

12 Minute Sport Lawyer



**Steven Indig, Dina Bell-Laroche,
Rachel Corbett**

SIRC

MISSION

“To enhance the education of all Canadian and International organizations and individuals involved in sport and fitness through quality information and learning services”

About SIRC

*With over 6.5 million pages of sport-related research dating as far back as the 1700's and encompassing over 62 different languages, **SIRC is the world's leading sport resource centre.***

SIRC's goal is to collect, archive, and share qualified sport information with sport enthusiasts in Canada and around the world.

Centre for Sport and Law

VISION

“Our vision is to help you achieve yours”

MISSION

“We educate, advise, consult, facilitate and innovate to help organizations achieve their full potential”

Some of our clients



FREESTYLE
SKI
ACROBATIQUE



Canadian Cycling Association
Association cycliste canadienne



COACHES
of Canada



SYNCHRO
CANADA

EQUINE  HIPPIQUE
CANADA

SQUASH
CANADA



TRUE
SPORT
LIVES HERE



CANADA



ONTARIO
BASKETBALL



— JEUX DU —
CANADA
— GAMES —



ONTARIO UNIVERSITY ATHLETICS
SPORTS UNIVERSITAIRES DE L'ONTARIO



SQUASH
ONTARIO



CANADA



ONTARIO COLLEGES ATHLETIC ASSOCIATION
OCA
FOUNDED 1961



CABC
COACHES ASSOCIATION
OF BRITISH COLUMBIA



CCA



ACSC



Athletes**CAN**

SWIMMING/NATATION
CANADA

RCGA
Royal Canadian Golf Association | Association Royale de Golf du Canada

Agenda



- ✓ Introductions
- ✓ Canada's New Not-for-Profit Corporations Act
- ✓ Risk Management Update
- ✓ Policy and Code on Prohibited Conduct in Sport
- ✓ Reciprocity among Sport Bodies Regarding Discipline Matters
- ✓ Appeals Innovations
- ✓ Q and A



Not-for-Profit Corporations Act

- ✓ The current CCA Part II governs nearly 20,000 not-for-profit organizations (Including NSOs).
- ✓ The CCA has not substantially changed since 1917.
- ✓ The new NFP Act received Royal Assent in June 2009 and will come into force in Spring 2011
- ✓ Rationale? ... strengthen member rights, modernize democratic governance, decrease paperwork and bylaw requirements.

Some new features of the Act

- ✓ Act does not include a restriction of “no pecuniary gain to members” - meaning directors and officers may be paid.
- ✓ “Codifies” directors’ and officers’ duties and liabilities:
 - Act honestly and in good faith with a view to the best interests of the corporation;
 - Exercise the care, diligence and skill of a reasonably prudent person;
 - Comply with the Act, articles and by-laws.

Unique features - members

✓ Communications:

- Flexible and modern provisions for holding meetings of directors and meetings of members.

✓ Members:

- Classes of members may vote separately on proposals affecting their class of membership
- Non-voting members may vote on 'fundamental changes' to the Corporation.

Soliciting Corporation

- ✓ A soliciting corporation receives public donations and/or government grants in excess of \$10,000 in a single financial year (all NSOs)
- ✓ Soliciting corporations have special requirements:
 - For conducting financial reviews and reporting
 - Must submit financial statements to Corporations Canada
 - Upon dissolution, assets must go to qualified “donee” as defined by the Income Tax Act

Transition steps

- ✓ All corporations will have **3 years** after the new Act comes into force to complete the transition (Spring 2014)
- ✓ Corporations that do not complete the transition will be dissolved.
- ✓ The transition process involves 5 steps:
 1. Review Your Letters Patent and By-laws;
 2. Prepare Articles;
 3. Revise By-laws;
 4. Get Members' Approval (as per existing bylaws); and
 5. File the Required Documents with Corporations Canada.

Review Letters Patent and By-laws

- ✓ Opportunity to reflect on your ‘core purpose’?
- ✓ Current rules that won't be required in future:
 - Statement that operations may be carried on throughout Canada;
 - Statement concerning no pecuniary gain to members;
 - Removal of directors;
 - Powers of the board of directors to manage the corporation;
 - Annual meetings of members;
 - Appointment of auditor;
 - Report by auditor; and
 - Enactment, amendment or repeal of by-laws.

Charities – unique features

- ✓ The draft Articles of Continuance should be sent to CRA for review before being filed with Corporations Canada:
 - ✓ CRA will review the articles to ensure there have been no changes to the purposes; or
 - ✓ If the purposes have been changed, CRA will ensure that the corporation continues to have purposes that are exclusively charitable.

[Note: NSOs have charitable status but are not charities. However, your NSO may affiliate with a Foundation that is a charity]

Transition considerations

✓ In preparation for the transition consider:

Articles

- Will need to review Letters Patent and prepare new Articles of Incorporation.

