

**BILL C-12: AN ACT TO PROMOTE  
PHYSICAL ACTIVITY AND SPORT**

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## LEGISLATIVE HISTORY OF BILL C-12

### HOUSE OF COMMONS

Bill Stage	Date
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First Reading:	9 October 2002
Second Reading:	9 October 2002
Committee Report:	9 October 2002
Report Stage:	9 October 2002
Third Reading:	9 October 2002

### SENATE

Bill Stage	Date
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Committee Report:	21 November 2002
Report Stage:	
Third Reading:	4 February 2003

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Statutes of Canada 2003, c. 2

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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BILL C-12: AN ACT TO PROMOTE PHYSICAL ACTIVITY AND SPORT\*

BACKGROUND

Bill C-12, An Act to promote physical activity and sport, was introduced in the House of Commons and deemed to have passed all stages on 9 October 2002.<sup>(1)</sup>

The bill is part of a strategy to affirm the important role of sport in Canadian culture and society and to give effect to the Government of Canada's policies on physical activity and sport. The aim of these policies is to promote physical activity as an essential aspect of health and well-being, to encourage people to incorporate physical activity in their daily lives, and to increase accessibility by helping reduce the barriers that prevent people from participation and being physically active. The bill sets out the government's desire to promote cooperation between various groups, organizations and enterprises, including the federal, provincial and territorial governments, physical activity groups, sport communities and the private sector in encouraging Canadians to participate in sport and increase their level of physical activity.

This bill would replace the *Fitness and Amateur Sport Act* of 1961 and seeks to better respond to the complexities of the modern world of sport and support the development of the Canadian sport system. In addition, this bill would modernize the *Fitness and Amateur Sport Act* to better reflect the government's role in fostering, promoting and developing physical activity and sport. The term "fitness" in the existing Act would be replaced with "physical activity," which refers more to the action of being active than to a particular end result.

This bill also enshrines a new Sport Dispute Resolution Centre of Canada to provide the sport community with a national alternative dispute resolution service for sport

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\* Notice: For clarity of exposition, the legislative proposals set out in the Bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

(1) The bill was originally introduced in the 1<sup>st</sup> session of the 37<sup>th</sup> Parliament as Bill-C-54 but died on the Order Paper when Parliament was prorogued on 16 September 2002. By motion adopted 7 October 2002, the House of Commons provided for the reintroduction in the 2<sup>nd</sup> session of legislation that had not received Royal Assent. The bills would be reinstated at the same stage in the legislative process they had reached when the previous session was prorogued.

disputes and the expertise and assistance to that end. Currently, national sport organizations funded by Sport Canada must provide for an internal appeal and arbitration mechanism for the settlement of disputes. Should a dispute fail to be resolved at this internal level, athletes and organizations must turn to the courts, which can be a costly and time-consuming enterprise. A working group composed of experts from the sport community recommended the creation of an alternative dispute resolution system with a national reach. The bill seeks to respond to that recommendation with the establishment of an organization to be used as a flexible tool to contribute to the fair, timely, equitable and transparent resolution of disputes at low cost, for the benefit of the sport community.

The change in name from the *Fitness and Amateur Sport Act* to the *Physical Activity and Sport Act* reflects the increasing ambiguity of the term “amateur,” as evidenced by professional athletes competing in the Olympics and amateur athletes collecting fees at some competitions. In addition, few countries refer to amateur sport in their modernized legislation.

**The bill was amended at the Senate stage to better reflect principles of linguistic duality and strengthen accountability measures. Four amendments were adopted during hearings at the Standing Senate Committee on Social Affairs, Science and Technology and in Senate debates, and all were concurred with by the House of Commons when the bill was reported back by the Senate.**

## DESCRIPTION AND ANALYSIS

The Preamble seeks to entrench and clarify the principles behind the government’s commitment to sport, and states that it wishes to increase awareness of the benefits of physical activity and sport. It also indicates that the government recognizes that physical activity and sport are important aspects of Canadian culture and society that benefit the health, quality of life, economic activity, cultural diversity and social cohesion of Canadians.

**As a result of an amendment made in the Senate, the first paragraph of the Preamble was amended to read “social cohesion, linguistic duality, economic activity, cultural diversity and quality of life.” This change replaces an earlier reference to Canada’s “bilingual character” with the more modern expression “linguistic duality,” which better reflects the constitutional duality of the two official languages.**

Further, the Preamble refers to the desire of the government to assist Canadians in increasing their level of physical activity and participation in sport, and to encourage co-

operation between the various governments, physical activity and sport communities and the private sector in the coordination of their efforts to promote physical activity and sport.

