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A WIN-WIN SOLUTION:

*Creating a National Alternate Dispute Resolution System
For Amateur Sport in Canada*

**Report of the Work Group
to the Secretary of State (Amateur Sport)**

May 2000

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· EXECUTIVE SUMMARY

There is an urgent need for policy reform within the amateur sport community in Canada. Due to a lack of fair and consistent policies, or to the improper administration of those policies, athletes and other participants in sport are being disciplined, harassed and denied opportunities without proper recourse to a hearing or appeal. Sometimes, even with policies in place and properly administered, the participants to a dispute need recourse to an impartial, third party.

These problems are widely acknowledged within the amateur sport community in Canada. They stem primarily from systemic difficulties and not the intentions of the thousands of Canadians whose volunteer and professional efforts constitute the administrative foundation of Canadian amateur sport.

The Secretary of State (Amateur Sport) is well aware of the need for an alternative to the courts to resolve these disputes. In January 2000, he created a Work Group made up of members of the sport community and charged them with developing a model for alternate dispute resolution (ADR) which could be applied to the amateur sport community on a national level.

The Work Group solicited and received input from a wide array of groups and individuals involved in sport and ADR today. The overwhelming consensus of the sport community is that a permanent national ADR program would make an immensely positive impact on the culture of sport in Canada.

The Work Group's recommendations are three-pronged:

1. PREVENTION

The Work Group believes, based on the information collected during the course of its work, that many of the disputes which arise in amateur sport in Canada could be prevented through the establishment of fair, transparent and consistently applied policies and procedures within sport organizations. It therefore recommends that the federal government require, through legislation, that all National Sport Bodies adopt a separate and overarching policy that provides:

- a level of appeal of internal decisions;
- access to mediation services, where appropriate; and
- access to arbitration that will be final and binding upon the parties to a dispute.

Further, the Work Group recommends that the federal government provide support and resources to the sport community to assist organizations in meeting these expectations and in moving toward best practices in policy areas such as discipline, team selection, doping and harassment. This support would be provided in the form of a **Policy Resource Centre**, housed within a separate organization and funded by the federal government.

2. A NATIONAL ADR PROGRAM

There is overwhelming support within the amateur sport community for a sport-specific alternate dispute resolution program at the national level. The Work Group therefore recommends that the federal government initiate the process of creating such a program with the following features:

- **Mandatory:** Access to alternate dispute resolution should be a right guaranteed to all participants of National Sport Bodies.
- **National - Provincial:** While ADR will be mandatory for National Sport Bodies, access to the program will be open to provincial sport bodies by agreement.
- **Governed by a Council:** In order to maintain credibility and independence from any existing sport body, the ADR Program should be governed by a newly established Council for ADR in sport.
- **Mediation and arbitration:** The program should provide mediation and arbitration services. The council will select a panel of mediators and arbitrators with knowledge and experience in sport who will be paid should they be selected for a case.
- **Linked to the international Court of Arbitration for Sport:** The CAS is a successful and highly regarded dispute resolution program currently exploring the development of partnerships with sport bodies in other countries. A link to the CAS would bring the new Canadian ADR program credibility as well as provide trained Canadian arbitrators for use at major international events.
- **Legal counsel:** The parties to a dispute should have recourse to legal counsel, if they so desire, although this Report does not address how such counsel would be obtained or provided.
- **Staffing/human resources:** Secretariat services will be required in order to administer the ADR process. These services may be provided through the hiring of staff or through a third party service contract.
- **Funding:** The Program should be fully funded in its initial stages by the federal government, with a longer term goal of diversifying its funding sources. Funding for the Program should not be derived from existing funding for amateur sport.

3. MONITORING

While the initiatives described – broad policy change and a national sport-specific ADR program – will make a significant impact on the culture of amateur sport in Canada, these changes will require ongoing monitoring and revision. The Work Group was persuaded by the arguments of many groups and individuals in sport of the need for an **Ombudsperson for Amateur Sport**. This individual would act as the watchdog for the sport community, investigating complaints concerning the administration of policies and executing of procedures, and issuing a public report annually, with recommendations to the sport community and the federal government.

The Work Group was encouraged in its deliberations by the widespread support it received for its work from all quarters -- athletes, coaches, volunteers and sport organizations. It is clear that the entire

community is looking for a solution to the current situation in which costly, time-consuming legal battles often result in destroyed relationships.

The Work Group believes its recommendations will benefit all members of the sport community in Canada through a three-pronged effort to ensure the policies, procedures and resources are in place to prevent and resolve disputes and monitor the results. In short, this Report presents a win-win solution that the Work Group believes, will greatly improve the culture of amateur sport in Canada.

· BACKGROUND

An athlete meets all of the criteria for selection to Canada's national team yet, days before the team departs for the Commonwealth Games, he is told he is no longer on the team.

Two members of the Canadian Team at an international competition go out for dinner, get held up in traffic and miss their curfew. They are sent home the next morning with no opportunity to explain themselves.

A wheelchair athlete is suspended for two years after a random doping test that she and her coach believed was improperly conducted.

A national coach is suddenly fired a few months prior to the Olympics amid rumours of sexual harassment.

These cases are typical of the disputes that arise in amateur sport in Canada. Some of them were resolved through an established mechanism for the appeal of decisions made by sports organizations. In other cases, however, participants lost valuable opportunities and their only recourse was to appeal to the courts – often at great personal stress and expense to all of the individuals involved.

Like all Canadians, athletes and coaches are guaranteed the right to “due process” or “natural justice” in the treatment they receive from the organizations in which they are members. However, these rights are periodically ignored, even violated. Sometimes the infringement of rights is a result of the substance of a rule or regulation. Sometimes it is a result of the procedures – or lack of – used to enforce the rules. Sometimes it simply results from poor or unfair decision-making. Quite often, the decision maker's intentions are good, but the decision made is simply a wrong one. Good intentions or not, the cumulative effect is unfairness for those affected, and an increasing amount of litigation over disputes. Most of the unresolved disputes in amateur sport involve issues of team selection, discipline, anti-doping protocols and, most recently, harassment.

Past experience has shown that litigation is an inappropriate method of resolving most disputes in sport. It is costly, time-consuming, destroys relationships and takes a huge personal toll on those involved. Instead, there is increasing support among those involved in sport for policies and procedures that can help athletes, their coaches and sporting organizations resolve disputes outside of the court system. So-called “alternate dispute resolution” (ADR) systems – such as mediation and arbitration – have proven effective in resolving conflicts in a timely, fair, and cost-effective manner that meets the needs of both parties. In other words, ADR creates the opportunity for a win-win solution – one in which both sides leave satisfied that the issues have been fully aired and a decision fairly rendered.

