there were no grounds to prove such an allegation.



### Arbitrator's Analysis (cont'd)

Prof. McLaren found that the CCA, in acting immediately to recommend de-carding without notice to the Team, breached the Athlete Agreement. *“Notice would have resulted in discussion of the conflict and possibly resolution. Instead, the Team became the victim of the turf war.”*

He ruled the CCA had also breached clause 1(j) of the Agreement because it failed to provide a hearing and appeal procedure.

According to Prof. McLaren, *“This breach makes a mockery of the AAP program and the compliance review by SC (Sport Canada). The absence of this process and the ensuing confusion and posturing that took place on all sides explains why this procedure does not even begin until more than a year after the breach of the Aagr (Athlete Agreement).”*

Finally, he ruled that the CCA acted appropriately when telling Sport Canada that Team McAuley had withdrawn from the program. It was Sport Canada's decision to determine if funding would cease.



## Ruling

The appeal was upheld.

As part of its decision to sign on with the WCT, Team McAuley secured an indemnity from IMG, covering any potential monetary loss brought about by an end to the carding program.

Therefore, awarding damages to the Team as a result of the CCA's breach of the Agreement would have amounted to over-compensation. Team McAuley was awarded nominal damages of \$1.

Prof. McLaren found no reason to award punitive damages and ordered the parties to cover their own costs.



[Click here](#) for the full text of this **ADRsportRED** judgment.



## Follow-up Application

On June 12<sup>th</sup>, 2003, Team McAuley applied to ADRsportRED for a further interpretation of the award.

Co-Chief Arbitrator, L. Yves Fortier, reviewed the award and determined there were no valid grounds for a further interpretation.





## Lessons Learned

1. When carding is based on a declared training and competitive schedule, athletes are bound by that schedule unless previous results don't allow for participation in a scheduled event; and,
2. An NSO's responsibility toward a team is one of support and assistance. It is a mutual relationship that does not fall within the principles of fiduciary duties.