Clause 1 sets out the short title of the bill: the *Physical Activity and Sport Act*.

Clause 2 defines the word “Minister” as the member of the Queen’s Privy Council designated by the Governor in Council as the Minister for the purposes of this Act.

The principles and objectives of the government’s physical activity and sport policies are proposed in clauses 3 and 4. Clause 3 states that it is the objective of the government to promote physical activity as a fundamental element of health and well-being; to encourage Canadians to improve their health by integrating physical activity into their daily lives; and to help them reduce the barriers that prevent them from being active. The sport policy principles are found in clause 4. This clause states that the objectives of the government’s sport policy are to increase participation in sport, to support excellence in sport and build capacity in the Canadian sport system. This policy also sets out the ethical standards and values that should guide participation in sport, which include: doping-free sport; the treatment of all persons with fairness and respect; the full and fair participation of all persons in sport; and the fair, equitable, transparent and timely resolution of disputes in sport.

The objects of the Act and the mandate of the Minister are set out in clause 5. This clause empowers the Minister to take appropriate measures to pursue the objectives of the physical activity and sport policies. These measures include:

- encouraging the promotion of sport as a tool of individual and social development;
- facilitating the promotion of under-represented groups in the Canadian sport system;
- coordinating federal initiatives regarding the encouragement, promotion and development of physical activity and sport, the hosting of major sporting events and the implementation of anti-doping measures, in cooperation with other federal government departments or agencies;
- encouraging provincial and territorial governments to promote and develop sport;
- encouraging contributions from the private sector towards the development of sport; and
- encouraging and supporting alternative dispute resolution for sport.

Clause 6 empowers the Minister to provide financial assistance in the form of grants and contributions to any person for the purposes of this Act. **In the Senate, the phrase “in accordance with Parts IV and VII of the *Official Languages Act*” was added to the**

**financial assistance provisions, so that clause 6 now states, “For the purposes of this Act, the Minister may provide financial assistance in the form of grants and contributions to any person, in accordance with Parts IV and VII of the *Official Languages Act*.” This amendment addresses shortcomings with regard to respect for both official languages and requires the government to enhance the vitality of francophone and anglophone minorities.**

Clauses 7 and 8 provide that the Minister may enter into agreements or arrangements with provinces or territories for the payment of contributions in respect of costs they incur in the encouragement, promotion and development of physical activity or sport or the implementation of Canada’s sport policy. Similarly, the Minister may enter into agreements or arrangements with governments of foreign states in order to encourage, promote and develop physical activity and sport.

Clauses 9 through 35 deal with the proposed Sport Dispute Resolution Centre of Canada. Clause 9 sets out the creation of the Centre, a not-for-profit dispute resolution secretariat and resource centre, offering its services to the public in both official languages. As it is the intention to make the Centre an arm’s-length entity, it is explicitly stated that it is not an agent of the Crown, a departmental corporation or a Crown corporation within the meaning of the *Financial Administration Act*. It is also not a federal board, commission or other tribunal within the meaning of the *Federal Court Act*. The Minister will be accountable to Parliament and the Canadian public for the Centre via a number of accountability measures set out in clauses 32 through 35.

The mission and powers of the proposed Centre are addressed in clauses 10 and 11. The mission of the Centre is to provide the sport community with a national alternative dispute resolution service for sport disputes and to offer expertise and assistance in this regard. These disputes include disputes among sport organizations and between a sport organization and persons affiliated with it, including its members. The Centre is empowered with the capacity of a natural person in carrying out its mission. These powers, which are subject to some restrictions, include the power to use funds that have been provided to it and to enter into contracts or agreements in its own name.

Clauses 12 through 16 cover the establishment, composition, appointment, term of office and guidelines of the board of directors for the proposed Centre. The board of directors will consist of one executive director and no more than 12 other directors. The directors, other

than the executive director, shall hold office during good behaviour for terms not exceeding three years, may be appointed to no more than two consecutive terms, and may be removed by the Minister with cause. The directors shall be chosen in accordance with guidelines established by the Minister in consultation with the sport community to ensure the board is composed of men and women committed to the promotion and development of sport and that it is representative of the sport community and the diversity and bilingual character of Canadian society. The directors are not entitled to be paid any remuneration but are entitled to recover such reasonable travel and other expenses incurred in connection with their duties or functions as may be fixed under the by-laws of the Centre.