What is Alternate Dispute Resolution?

Alternate dispute resolution has been defined as a series of processes that are alternatives to litigation.¹ ADR processes include prevention, negotiation, mediation, facilitation and arbitration. The goals of an ADR system are to:

- Reduce time and costs for dispute resolution.
- Maintain or improve the disputants' relationship.
- Ensure that the outcome of the system is workable, durable and implementable.
- Develop a process that people can learn from.²

The two most common forms of ADR are mediation and arbitration. Mediation is the use by disputing parties of a neutral third party to facilitate their own resolution of their dispute. It works only when both parties agree to engage in the process and where there is some hope of a mediated solution. Mediation only brings a dispute to an end if both parties, with the intervention and assistance of the mediator, are able to come to an agreement that resolves the dispute.

Arbitration, on the other hand, employs a neutral third party to hear the evidence and decide for the disputants how their conflict should be resolved. Arbitration tends to be more structured and formal than mediation. Unlike mediation, arbitration will bring finality to the dispute whether the parties agree or not; an arbitrator's decision is, and is meant to be, final and binding on the parties to the dispute. Indeed, the decision of the arbitrator may not accord with the resolution suggested by either party, but it will be final.

In both mediation and arbitration, the independence of the third party – whether one individual or a panel – is critical. Both methods also tend to be more successful when the mediator or arbitrator has expertise in the area being disputed.

• **The ADR Experience in Canadian Sport**

In 1994, the Canadian Sport Council approved the concept of ADR at its annual congress and struck a committee to advance the concept. The committee recommended an independent ADR mechanism for national sport³ and the Council issued a request for proposals for implementing it. The contract was awarded to the Centre for Sport and Law and, by February 1996, with financial assistance from Sport Canada, the ADR program was launched as a two-year pilot project.⁴

Before the end of the pilot project, the Canadian Sport Council was dissolved. The Canadian Centre for Ethics and Sport briefly carried it on, but for the last few years, the ADR program has been in a vacuum with no organization to facilitate its evolution in Canadian sport.

Nevertheless, since that time, the idea of an ADR system has continued to gain support. A number of provinces have taken steps to develop their own ADR programs. This has prompted the Federal-Provincial-Territorial Sport Committee (FPTSC), over the past two years, to investigate the merit and means of developing a national network of ADR programs by which common elements of an ADR program could be shared for mutual benefit.

A 1998 survey conducted for the FPTSC by the Centre for Sport and Law determined that while there exist shared views of ADR for sport and common needs across all jurisdictions, no “champion” had emerged to lead the introduction of ADR across all jurisdictions. Rather, the survey found, all but a few jurisdictions were operating on an ad hoc, reactive basis and were likely to do so until a sense of urgency or crisis emerged to trigger systematic and collective response.⁵

In January 2000, the federal Secretary of State (Amateur Sport), the Hon. Denis Coderre, M.P., announced the appointment of a Work Group to develop a national Alternate Dispute Resolution system for amateur sport in Canada. This Report presents the findings and recommendations of that Work Group.

• **Terms of Reference for the Work Group**

The objective of the Work Group was to prepare, for submission to the Secretary of State (Amateur Sport), several options for the development of a National Alternate Dispute Resolution System and support structures, for use by the national sport community that will:

- Ensure access to independent alternate dispute resolution processes for all participants in the Canadian sport system;
- Strengthen the transparency and accountability of the national sport system and national sport organizations through clarifying their responsibilities to athletes, coaches and other stakeholders;
- Ensure that the independent alternate dispute resolution processes are equitable to all participants;
- Build on the experience gained since 1994, and particularly the Centre for Sport and Law's assessment of elements requiring immediate attention, including
 - Information resources;
 - Adjudicator/mediator recruitment and training;
 - Integration of related programs;
 - Accountability framework for sport associations.
- Facilitate the integration of Provincial/Territorial ADR programs so that the principles and processes of the National ADR System could be harmonized throughout all jurisdictions in Canadian amateur sport.

A list of members of the ADR Work Group is attached as Appendix D.

• **Methodology**

The Work Group met three times between January and March 2000, once in Toronto and twice in Montreal. Sub-groups were formed to complete research and to report on specific elements of the program. Two members of the Work Group met with representatives of the international Court of Arbitration for Sport.

The wider amateur sport community in Canada also played a role in the ADR Work Group's deliberations. A letter sent to all National Sport Organizations, Multi-Sport/Service Organizations, Major Games Organizations and some Provincial Sport Organizations solicited input on the desired features of an ADR system and requested copies of internal policies on dispute resolution and appeals. In all, almost 60 organizations responded to the request.

Informally, an even wider network of sport organizations and leaders contributed their ideas and information to Work Group members.

The Work Group looked both within and outside of sport, and both in Canada and to other jurisdictions, for models of ADR and related programs that could be applied to this context. Experts in alternate dispute resolution also provided an enormous amount of information to the group.

The Work Group was gratified by the amount of information and input supplied by the sport community. The response clearly demonstrated widespread interest in the establishment of an ADR system for amateur sport. A list of some of the people and organizations that provided information and support to the Work Group is attached as Appendix E.

CONTEXT: DISPUTE RESOLUTION WITHIN CANADIAN SPORT

Canadian law has established the right to procedural fairness within sport organizations. The requirement of fairness applies to all decisions within the organization -- eligibility, team selection, discipline of club members, regimes for training, procedures for drug testing, appeals of decision or other matters.

Regrettably, this well-established right has not translated into an amateur sport system that fully reflects the principles of due process and natural justice. Instead, the Work Group discovered that some decisions within sport and sport organizations continue to be made without hearings or opportunities for appeal; that the arbitrary authority of the coach and other officials continues to reign completely unfettered within some sports; and, that the current culture of amateur sport is still one in which individuals are generally not encouraged to pursue their rights.

Within some sports, tremendous power rests within the members of the Board of the national organization, the staff, officials and coaches. As a result, athletes and other participants are often reluctant to pursue any avenues for dispute resolution open to them for fear of future reprisals.

That said, there has certainly been some progress within the sport community. During the 1990s, many organizations and jurisdictions implemented appeal procedures for athletes and other participants, and some have instituted alternate dispute resolution mechanisms as a formal component of the decision-making process.