Election of directors

- Directors must be elected by members; ex-officio and substitute directors are not permitted; appointed directors cannot number more than 1/3 of total number of Directors.

Classes of members

- All members (voting and non-voting) as defined in bylaws will have the right to vote on 'fundamental changes'.

Further information

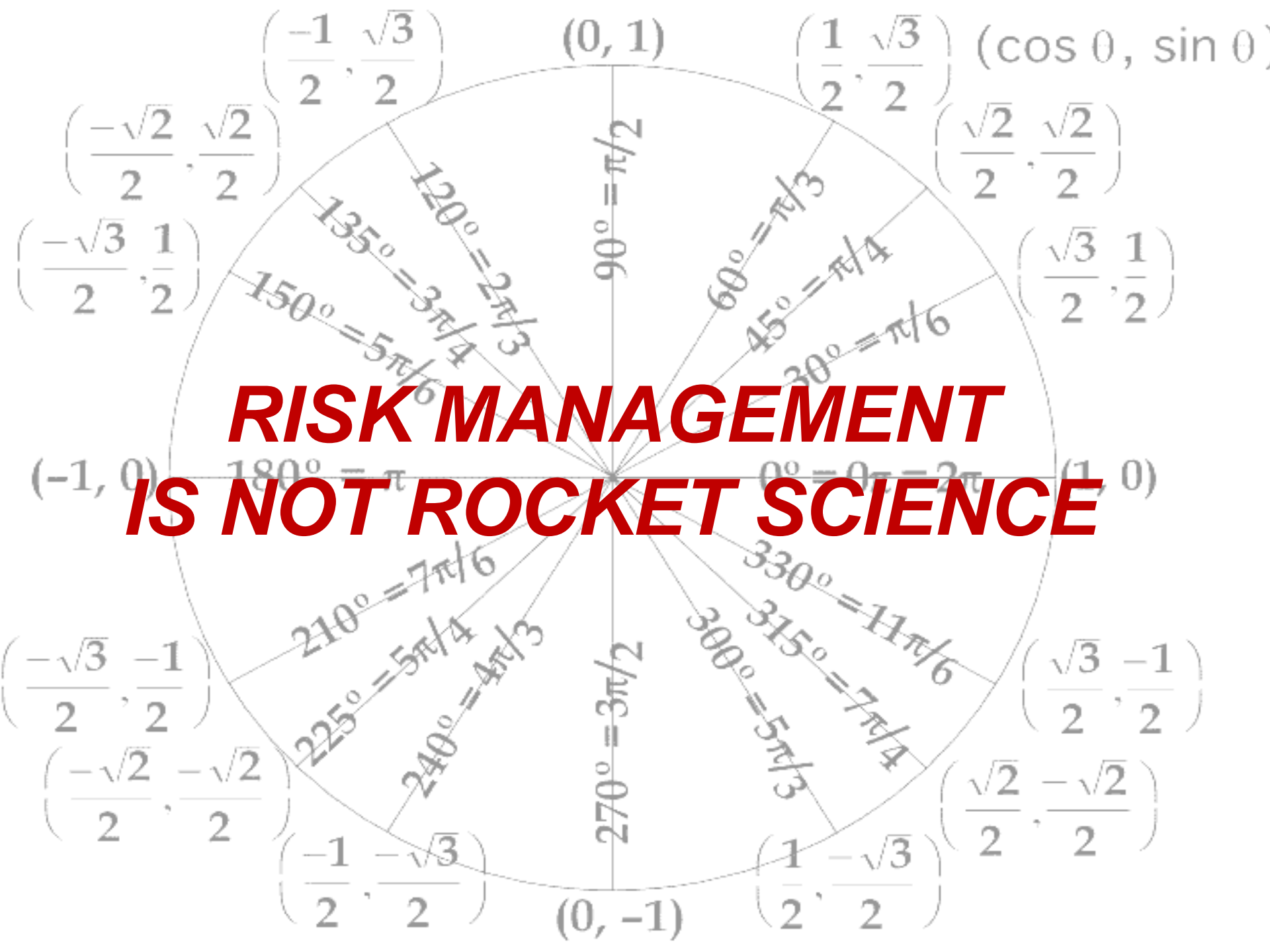
- ✓ Information on the new NFP Act, its regulations, policies, forms, etc will be released on Corporations Canada's website:

www.corporationscanada.ic.gc.ca

- ✓ For registered charities, information is also available on CRA's website:

www.cra-arc.gc.ca/charities/





***RISK MANAGEMENT
IS NOT ROCKET SCIENCE***

Evolution in risk management

Traditional approach (1980s)

→ focus on injury prevention

Modern approach (1990s)

→ focus on avoiding other losses (legal, financial, reputation)

True Sport approach (2000s)

→ risk management as a comprehensive approach to improve performance through effective governance, efficient planning, relevant programming (AS/NZS 4360:1999)



Paradigm shift

Helping organizations to shift from:

- ✓ Fixing problems to **investing in assets**
- ✓ Culture of doing to culture of doing **and learning**
- ✓ Asking 'what is wrong?' to asking '**what is right, or what is working well?**'
- ✓ Fixing weaknesses to **building on strengths**
- ✓ Coping to **managing**
- ✓ Firefighting to **optimizing excellence**

Risk Management Project (RMP)



... is a multi-year, True Sport initiative that offers a values-based framework to help sport organizations address and manage the issues that stand in the way of providing a quality sport experience for all participants ...



