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Contracts and Contract Negotiations

During the first national women coaches retreat in March 2002, it became evident that few of the participants had an appropriate understanding of their contracts or of what should be included in a contract. It was also evident that women coaches need to learn how to ask, or negotiate, for things that they believe are important in contracts.

Consequently, one of the prime objectives of the second national women coaches retreat in March 2003 was to address the shortfall of information on contracts and contract negotiations. **Dru Marshall's** study on national coach employability standards, funded by the Canadian Professional Coaches Association (CPCA) and the Coaching Association of Canada's Women in Coaching program, included an exploration of national team coaching contracts and formed a key part of the discussion. During the retreat, an expert on contract law, **Heather Barnett**, gave a presentation on the importance of different types of contracts, key contract clauses, and contract negotiations. The retreat was facilitated by Dru and by former national synchronized swimming coach **Sheilagh Croxon**, who worked for many years as a contract employee.

"Contracts and Contract Negotiations" captures the highlights of the contract discussions at the retreat and supplements that information with additional data from the study. This article is an important addition to the **Journal's** ongoing efforts to provide information that improves the quality of the coaching experience for women. - Sheila Robertson

JANUARY 2004 FEATURE

Contracts and Contract Negotiations

by Sheilagh Croxon and Dru Marshall

The professionalization of coaching in Canada has long been an issue. While Canada has one of the most recognized coach education systems in the world, an organized coaching structure that includes well-developed coaching agencies such as the Coaching Association of Canada (CAC), and advocates such as the Canadian Professional Coaches Association (CPCA), high performance coaches are not always treated as they should be. A number of federal ministerial task forces have been struck in the last four years to examine the issue of high performance coaching in Canada. These include the Coaching Working Group (CWG), which tabled a number of recommendations on high performance coaching standards, and, more recently, the Coaching Implementation Group, a committee designed to develop an implementation plan for the recommendations developed by the CWG.

A primary goal of CPCA is to enhance the status of the profession of coaching and the professionalism of its members. Part of the CPCA vision embodies coaching as a respected and viable career choice for those who choose the profession as their lifework. Part of being a professional is having a solid working contract with the organization that employs you.

Coaches are typically hired in one of two ways: as an employee of the organization for which they are working or as an independent contractor.

For an employee of an organization, the employment agreement represents a contract for services. The employee is taxed on income gained from the employment, there is an employment contract, and the agreement is considered exclusive. For an independent contractor, there is a contract for services, the individual is taxed on income from the business, and the agreement is non-exclusive. The contractor operates either as a sole proprietor or corporation or as an independent contractor.

As a sole proprietor or corporation, a coach could set herself up as a shareholder of her company and develop an employment contract whereby she hires herself. The company would take source deductions such as unemployment insurance and Canada Pension Plan contributions and the coach would be entitled to receive benefits. However, the costs of incorporation need to be taken into consideration, and the tax benefits depend on the level of income. In general, an income of \$100,000 or more justifies incorporation. As an independent contractor, a coach must invoice for services and include the applicable GST. In addition, if self-employed, she must have liability insurance.

Regardless of the type of employment situation, all coaches should have solid contracts. A contract is a binding agreement between an employer and employee that should outline the task at hand. Contracts vary as a result of the clauses that they contain. A clause is a distinct section or paragraph in a contract that outlines a specific obligation between the parties (for example, termination and vacation). According to contract lawyer **Heather Barnett**, a number of clauses should be included in coaching contracts.

Terms and conditions of service. The length of the contract and expectations for the job should be clearly outlined, including both general and specific duties. **Performance standards** such as podium finishes and anticipated world rankings should be delineated and the **performance incentives** outlined for reaching those performance standards. **Equipment, facility time, and assistance** that coaches are to receive should also be outlined in the contract. If the contract is for a specified time, such as one year, the coach should include a clause for automatic renewal. This enables the coach to negotiate a severance package should the organization choose not to renew.

Review periods. Coaches should have specified review periods for their contracts. If possible, **evaluation/assessment** methods to be used during the review should be included.

Termination. Coaches should have contracts in which the **grounds for termination** are clearly outlined. Typical grounds for termination include lack of performance, unethical behaviour, fraud or dishonesty, and failing to comply with the rules and regulations of the employer. Contracts should also include a **notice clause**, which typically ranges from 30 to 90 days (that is, both parties are given notice that the contract will be terminated). Where a breach of contract has occurred, coaches should have a **cure period** built into the contract. A cure period is a period of time in which the coach is allowed to correct a mistake. Cure periods do not apply to cases of fraud or dishonesty, which typically result in termination. Coaches should consider negotiating, in advance, a **severance package** in the case of termination without cause. Severance packages are typically based on the length of service. Finally, coaches should consider a **confidentiality** or **non-disclosure agreement**. This clause is used in a number of situations, but typically in cases of dismissal, where either party does not want to make the reasons for the dismissal public, or to prevent disclosure of salaries.

Mediation/Arbitration. A mediation process should be outlined in the contract to cover any dispute that may occur. This clause is to ensure that there is an obligation on behalf of all parties involved in the contract to resolve conflicts. Coaches should also ensure that they have an **indemnity clause** within their contracts, which essentially ensures that in disputed cases, where the decision of the coach can be supported, the employer indemnifies, or covers, any losses that the coach may suffer as a result of a lawsuit.