A review of existing policies submitted by sport organizations revealed the following:

- Most national sport organizations have an internal appeal process, though the location of that policy varies widely and, in some cases, does not apply to all decisions of the organization.
- Over half of the organizations responding to the request for information/consultation did have provisions for independent arbitration and/or mediation.
- There are inconsistencies in the policies and procedures of some sport organizations.
- Some organizations do not stipulate that arbitration is final and binding, thereby allowing for appeals to the courts of arbitration decisions.

Sport Solution, a service developed by Athletes CAN, in conjunction with the University of Western Ontario Faculty of Law, provides assistance to athletes who wish to appeal a decision of a sport organization. Between January and October of 1999, case workers at Sport Solution dealt with 137 cases. These represent athletes who approached the service for assistance in having their complaint pursued through the appropriate channels. Of those 137 complaints:

- 67 (49%) concerned issues of team selection.
- 22 (16%) concerned funding and carding issues.
- 8 (6%) concerned disciplinary action.
- 2 (1%) concerned doping.
- 38 (28%) concerned other issues.
- Of these 137 cases, 42 (31%) were pursued through to an appeal – almost all through litigation.
- Arbitration was used only in two cases; mediation in one.

The Centre for Sport and Law, the private law firm which has run the pilot ADR project since 1996, reported over 60 contacts involving disputes in sport organizations during the intervening period. The vast majority of these disputes stem from complaints of harassment, usually of athletes by coaches. Though advice and assistance were most often sought by the heads of sport organizations, the Centre also reports several contacts with parents, athletes, coaches and board members. Many of these cases were complicated by vague or ill-thought out policies or the lack of any policy or procedure to deal with the matter.

Despite extensive discussion and research on dispute resolution in sport, it is clear that athletes continue to face formidable barriers in securing their rights to ‘natural justice’ within sport in Canada. Other participants, such as coaches and professional and volunteer administrators, would also benefit from the broad protection of rights.

All of this information quickly led the Work Group to the conclusion that an ADR system cannot work in isolation from the policies and procedures of the sport organizations it aims to serve. Further, the Work Group determined that prevention of disputes through appropriate, fair and transparent policies and procedures should form an essential component of the ADR initiative.

There are cases in which a dispute erupts not over the administration of a policy but over the substance of the policy itself. The Work Group acknowledges the right of a sports body to develop and implement its own policies through a democratic process and this Report is not intended to infringe on that process in any way. Disputes over the substance of a policy should continue to be dealt with through the decision-making processes of each sport organization.

Where the Work Group saw the need for dramatic improvement is where the right to natural justice is jeopardized by inconsistencies and deficiencies in an organization’s policies and procedures or where decision-makers lack proper knowledge. Given the reluctance and capacity of some sport organizations to rectify their own policies and procedures and to train decision-makers, members of the Work Group agreed that it is time for the federal government

to legislate athletes' and coaches' rights in Canada and to assist the sport community in meeting the requirements of natural justice in decision-making.

Recommendation 1:

That the Secretary of State (Amateur Sport) require, either through amendments to the Fitness and Amateur Sport Act (FAS Act) or through introduction of new legislation, that all national sports bodies adopt a separate and overarching policy that:

- *institutes an appropriate internal appeal process incorporating the principles of natural justice; and*
- *provides for mediation and arbitration in the event of a dispute of any internal decision; and*
- *ensures that the results of arbitration are final and binding upon the parties involved in a dispute.*

For the purposes of this and subsequent recommendations, 'National Sport Bodies' are defined as:

Any national sport organization that is

- *federally incorporated, or that applies to become federally incorporated, and/or*
- *a registered Canadian amateur athletic association as designated by the Minister of National Revenue, or that applies to the Minister for such registration.*

Note that this definition includes national Multi-Sport Organizations such as the Canadian Interuniversity Athletic Union, Major Games Organizations, such as the Canadian Olympic Association, as well as single sport organizations, commonly known as National Sport Organizations.

While the provision of model clauses for such policies will assist sport bodies, the Work Group also recognizes that a "cookie cutter" approach to policy development is not a complete solution. Policies will need to be refined to meet the distinct needs of each organization and revised over time based on the experience gained in implementing them. The Work Group therefore proposes the development of a Policy Resource Centre for Sport Policy with the role of collecting and disseminating information and policy models for adaptation by national and provincial sport bodies and of training volunteers and professionals in the administration of policies.

The Work Group recognizes that some of this work is being done by existing organizations, including: Centre for Sport and Law Inc., Canadian Centre for Ethics in Sport (CCES), Sport Solution, Sport Information Resource Centre (SIRC), National Sport Centres, and the Canadian Association for the Advancement of Women and Sport and Physical Activity (CAAWS). These organizations would continue to play a role in policy development and the provision of specialized services in their respective areas but the creation of a Policy Resource Centre would serve to centralize the information, educate sport organizations and individuals, ensure the training of leaders, and, most importantly, to bring about positive change in the culture of sport.

As an immediate measure, the Secretary of State (Amateur Sport) should initiate the establishment of the Policy Resource Centre for Sport. Once the organizational framework for the entire ADR program is in place, as described later in this Report, the Policy Resource Centre would be relocated there.

Recommendation 2:

That the Secretary of State (Amateur Sport) ensure the establishment of a policy resource centre to assist National Sport Bodies and other sport bodies with the design and structure of policies related to internal appeal mechanisms and alternate dispute resolution and to ensure appropriate training for decision-makers in the national sport community on the development, interpretation and implementation of these policies.

A NATIONAL ADR MODEL

A national program of alternate dispute resolution will initiate important changes in the culture of amateur sport in Canada. Conflicts can be resolved relatively quickly, which is particularly important in situations where an athlete's ability to compete is at stake. ADR is less costly than the courts. Decisions made by trained and experienced mediators and arbitrators will incorporate a general knowledge of the sport system. Perhaps most importantly, ADR provides the right to natural justice where the internal policies and procedures within a sport or organization may have failed to do so.

The Work Group examined a number of ADR models in the course of its deliberations. The experience of the ADR pilot project, carried out by the Centre for Sport and Law, has highlighted the need for information, mediator/arbitrator recruitment and training strategies, related supports for athletes and organizations and an accountability framework for the program.

The Court of Arbitration for Sport at the international level also has features that appealed to the Work Group. The CAS operates under the administrative and financial authority of the International Council for Arbitration in Sport, composed of independent individuals, and offers dispute resolution services specific to the needs of the sports world.