Clause 17 states that the board of directors may make by-laws that are available to the public regarding such matters as:

- the mandate, duties and functions of the dispute resolution secretariat, resource centre or any other part of the Centre;
- the establishment of a policy respecting the official languages of Canada;
- the appointment and remuneration of officers of the Centre;
- fees for services provided by the Centre and how they are to be determined;
- the roles and responsibilities of mediators and arbitrators;
- the steps involved in submitting an application; and
- the dispute resolution procedure and the selection process to be followed in choosing mediators and arbitrators.

Clauses 18 through 20 propose the designation, term of office and duties of a chairperson for board meetings. Similarly, clauses 21 through 24 address the appointment, term of office, duties, absence of and delegation powers of the executive director for the proposed Centre, who is to be appointed by the board of directors.

Clauses 25 and 26 empower the Centre to engage any employees it considers necessary for the proper conduct of its activities, and state that directors, officers and employees are deemed not to be employees of the public service of Canada.

Clauses 27 provides for the establishment, duties and powers of an audit committee for the Centre. These duties and powers include:



- implementing and maintaining appropriate internal control procedures, and reviewing, evaluating and approving those procedures;
- meeting with the Centre's auditor and management to discuss the effectiveness of the internal control procedures;
- making a report of any information that in the committee's opinion should be brought to the attention of the Minister; and
- engaging, on a temporary basis, any technical assistance the committee needs in order to carry out its duties.

The requirement for an annual independent audit of the Centre's accounts and financial transactions is stated in clause 28. A written report of the audit shall be made to the board of directors. **An amendment proposing that the accounts and financial transactions of the proposed Centre be subject to examination and audit by the Auditor General of Canada was defeated by majority vote in the Senate.**

Clause 29 proposes that the Centre shall ensure that the mediators and arbitrators who provide dispute resolution services are independent of the Centre and are able to offer their services in both official languages of Canada, according to the needs of the parties.

Clauses 30 and 31 outline general provisions regarding the duty of care of directors and officers and the applicability of the *Canada Business Corporations Act*. Directors and officers shall not be able to escape liability for any breach of their duties, regulations, by-laws or this Act by means of a waiver of liability in a contract or by a resolution of the board. However, directors and officers will not be liable for a breach of duty if they rely in good faith on information provided to them by persons whose position or profession lends credibility to statements made by those people.

The *Canada Corporations Act* does not apply to the Centre. However, the Centre, its directors, officers and employees would be subject to selected provisions of the *Canada Business Corporations Act* as if the Centre were a corporation and the provisions of the bill were its articles of incorporation. These provisions include:

- conflict of interest of directors and officers;
- qualifications of auditor; and
- right of auditor to information.

Requirements for a corporate plan and annual report are set out in clauses 32 and 33. Each fiscal year the Centre shall prepare a corporate plan and deliver it to the Minister. The scope and objectives of the plan shall include a statement of the Centre's objectives, the strategies which the Centre intends to use to reach those objectives, and the Centre's operating and capital budgets for the next fiscal year. The corporate plan is to be made public after delivery to the Minister.

In addition, an annual report on the operations of the Centre shall be made and delivered to the Minister and then made public. The contents of the report shall include the financial statements of the Centre for the fiscal year, including total remuneration of each officer and reimbursements and monetary benefits each director received in that fiscal year, the auditor's report, a summary of the Centre's corporate plan, and information about the Centre's performance with respect to the objectives set out in the corporate plan.

**During hearings at the Standing Senate Committee on Social Affairs, Science and Technology and in Senate debates, concern was expressed about the lack of accountability of the proposed Centre. Specifically, it was noted that, as originally drafted, the bill provided for some degree of ministerial oversight but that it included no measures for parliamentary accountability. It was felt that some basic, minimum requirement should be added to provide for this necessary accountability. The bill was therefore amended to include two new provisions that require the Minister to table both the corporate plan (clause 32(4)) and the annual report (clause 33(5)) in Parliament.**

**A proposed amendment that the Centre be subject to the openness and privacy provisions of the *Access to Information Act* and the *Privacy Act*, respectively, was defeated by majority vote in the Senate.**

Within 60 days of the delivery of the annual report to the Minister and having given proper notice, the Centre shall convene a public meeting at a city in Canada selected by the Centre to consider the report and other matters relating to the Centre's activities during the current fiscal year. This is proposed in clause 34.

The Minister is empowered by clause 35 to order the dissolution of the Centre under certain circumstances. These include:

- the Minister being satisfied the Centre has failed to carry on its affairs and business, or is not fulfilling its mission or is no longer necessary; and
- on petition by the Centre supported by a resolution passed by at least two thirds of the directors.