Participants in the RMP

- ✓ Diving Canada
- ✓ Gymnastics Canada
- ✓ Athletics Canada
- ✓ Speed Skating Canada
- ✓ Swimming Canada
- ✓ Canoe Kayak Canada
- ✓ Field Hockey Canada
- ✓ Kanata Soccer Club
- ✓ Canadian Centre for Ethics in Sport
- ✓ Canadian Cycling Association
- ✓ Volleyball Canada
- ✓ Wheelchair Basketball
- ✓ Synchro Canada
- ✓ Skate Canada
- ✓ Squash Canada
- ✓ Kanata Soccer Club
- ✓ Golf Canada
- ✓ Biathlon Canada

Who's up next

- ✓ Cross-Country Ski Canada
- ✓ Canadian Freestyle Ski Association
- ✓ Canadian Snowboard Federation
- ✓ ?
- ✓ ?
- ✓ ?



What is keeping you up at night?



- ✓ What are the risks that are keeping you up at night?
- ✓ What are the opportunities you want to get to but can't because you're too busy putting out fires?



Canadian Policy and Code on Prohibited Conduct in Sport

- ✓ Single, uniform Policy and Code to be adopted by sport organizations
- ✓ Modeled after early anti-doping policies and procedures
- ✓ Will lead to national registry of sanctions imposed, to be maintained by CCES
- ✓ Adoption is not mandatory

Purpose and scope

- ✓ To protect athletes and sport participants from misconduct by those in positions of authority over them
- ✓ Applies to coaches, officials, volunteers and administrators
- ✓ Defines “prohibited conduct”
- ✓ Requires fair hearing procedures

Prohibited conduct

- ✓ Sexual relations or sexual intimacy in the coach-athlete relationship (regardless of age)
- ✓ Sexual misconduct (including sexual harassment)
- ✓ Use of illegal drugs or substances
- ✓ Operating a motor vehicle while under the influence

Prohibited conduct (cont'd)

- ✓ Criminal convictions (child pornography, sexual offences involving minors, assault involving a minor, physical or psychological violence involving a minor) (previous 8 years)
- ✓ Cheating or offering or receiving bribes relating to the outcome of a competition
- ✓ Concealing prohibited conduct of others

Suggested approaches

- ✓ Before adopting *Policy* and *Code*, carefully examine your existing policy framework
- ✓ Alternatively, incorporate the description of “prohibited conduct” in your existing policy framework
- ✓ Consider that this scheme excludes athletes/participants?



Recent innovations in appeals

- ✓ Independent administrator (let someone else manage, leaving you free to be a part of the process!)
- ✓ “Screen” appeals (if not brought on proper grounds, they do not proceed)
- ✓ Put confidentiality provisions in policy (breach can result in the appeal process being suspended or stopped)
- ✓ Simplify the Tribunal and its procedures

What is a Mini-Trial?

“A mini-trial is a private meeting between you and the defendant (and your lawyers, if you have them) and a judge or master where you both will present, briefly and without witnesses, the facts of your case. Then, to help you come to the best possible decisions now, the judge or master will give you his or her opinion about what would most likely happen if your case were to go to full trial.”

Mini-Appeal?

- ✓ Concept of mandatory **pre-trial** (civil matters), **mediation** (family law) or **resolution facilitation** (SDRCC) is very common
- ✓ Sport organizations could use the technique to improve **appeals management!**
- ✓ Involves putting general dispute before an independent adjudicator for an opinion or other guidance



Reciprocity

Definition → *“a relation of mutual dependence or action or influence; the mutual exchange of rights, privileges or obligations between [nations].”*

The Problem → without taking explicit, positive steps as a matter of policy, sport organizations cannot recognize each other’s disciplinary decisions.

Examples?

Fixing the problem?

- ✓ First, there has to be a willingness to work together (NSO with NSO, NSO with PSO, PSO with PSO) – **Have the discussion!**
- ✓ **The solution is contractual:**
 - ✓ Amend by-laws – the transition to the new Act might be the perfect opportunity!
 - ✓ Amend MOUs or other affiliation agreements that exist between NSOs and PSOs
 - ✓ Amend Codes of Conduct/discipline policies within your NSO



Questions?



Contact information

Centre for Sport and Law

www.sportlaw.ca

Tel: 647-348-3080

Steven Indig - sji@sportlaw.ca

Dina Bell-Laroche - dbl@sportlaw.ca

Rachel Corbett - rmc@sportlaw.ca