Consultations within the Canadian sport community led to the following conclusions:

- There is widespread support for a national ADR program as a means of dealing with disputes that cannot or have not been resolved internally.
- The ADR program should be independent from any sport ensuring no conflict of interest on the part of the administrators of the system.
- Mediators and arbitrators should be knowledgeable in sport and competition but not currently involved in the sport in question.
- The ADR program must be widely promoted to ensure that all participants are aware of their rights, and that the Canadian sports system has an obligation to protect rights.
- Disputes must be resolved in a timely manner.
- The program must be accessible -- in terms of language and geography -- and should be easy to understand.
- The program must be affordable.
- The program should, where appropriate and agreed by the parties, maintain confidentiality. Results of decisions, however, should be reported publicly to facilitate progress toward best practices.
- Arbitration must be final and binding upon the parties.
- There should be a provision for provincial sport organizations, and their members, to use the national ADR system.

Based upon its study of existing models, and the input of the sport organizations, the Work Group was convinced that a national, sport-specific program of alternate dispute resolution is

necessary to maintain the integrity and credibility of Canadian amateur sport and, indeed, is widely anticipated by the sport community.

Recommendation 3:

That the Secretary of State (Amateur Sport) ensure the establishment of the structures required to support an alternate dispute resolution (ADR) system incorporating the following principles:

- *Sport-specific*
- *Independent of any sport organization or government*
- *Not for profit*
- *Affordable*
- *Accessible*
- *Timely, and*
- *Confidential, where appropriate.*

And that,

- *Provides a mandatory level of appeal for the resolution of disputes within National Sport Bodies when disputes have not been resolved through an internal process;*
- *Offers an optional level of appeal for disputes within provincial sport organizations when disputes have not been resolved through an internal process; and*
- *Offers dispute resolution through mediation and arbitration services.*

Implementation

Though a number of national organizations would adopt, and indeed have adopted, ADR on a voluntary basis, it is the consensus of the Work Group that the new national ADR program should be mandatory for National Sport Bodies. This would avoid the risk that key players would not opt in, which would have implications throughout the Canadian sport system, particularly for doping matters.

Accordingly, the Work Group recommends the adoption of the ADR system be mandatory in Canada for all National Sport Bodies, as defined in Recommendation 1.

Recommendation 4:

That the Secretary of State (Amateur Sport), either through amendments to the Fitness and Amateur Sport Act (FAS Act) or the introduction of new legislation, require that National Sport Bodies institute a provision for appeal of disputes to the national alternate dispute resolution system.

The transition to a sport system that incorporates ADR as a mandatory element is envisioned as a two-stage process. During the first phase – or transition phase – the Work Group suggests

that the Secretary of State (Amateur Sport) notify relevant organizations of the Government's intention to legislate ADR and provide assistance to sport organizations in their efforts to incorporate ADR into their own policies. This role would be part of the mandate of the Policy Resource Centre suggested in Recommendation 2, above.

Resources provided to National Sport Bodies should include:

- All necessary information regarding the new requirements of the new or revised *FAS Act* and the ADR system and related structures.
- A sample mandatory mediation and arbitration clause.
- Suggested procedures for mediation.
- Suggested procedures for arbitration.
- Sample policies and procedures in areas such as team selection, discipline, doping and harassment.

After a reasonable period of time (perhaps one year), the Secretary of State (Amateur Sport) should ensure the implementation of the mandatory phase of the ADR program. At this point, those organizations that have not yet incorporated provisions for ADR into their internal policies would be subject to sanctions by the Government of Canada.

Scope

The Work Group spent a substantial amount of time trying to determine the scope of a national ADR system – in other words, who would have access to it and for what kinds of decisions. Our conclusion was that access to the national ADR program should be a guaranteed right for any member of, or any participant within, a national sport body (as defined in Implementation, above) for any dispute within the jurisdictions of those bodies.

In several cases, the policies of provincial sport organizations already refer disputes to the resolution and appeal mechanisms of their national counterpart. Consequently, then, these provincial sport organizations would have access to the national ADR system. Further, the Work Group believes the ADR system should be available to any provincial sport organization on an optional basis. This will help coordinate and standardize the dispute resolution system at both levels.

While access to the ADR program should be guaranteed to parties in a dispute who have exhausted the internal avenues for resolution within a given sport or jurisdiction, the Work Group recommends that parties may agree to bypass the internal procedures in favour of direct access to the national ADR program. This option enables parties to distance themselves from the sport in question, if needed, and to seek mediation prior to positions irrevocably hardening or to seek an expedient resolution to a time-sensitive conflict.

Accordingly, the scope of the ADR program is any dispute which (a) has not been resolved to the satisfaction of both parties using the sport/jurisdiction's appeal procedures or (b) in which both parties agree to participate in the program. The principle of the program is based on the concept of *Trial de Novo* – in which the arbitrator measures the correctness of the decision.

The arbitrator may review all aspects of the case and may use the evidence and record that was before the original decision-maker.

The Work Group also believes that the Canadian ADR system should be formally linked to the Court of Arbitration for Sport at the international level. Such a relationship would give the Canadian system access to the knowledge and experience of CAS, and bring it the credibility CAS has earned throughout the world. It would also provide a group of trained Canadian arbitrators to the CAS for use at major international events.

The relationship between the CAS and the Canadian ADR system would be particularly valuable during the start-up period of the Canadian system. The CAS has established such a relationship with the Australian Olympic Committee, to create and jointly operate the Australian Court of Arbitration for Sport. CAS is currently exploring the development of similar relationships with sports bodies in the United Kingdom and the United States. We suggest that the Secretary of State (Amateur Sport) ensure a working agreement between the proposed Canadian ADR system and CAS.

Recommendation 5:

That the Secretary of State (Amateur Sport) ensure the establishment of a national alternate dispute resolution program that:

- *Provides access to mediation and arbitration services where there is a dispute of a decision made within a national sport organization or where the parties agree to move to mediation or arbitration; and*
- *Is available to any participant of a national sport body that is*
 - *federally incorporated, or that applies to become federally incorporated, and/or*
 - *a registered Canadian amateur athletic association as designated by the Minister of National Revenue, or that applies to the Minister for such registration; and*
- *Is available to any participant of a provincial sport organization where that organization has opted into the national ADR program; and*
- *Deals with any matter falling within the jurisdiction of those organizations; and*
- *Operates on the principle of trial de novo; and*
- *Is linked to the Court of Arbitration for Sport.*

Organizational Framework

The Work Group considered a number of possible organizational structures to support the national ADR program, including:

- Housing the program within an existing organization.

- Housing the program within government.
- Creating a new organization to oversee the program.

The need for the sport community to feel a sense of ownership over the ADR program and the desire to establish credibility and independence in the administration of the ADR program argues against establishing the ADR program within an existing entity.