Should the Centre be dissolved, any property of the Centre remaining after payment of its debts and liabilities may be transferred to any person or institution having a mission similar to that of the Centre.

Clause 36 proposes that the Governor in Council may make regulations generally for carrying into effect the purposes and provisions of this bill.

Clause 37 would replace paragraph 4(2)(f) of the *Department of Canadian Heritage Act* with the following:

(f) the encouragement, promotion and development of sport;

Clause 38 is a coordinating amendment. It states that should Bill C-30 receive Royal Assent by a certain date, then the wording of section 9(4) of this Act will be replaced to state that the Centre is not a federal board, commission or other tribunal within the meaning of the *Federal Courts Act*.

Clause 39 would repeal the *Fitness and Amateur Sport Act*.

Clause 40 provides that the bill, other than clause 38, would come into force on a day fixed by order of the Governor in Council.

## COMMENTARY

During the 1<sup>st</sup> session of the 37<sup>th</sup> Parliament, the Subcommittee on the Study of Sport in Canada of the Standing Committee on Canadian Heritage heard from a number of witnesses representing a range of interests. One of these groups, COMMONWEALTH Games Canada, for example, characterizes itself as an organization that uses sport as a development tool

for people, communities and nations. It is engaged in national and international endeavours aimed at enhancing social development through sport and physical activity. It does this in two separate ways: by setting up Canadian teams for the Commonwealth Games, and through its International Sport Development Program. It advised the Subcommittee that its international sport development efforts not only benefit all those involved, but also enormously showcase and strengthen Canadian expertise. This group spoke to the need for a strong commitment from the Canadian government for the budget of the International Sport Development Program.

Similarly, Athletes CAN, a group that provides a collective voice for Canadian athletes, appeared before the Subcommittee in the 1<sup>st</sup> session of the 37<sup>th</sup> Parliament and recommended greater access to the proposed alternative dispute resolution centre. It recommended that all athletes have access to this service, not just those who are under the Sport Canada framework of accountability. This view was endorsed by other sport groups as well. Bill C-12 reflects this broader access.

In the Subcommittee hearings on the bill during the 1<sup>st</sup> session of the 37<sup>th</sup> Parliament, Sports-Québec pointed out that the bill as initially drafted did not refer to the use of Canada's two official languages. This group noted the need for athletes to receive instructions, documentation and direct services in each of the two official languages and sought amendments to the bill on this ground. The Commissioner of Official Languages for Canada also appeared before the Subcommittee and suggested a number of amendments to the bill intending to better reflect Canada's linguistic duality. Bill C-12 reflects these changes.

Media reaction to Bill C-12 and its predecessor, Bill C-54, has been generally muted. The issue that has garnered the most media attention was the discussion concerning a request by the Canadian Association for the Advancement of Women in Sport that the bill be amended to include a gender equity provision requiring the federal government to fund sport along sex-balanced lines. The aim of the proposed change would be to better facilitate under-represented groups in the Canadian sport system. This would include obligating universities and national sport programs to give equal opportunity and funding to men and women. Although education is a matter for provincial legislative competence, it was suggested that the federal government could impose a gender equity requirement on universities as a condition for post-secondary education transfer payments.

This suggested change was met with some resistance on the part of the Secretary of State for Amateur Sport, the Hon. Paul DeVillers, on the basis that giving any one group “special emphasis” would open the door to other under-represented groups to press for equal legislative rights.<sup>(2)</sup> Mr. DeVillers said that the proposed amendment was unnecessary as the bill already contained provisions protecting the interests of all under-represented groups, including women, as a cornerstone of the full and fair participation of all persons in sport.<sup>(3)</sup>

The request for an amendment providing for gender equity was subsequently withdrawn when Mr. DeVillers gave written assurances to the Canadian Association for the Advancement of Women in Sport that the federal government would establish an accountability mechanism that would “clearly articulate how existing national equity standards are to be applied in such areas as funding, coaching and staffing if national sport bodies are to continue to receive [federal] funding.”<sup>(4)</sup>

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(2) W. Kondro, “Imposed sport equity ‘not appropriate’: Proposed bill protects under-represented, federal minister says,” *Ottawa Citizen*, 5 May 2002, p. B1.

(3) J. Christie, “Minister opposes enshrining women despite pressure,” *Globe and Mail* [Toronto], 30 May 2002, p. S4.

(4) W. Kondro, “Women withdraw gender equity demand,” *Ottawa Citizen*, 6 June 2002, p. C8.