

## **National Sport Organizations, Athlete Directors and the *Canada Not-for-profit Corporations Act***

By Josh Vander Vies†

In Canada we have come to expect every sport organization to have an athlete representative on its board. Most do. They are usually elected by athletes and placed on boards as directors and onto committees as experts. Often, they sit on Athlete Councils and contribute to the governance of the association, as a valuable collection of voices. Effective athlete representatives help advance their sport by bringing front line perspectives and building a closer connection to athletes.

### **The New *Canada Not-for-profit Corporations Act***

Recently, the Sport Law & Strategy Group and some of our Canadian athlete leaders have commented that the new *Canada Not-for-profit Corporations Act (CNCA)* does not allow athlete directors to get onto boards of new *CNCA* Corporations in the same way as they could under the old *Canada Corporations Act*. In this short article, a simple way to achieve meaningful athlete representation under the modern not-for-profit Act is recommended.

### **Sport Canada Funding and Athlete Representation**

Sport Canada's funding evaluation, the *Sport Funding and Accountability Framework* requires that sport organizations have **"a formal policy on athlete centeredness and can demonstrate the direct involvement of high performance athletes in decision-making."**

Since it was founded, AthletesCAN has suggested that an effective minimum number of athlete representatives on a board or committee would be 20%. This recognizes the value of a diverse athlete voice, and the ability to bring male and female perspectives, as well as those of different disciplines and classifications, to important decisions. We recommend that having an athlete centeredness policy, allocating a minimum of 20% of sport organization director positions to athlete directors, and achieving at least 20% athlete representation on performance

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committees of a sport organization, is a reasonable way to satisfy this Sport Canada funding requirement.

### **The Performance Advantage – Athletes on Boards**

Canadian National Sport Organizations (NSOs) and Multisport Organizations (MSOs) have a strong tradition of enshrining athlete representation on boards and committees making decisions that impact performance. The contribution that competing or recently retired athletes bring to the governance of Canadian NSOs and MSOs is widely seen as bringing value in two streams.

First, effective athlete representatives are able to bring an athlete perspective to board and committee tables, and communicate decisions flowing from those tables to affected athletes. This can help build buy-in and support from active athletes and protects their basic rights.

Second, organizations reap the reward of athlete political participation in informed policy and program creation. Informed decisions drive performance results. An active or recently retired athlete can bring a direct perspective to the leadership of the sport that is unique and can help advance the values of the organization. Boards often see that having an athlete director at the table that has been on the ground and in the trenches at training and competition, informs solid decisions that propel athletes to podiums.

### **Establishing a Protocol for Athlete Directors on Boards**

In the past, NSOs and MSOs would often appoint athlete directors, usually on the recommendation of a sub-committee like an Athlete Council, or a meeting like an Athlete Meeting at a national event. As a result, athlete directors have largely been fully participating, *ex officio*, directors in the sport system. *Ex officio* is sometimes thought to mean non-voting. This is not the case. The word simply describes how the person got into the position. An *ex-officio* director becomes a director by virtue of some other position or status he or she holds, as opposed to being elected into the position by the organization's members.

Section 128(3) of the *CNCA*, as many organizations are discovering, does not allow *ex officio* directors. Members must elect all directors. Luckily, the result of a director being elected by a specific group of members – as athlete representatives traditionally are – can easily be accomplished under the *CNCA*.

A membership class, separate from the main voting member class, can be created that is comprised of athletes. For example, national team athletes, members of an Athlete Council, members of a national squad, or athletes who are training in designated training centres could be deemed to represent a class of members, with specific voting rights.

As a class of member, designated athletes could vote in general meetings of the association and could also elect a director or directors to represent them as a class. Voting could be established in a number of ways: each athlete member could exercise one vote, or the class as a whole could exercise a block of votes that would be in appropriate balance to the votes held by other classes of members, such as provincial and territorial organizations.

Such a class of members comprised of athletes could vote in a number of ways – at the annual meeting, along with other members; at a special meeting of the class that could be called at a training camp or a competition; or at any time using an electronic ballot. Whatever method is chosen, the end result is that athletes are able to choose their director or directors for the Board, in a manner that is compliant with the new corporations legislation.

In order to secure effective athlete representation per the *SFAF*, it is essential that organizations are aware of the athlete director issue outlined above and posed by the *CNCA*. In fact, like much of the *CNCA*, it creates an opportunity. By describing athletes as members, and providing them with specific recognition and powers, sport organizations can leverage the value of athlete participation in the political process. By not addressing this in the *CNCA* continuance process, NSOs put their athlete representation and potentially their Sport Canada funding at risk.

Many NSOs and MSOs see strong athlete leadership as building clear communication and fairness. They also recognize that having the right athlete leaders in their boardrooms gives a performance edge. AthletesCAN tends to agree.

*AthletesCAN, the association of Canada's national team athletes, is the only fully independent and most inclusive athlete organization in the country and the first organization of its kind in the world.*

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