The Work Group was absolutely convinced of the necessity to house the ADR program within a newly-created, independent organization with the sole purpose of overseeing the program. The Canadian ADR program for sports should be governed by a Council made up of members of the sport community but would be independent of any existing organization or institution.

The Council would be responsible for designing and implementing the structure, overseeing its administration, and ensuring that appropriate evaluation and follow up occurs.

The Council should be made up of individuals representing stakeholders, including:

- Athletes
- Coaches
- National Sport Organizations (NSO's)
- Sport Canada
- Canadian Olympic Association
- National Sport Centres
- Government (federal/provincial/territorial)
- National Multi-sport organizations (e.g. CCES, CAAWS, CGAC, CIAU, etc.)
- Provincial Multi-sport organizations (e.g. Sport Manitoba, Sports-Québec, Sport B.C., Sask Sport, etc.)

The concept is for stakeholders to nominate people to the Council who have the requisite expertise to ensure the ADR system serves the needs of the sport community. It is not intended that any stakeholder appoint a member representative to have a voice for that stakeholder; rather it is intended that the stakeholders will have input into the Council members and will nominate people who have expertise in ADR and the maintenance of an ADR system. Qualifications of the directors would not require nominees to have legal training but to have a firm understanding of disputes, how they arise and how to govern through policies.

The number of Council members is determined arbitrarily. We suggest 12 – a number large enough to allow input from the various stakeholders but small enough to contain costs.

Appointments to the Council would be made through a nomination and/or application process. The call for nominations and applications would be widely circulated. Organizations would be encouraged to nominate qualified individuals. Interested individuals would be invited to submit an application outlining their respective skills.

We suggest that five key stakeholders (athletes, coaches, NSO's, Sport Canada and COA) each have the first right to appoint one representative to the Council. Those five appointees would then select three nominees out of the nominations submitted by the other four stakeholder groups.

The eight Council members would then choose four additional members out of all remaining nominations and applications, with a view to ensuring a balance among members in terms of gender, geography, official languages, persons with a disability, team vs. individual sports, summer vs. winter sports, lay vs. lawyers, and other factors which may arise. At least three of the 12 Council members should be either active athletes or recently retired athletes within eight years of retirement.

It is recommended that the terms of Council members be four years, with initial terms made on a staggered basis (some for two, some for three, and some for four years) to ensure continuity.

Mediation and Arbitration Panels

It is envisioned that the Council would be responsible for selecting mediators and arbitrators to two sport-specific panels. The Council could do this itself, through an appointment process, or by securing a contract with an ADR service provider for the recruitment and training of sport-specific panel members. In either instance, it was suggested that a maximum of 20 mediators and 50 arbitrators, with due consideration to geographic location, skills, gender, and language, be appointed.

Membership on the panels should be for a defined term of four years, after which panel members would have to be re-selected by the Council. This allows for a review of performance while providing security of tenure. Decision-makers should enjoy independence and neutrality while still having to produce work that is acceptable to all members of the sport community.

While the Work Group considered attempting to secure mediation and arbitration services on a *pro bono* basis, it was agreed that paid mediators and arbitrators would ensure not only professionalism and credibility but their availability to resolve disputes on short notice. Council members would not be eligible to be appointed to the panels.

System Administration

It was recognized that the administration of the ADR system is absolutely critical. At a minimum, a central secretariat will be required to coordinate the mediation/arbitration panel, in accordance with a set of rules and procedures approved by the Council, and provide support during the hearing process. This office could be governed by Council directly, or could be incorporated into a third party contract for ADR services. It could be done on a full-time or part-time basis. It is instructive that both the Australian Court of Arbitration for Sport and the (British) Sport Dispute Resolution System are administered on a part-time basis.

In any case, the role of the Secretariat is to field inquiries related to access to ADR, to process documentation in preparation for a hearing, to coordinate the selection of a mediator or arbitrator, and to maintain a record of the hearing process and a compendium of decisions rendered. The Secretariat also functions as a Help Desk for the ADR system, remaining completely impartial while skillfully directing parties through the process.

Legal Counsel

Ideally, the mediation and arbitration programs would operate in such a clear and straightforward manner that participants would not feel a need for legal counsel, thereby reducing the cost of dispute resolution for participants. It was the view of the Work Group, however, that the system should not preclude legal counsel. The Work Group discussed the development of a needs-based program to provide financial assistance to participants seeking legal counsel. However, this idea was not fully developed for the purposes of this Report; the Work Group suggests this question be explored by the Council.

Funding

The set-up and maintenance of a national ADR program and related supports for sport organizations would require a budget for:

- Secretariat – salaries and benefits, or a third party contract.
- The Policy Resource Centre
- Mediation and arbitration process
- The Council

The Work Group considered many sources of funding for the program, including:

- Volunteers
- Donations
- Federal government
- User fees/service fees
- Sponsorships

It is the conclusion of the Work Group that the Secretary of State (Amateur Sport) must provide funding to establish the ADR program and related supports and provide core funding on an on-going basis. Once the ADR program, its organizational framework and related programs are functional, the program will be in a position to secure additional sources of funding – perhaps through a sponsorship. However, without a track record and prior to the widespread adoption of the system, it will be difficult to secure enough funding through user fees, donations and sponsorships to support the program.

Recommendation 6:

That the Secretary of State (Amateur Sport) ensure the creation of an independent, free-standing council for a national ADR program that will:

- *Develop policy for and oversee the management of the ADR and related services,*
- *Be composed of members that represent athletes, coaches, NSOs, governments (federal, provincial and territorial), National Sport Centres, Multi-Sport Organizations (national, provincial and territorial).*

- *Be responsible for establishing a panel of mediators and arbitrators composed of individuals knowledgeable in the area of sport and dispute resolution.*

Recommendation 7:

That the Secretary of State (Amateur Sport) provide sufficient funding to cover:

- *The expenses of the Council of the national ADR system*
- *The salaries of an ADR secretariat and/or fees to a third party administrative service provider*
- *Promotion and outreach materials for the services*
- *The establishment of a policy resource centre for sport and sport organizations,.*

And,

That such funding be provided by new funds.

AN OMBUDSPERSON FOR AMATEUR SPORT

Several organizations and individuals in Canadian sport have spoken to the need for an Ombudsperson for Amateur Sport – an office that would monitor the decision-making processes within sport. The Work Group came to see the Ombudsperson as a critical component of the ADR Program. The Group examined several models, including some in which the Ombudsperson acts as an advocate and some in which the Ombudsperson is impartial. The Work Group determined that the Ombudsperson for Canadian Sport should adhere to the following principles:

- Independent
- Impartial
- Confidential
- Accessible
- Equitable

Unlike mediation and arbitration, the Ombudsperson would have no authority to resolve disputes or render decisions. Rather he or she is a critical part of, and acts as a “watchdog” for, the sport community, ensuring its policies are workable, fair and consistent, and that they comply with federal policy. Specifically, the Ombudsperson will:

- Have jurisdiction over National Sport Bodies – as well as the sports programs of the federal government.
- Have the ability to self-initiate investigation and report on issues of a systemic nature where she or he has reason to believe they exist.
- Have the power to criticize, recommend and publicize.
- Document all complaints and inquiries received.
- Help organizations to improve their internal process and move towards “best practices”.
- Provide information to assist in the education of people in sport.
- Submit an annual report to the ADR Council and the Secretary of State (Amateur Sport) documenting:
 - The number and type of complaints received and the outcomes.
 - Organizations whose policies do not comply with federal requirements.
 - Any policy inconsistencies or omissions identified in the course of his/her work and any other issues of non-compliance.
 - Recommendations to sport organizations and government with respect to policy development and policy implementation.

The Ombudsperson is critical to the success of the ADR project envisioned in this Report and will have close links with both the Policy Resource Centre and the ADR Secretariat. For example, the Ombudsperson will use the materials in the Policy Resource Centre as models in her or his educational work and will refer some matters to the ADR Secretariat when

appropriate. However, the bulk of the Ombudsperson's work will concern matters which are not appropriate for ADR resolution.

The sport community must both own and respect the position of Ombudsperson. In all of the models examined by the Work Group, the criticism and advice provided by the Ombudsperson was taken extremely seriously by the community served and, in most cases, prompted immediate changes to policies and procedures.

In order to ensure the credibility and permanence of the Ombudsperson, the office should be established through legislation. While the Ombudsperson will report to the ADR Council, the independence of the Ombudsperson must be maintained. Clear policies will need to be developed on under what conditions the Ombudsperson can be disciplined or dismissed, so as not to undermine that independence.

Recommendation 8:

That the Secretary of State (Amateur Sport) establish a federally legislated and funded appointment of an ombudsperson for the national amateur sport system, and

That the ombudsperson follow a traditional model with traditional powers.

That the ombudsperson be accessible to all participants in National Sport Bodies.

The ombudsperson operate in conjunction with the ADR system but that it be housed separately.

· FOLLOW-UP & REVIEW

While the Work Group came to consensus on the main features of an ADR program, a number of issues will need to be resolved before the system can become operational. It is therefore recommended that a small implementation committee be formed to assist the Secretary of State in establishing the framework for the new program. We suggest that at least one of these persons be drawn from the Work Group.

Recommendation 9:

That the Secretary of State (Amateur Sport) establish an Implementation Committee, made up of members of the sport community, including at least one member of the Working Group, to assist in implementing the recommendations of the Work Group.

The Work Group was also concerned that the momentum toward the implementation of a national ADR system for Canadian sport be maintained. It therefore agreed to take responsibility for ensuring the recommendations in this Report are acted upon and for providing further input into the design of the program.

Recommendation 10:

That the Secretary of State (Amateur Sport) facilitate and fund a meeting of the full ADR Work Group one year after the submission of its report to follow up on the implementation of the recommended action and to make further recommendations as required.

· APPENDIX A: SUMMARY OF RECOMMENDATIONS

Recommendation 1:

That the Secretary of State (Amateur Sport) require, either through amendments to the Fitness and Amateur Sport Act (FAS ACT) or through introduction of new legislation, that all national sports bodies adopt a separate and overarching policy that:

- *institutes an appropriate internal appeal process incorporating the principles of natural justice; and*
- *provides for mediation and arbitration in the event of a dispute of any internal decision; and*
- *ensures that the results of arbitration are final and binding upon the parties involved in a dispute.*

For the purposes of this and subsequent recommendations, 'National Sport Bodies' are defined as: Any national sport organization that is

- *federally incorporated, or that applies to become federally incorporated, and/or*
- *a registered Canadian amateur athletic association as designated by the Minister of National Revenue, or that applies to the Minister for such registration.*

Note that this definition includes national Multi-Sport Organizations such as the Canadian Interuniversity Athletic Union, Major Games Organizations, such as the Canadian Olympic Association, as well as single sport organizations, commonly known as National Sport Organizations.

Recommendation 2:

That the Secretary of State (Amateur Sport) ensure the establishment of a policy resource centre to assist National Sport Bodies and other sport bodies with the design and structure of policies related to internal appeal mechanisms and alternate dispute resolution and to ensure appropriate training for decision-makers in the national sport community on the development, interpretation and implementation of these policies.

Recommendation 3:

That the Secretary of State (Amateur Sport) ensure the establishment of the structures required to support an Alternate Dispute Resolution (ADR) system incorporating the following principles:

- *Sport-specific*
- *Independent of any sport organization or government*
- *Not for profit*
- *Affordable*
- *Accessible*

- *Timely, and*
- *Confidential, where appropriate.*

And that,

- *Provides a mandatory level of appeal for the resolution of disputes within National Sport Bodies when disputes have not been resolved through an internal process;*
- *Offers an optional level of appeal for disputes within provincial sport organizations when disputes have not been resolved through an internal process; and*
- *Offers dispute resolution through mediation and arbitration services.*

Recommendation 4:

That the Secretary of State (Amateur Sport), either through amendments to the Fitness and Amateur Sport Act (FAS Act) or the introduction of new legislation, require that National Sport Bodies institute a provision for appeal of disputes to the national alternate dispute resolution system.

Recommendation 5:

That the Secretary of State (Amateur Sport) ensure the establishment of a national alternate dispute resolution program that:

- *Provides access to mediation and arbitration services where there is a dispute of a decision made within a national sport organization or where the parties agree to move to mediation or arbitration; and*
- *Is available to any participant of a national sport body that is*
 - *federally incorporated, or that applies to become federally incorporated, and/or*
 - *a registered Canadian amateur athletic association as designated by the Minister of National Revenue, or that applies to the Minister for such registration; and*
- *Is available to any participant of a provincial sport organization where that organization has opted into the national ADR program; and*
- *Deals with any matter falling within the jurisdiction of those organizations; and*
- *Operates on the principle of trial de novo.*
- *Is linked to the Court of Arbitration for Sport.*

Recommendation 6:

That the Secretary of State (Amateur Sport) ensure the creation of an independent, free-standing council for a national ADR program that will:

- *Develop policy for and oversee the management of the ADR and related services,*
- *Be composed of members that represent athletes, coaches, NSOs, governments (federal, provincial and territorial), National Sport Centres, Multi-Sport Organizations (national, provincial and territorial).*
- *Be responsible for establishing a panel of mediators and arbitrators composed of individuals knowledgeable in the area of sport and dispute resolution.*

Recommendation 7:

That the Secretary of State (Amateur Sport) provide sufficient funding to cover:

- *The expenses of the Council of the national ADR system*
- *The salaries of an ADR secretariat and/or fees to a third party administrative service provider*
- *Promotion and outreach materials for the services*
- *The establishment of a policy resource centre for sport and sport organizations,.*

And,

That such funding be provided by new funds.

Recommendation 8:

That the Secretary of State (Amateur Sport) establish a federally legislated and funded appointment of an ombudsperson for the national amateur sport system, and

That the ombudsperson follow a traditional model with traditional powers.

That the ombudsperson be accessible to all participants in National Sport Bodies.

The ombudsperson operate in conjunction with the ADR system but that it be housed separately.

Recommendation 9:

That the Secretary of State (Amateur Sport) establish an Implementation Committee, made up of members of the sport community, including at least one member of the Work Group, to assist in implementing the recommendations of the Work Group.

Recommendation 10:

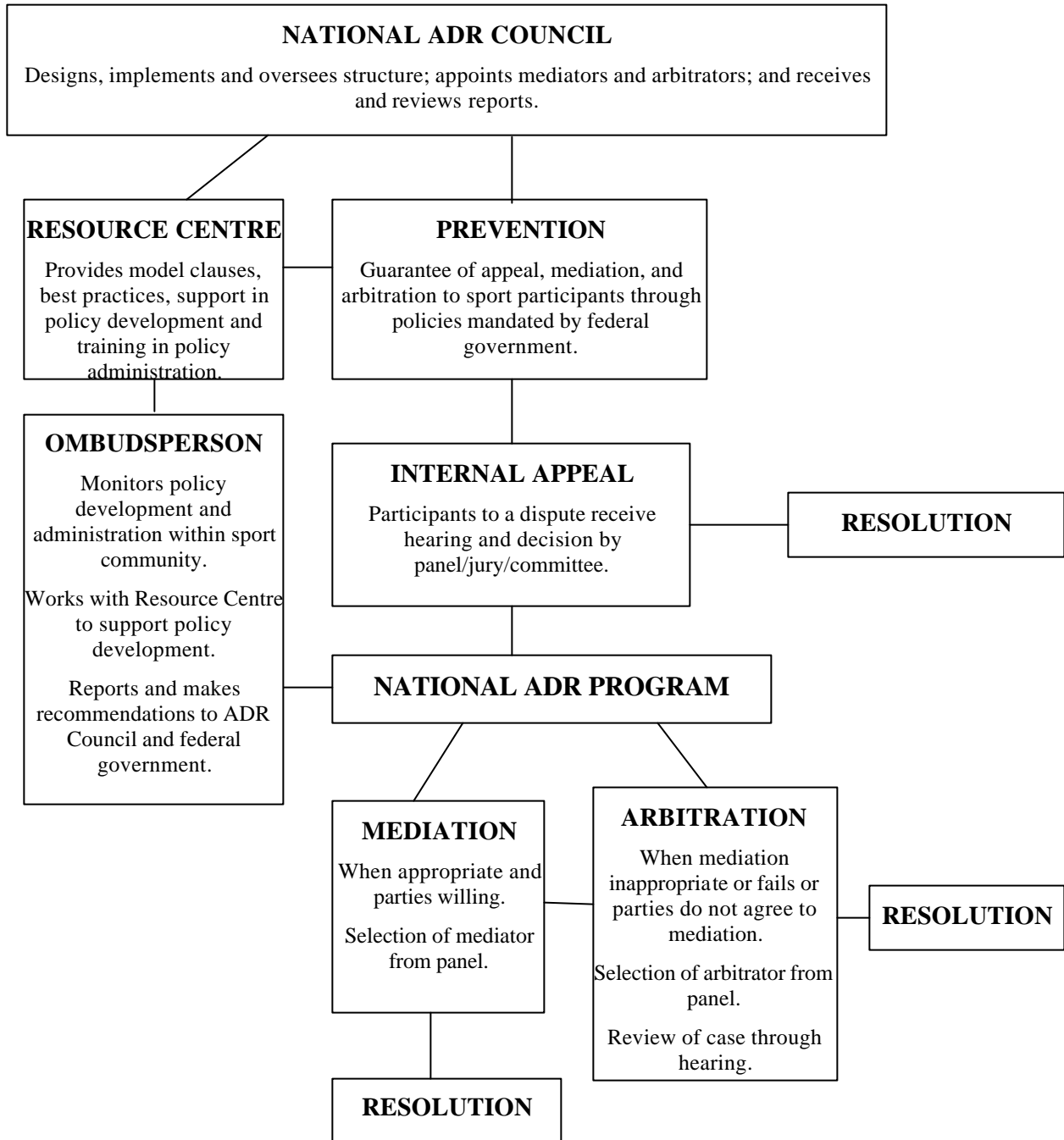
That the Secretary of State (Amateur Sport) facilitate and fund a meeting of the full ADR Work Group one year after the submission of its report to follow up on the implementation of the recommended action and to make further recommendations as required.

· APPENDIX B: SUGGESTED ACTION PLAN

TASKS	WHO	TIMELINE
Announce commitment to the initiatives described in the Report	Secretary of State (Amateur Sport)	Summer 2000
Secure and announce funding for the initiatives described in this Report	Secretary of State (Amateur Sport)	Summer 2000
Initiate the legislative process as described in this Report and inform the sport community of the intention to legislate policy requirements	Secretary of State (Amateur Sport)	Summer 2000
Appoint an Implementation Committee to oversee the development of the Program	Secretary of State (Amateur Sport) in consultation with the Work Group Co-chairs.	Summer 2000
Develop a draft constitution and by-laws for the ADR Council	Implementation Committee, with support from federal government	Summer 2000
Establish link between ADR Council and Court of Arbitration for Sport	Secretary of State (Amateur Sport)	Summer 2000
Initiate the appointment process and establish the first Council	Secretary of State (Amateur Sport) in partnership with the Implementation Committee	Fall 2000
Develop a terms of reference for the Ombudsperson for Amateur Sport and recruit a qualified individual to the position on a part-time basis	ADR Council	Fall 2000
Secure space and recruit staff required to support the Policy Resources Centre for Sport	ADR Council, with support from federal government	Fall 2000
Develop and issue request for proposals and/or criteria for mediation and arbitration services; appoint panels or secure third party contract	ADR Council	Fall 2000
Develop and issue request for proposals to develop educational and promotional materials (electronic and print) for new ADR Program, including Policy Resource Centre, Ombudsperson, and Mediation & Arbitration Services; oversee development	ADR Council, with Ombudsperson and Policy Resource Centre staff	Fall 2000

of materials.		
Disseminate promotional and educational materials	Ombudsperson & Policy Resource Centre staff	Winter 2001 and ongoing
Launch Mediation and Arbitration Services	ADR Council and/or ADR Service Provider	Winter 2001
Review the office of the Ombudsperson and Policy Resource Centre with a view to determining the appropriate allocation of funding/time (full/part-time)	ADR Council	Spring 2001
Meet to review progress on the initiatives described in this Report	ADR Work Group, assisted by federal government	Spring 2001
Issue first annual report with recommendations to sport community and government	Ombudsperson	Fall 2001 and annually thereafter
Review first full year of experience of ADR Program and implement changes, if needed	ADR Council	Winter 2002
Complete legislation; announce mandatory phase of ADR Program and intention to impose sanctions for non-compliance	Secretary of State (Amateur Sport)	Winter 2002

APPENDIX C: PROPOSED MODEL FOR A NATIONAL ALTERNATE DISPUTE RESOLUTION SYSTEM FOR AMATEUR SPORT IN CANADA



APPENDIX D: MEMBERS OF THE WORK GROUP

Bruce Kidd (Co-Chair)	University of Toronto	Toronto
Jean-Guy Ouellet (Co-Chair)	Sports-Québec	Sherbrooke
Michael Chambers	Canadian Olympic Association	Ottawa
Donald Dion	Canadian Professional Coaches Association	Montréal
Hilary Findlay	Centre for Sport and Law	Ottawa
Benoît Girardin	Barrister and Solicitor	Montréal
Josée Grand'Maître	Centre national multisport - Montréal	Montréal
Sandra Levy	Barrister and Solicitor	Toronto
Scott Logan	Sport Nova Scotia	Halifax
Marg McGregor	The Harassment and Abuse in Sport Collective	Ottawa
Gordon Peterson	Aquatic Federation of Canada	London
David Pym	Alpine Canada Alpin	Vancouver
Carla Qualtrough	Athletes CAN	Ottawa
<i>Ex-officio Members</i>		
Jeff Hnatiuk	Sport Manitoba	Winnipeg

David McCrindle

Sport Canada

Hull

Lori Johnstone

Secretary of State (Amateur Sport)

Hull

• APPENDIX E: RESEARCH AND CONSULTATION RECORD

The following organizations responded to the Work Group's request for information and consultation:

National Sport Federations

Alpine Canada/Alpin
 Athletics Canada/Athlétisme Canada
 Basketball Canada/Basketball Canada
 Canadian Amateur Diving Association/L'Association canadienne du plongeur amateur Inc.
 Canadian Amateur Wrestling Association/Association canadienne de lutte amateur
 Canadian Association for Disabled Skiing/Association canadienne pour les skieurs handicapés
 Canadian Canoe Association/Association canadienne de canotage
 Canadian Curling Association
 Canadian Cycling Association
 Canadian Fencing Federation/Fédération canadienne d'escrime
 Canadian Figure Skating Association/Association canadienne de patinage artistique
 Canadian Free Style Ski Association/Association canadienne de ski acrobatique
 Canadian Hockey Association/Association canadienne de hockey
 Canadian Ladies' Golf Association/Association canadienne des golfeuses
 Canadian Table Tennis Association
 Canadian Tennis Association
 Canadian Yachting Association
 Cross Country Canada
 Federation of Canadian Archers/Fédération canadienne des archers
 Field Hockey Canada
 Judo Canada/Judo Canada
 Lawn Bowls Canada
 Ringette Canada
 Rowing Canada
 Rugby Canada
 Soaring Association of Canada/L'Association canadienne de vol à voile
 Swimming/Natation Canada
 Synchro Canada
 Triathlon Canada
 Water Polo Canada/Water polo Canada
 Water Ski Canada

Multi-Sport/Service Organizations (Federal & Provincial)

Canadian Centre for Ethics in Sport
 Canadian Cerebral Palsy Sports Association
 Canadian Interuniversity Athletic Union
 Coaching Association of Canada/Association Canadienne des Entraîneurs
 Ontario Colleges Athletic Association
 Ontario Federation of School Athletic Associations

Regroupement Loisirs Québec
 Sport BC
 Sport New Brunswick
 Sports-Québec
 Team Nova Scotia

Major Games Organizations

Canadian Olympic Association/Association Olympique Canadienne
 Canadian Paralympic Committee

Provincial Sport Organizations

Gymnastics Ontario
 Judo Ontario
 Newfoundland & Labrador Hockey Association
 Ontario Amateur Netball Association
 Ontario Fencing Association
 Ontario Hockey Federation
 Ontario Lawn Bowls Association
 Ontario Ringette Association
 Ontario Rugby Union
 Ontario Sailing Association
 Ontario Taekwondo Association
 Ontario Track & Field Association
 Provincial Women's Softball Association of Ontario
 Saskatchewan Amateur Trapshooting Association
 Swim Ontario
 Synchro Swim Ontario

The following individuals provided support, information on specific aspects of the report and feedback:

Todd Allison
 David Draper
 Diana Duerkop
 Joan Duncan
 Michel Gohier
 Gervin Greasley
 Susan Haslip
 Judy Kent
 Marion Lay
 Marie Lefebvre

Richard McLaren
Wendy Pattenden
Ann Peel
Matthieu Reeb
Bob Rogers

The Work Group is also grateful to Deanne Fisher for editorial assistance in the preparation of the Report.

· **ENDNOTES**

¹ Allan J. Stitt. *Alternative Dispute Resolution for Organizations: How to design a system for effective conflict resolution*. (John Wiley & Sons Canada Ltd., Toronto: 1998)

² Ibid.

³ Canadian Sport Council, Report of the ADR Committee, January 31, 1995. The members of the Committee were: Hugh Fraser (Chair), Victor Lachance (Vice Chair), Margaret Barber, John Barnes, Mike Chambers, Joseph de Pencier, Slava Corn, Paul Dupré, Tom Kinsman, Sandra Levy and Ann Peel.

⁴ Centre for Sport and Law, ADR Program for Amateur Sport, Rules for Arbitration, April 1996.

⁵ Centre for Sport and Law. Final Report: Telephone Survey Regarding a National Sport A.D.R. Network. December, 1998.