Record keeping. Coaches typically keep records for their own use. However, it is important to be aware of the records required by the employer as a function of the job. These records may range from information on athlete selection processes to financial accounting of events.

Benefits. Coaches should consider the inclusion of **medical, dental, disability, and retirement** benefits. If being hired as an independent contractor, the coach should consider increasing her salary to cover the costs of the benefits she will be providing for herself.

Vacation. Coaches should have a **vacation clause** in their contracts, which should specify the amount of time they are allowed to take as vacation days. For independent contractors, the contracts should state whether the coaches are being paid during their vacation, are receiving vacation pay as a result of no vacation, or are having an unpaid leave of absence.

Maternity/Parental leave. While maternity leaves are an obligation for employers, they are not guaranteed if a coach is hired as an independent contractor. Thus, **maternity** or **parental leaves** should be part of negotiations by independent contractors.

Disability. Every coaching contract should include a **disability clause** that outlines what happens if the coach gets sick or injured while on the job.

Travel. Any **expectations for travel**, both international and domestic, along with agreements about financial compensation for the required travel, should be included in a contract. Survey on Employability Standards

Recently, **Dru Marshall** (2003) collected data from 18 current or former national team coaches as part of a broader study examining the employability standards of national team coaches in Canada. Coaches were asked specific questions about their contract situations. Among other things, the results revealed that coaches need to be educated about the importance of the contents of their contracts.

The sample included 18 coaches (nine males and nine females). Twelve were current and six were former national team coaches. The sample represented coaches from 13 sports (eight individual and five team).

Nine coaches (seven males and two females) were hired as employees of their national sport federations (NSFs), eight (two males and six females) were independent contractors, and, surprisingly, one coach (female) had no contract.

Of those who were independent contractors, six coaches (all female) received honoraria and two (male) were salaried. Only two independent contractors (one male and one female) had built the cost of benefits (for example, medical, disability, retirement) into the cost of their contract. Fourteen coaches (eight males and six females) considered themselves to be working full-time, while four (one male and three females) were working part-time. Twelve coaches (71%) considered themselves to be somewhat independent (had to check on some things with the national office before doing them), while two considered themselves totally independent (could work a whole season and not talk to bosses), and three considered themselves to have no independence (national office was involved in all decision making).

Coaches were asked specific questions about their contracts, regardless of whether they were independent contractors or employees. Because one coach did not have a contract, 17 coaches answered questions in this area.

Terms and conditions of service

Twelve coaches (71%) thought that the terms and conditions of service were clearly outlined and knew what was expected of them. Thirteen coaches (76%) had contracts established for a set period of time, seven of which were for a one-year period. Four coaches (24%) (three males and one female) had contracts for four years or greater. Six (35%) (four males and two females) had contracts that included a probationary period, while 11 did not. Probationary periods ranged from three months to a year. Ten coaches (59%) had contracts that were automatically renewed on an annual basis, while six (four females and two males) had to renegotiate every year, and one coach was not aware of the continuity status of the contract.

Surprisingly, equipment, facility time, and assistance that coaches were to receive while being the national coach were not usually included in their contracts. Only two contracts (12%) specified equipment, while five (29%) (four males and one female) specified the facility time and assistance that the coaches were to receive.

Review periods

Eleven coaches (65%) (seven males and four females) had specified review periods built into their contracts, and all stated that they were to be reviewed annually. However, in some cases, a formal review process had not occurred. Eight coaches (47%) had contracts that included a description of the performance appraisal procedures and policies to be used in their annual evaluations.

Eleven coaches (65%) said that their expected performance standards were not clearly outlined in their contracts. Of those six coaches who did have clear performance standards, these ranged from World Cup qualifications to top-12 finishes in the world to increased medals at major international competitions. Six coaches (35%) had negotiated to have performance incentives built into their contracts, while 11 had not.

Termination

Nine coaches (53%) (six males and three females) had contracts where grounds for termination were clearly outlined and typically included clauses around ethics or morals, failure to comply with rules and regulations, fraud or dishonesty, lack of services, and lack of performance. Only seven coaches (41%) had contracts that included termination clauses for both parties, six of which included notice clauses, which typically ranged from 30 to 90 days. Not one coach had a contract that included a cure period for a breach of contract. Fourteen coaches reported that they definitely did not have cure periods, and three were not sure. Of note, not one coach had negotiated for a severance package in advance in the case of termination, but five coaches had contracts that included confidentiality or non-disclosure agreements - clauses that are typically put into effect when a contract is terminated.

Mediation/Arbitration

Three coaches (18%) had contracts that outlined mediation processes that would be used for any disputes in which they might be involved. Four coaches suggested that alternate dispute resolutions would be used in disputed cases. Interestingly, six coaches (35%) had indemnity clauses in their contracts, ensuring that the association would cover them for any losses they might incur in the case of disputes.

Record keeping

Ten coaches (71%) (two males and eight females) had clauses in their contracts related to record keeping. Examples of records required included typical factors that might be used in a dispute resolution, such as athlete statistics and evaluation, selection criteria and process, event summaries, and financial records.

Benefits

Nine coaches (53%) (six males and three females) had contracts that outlined benefits packages. Benefits included medical, dental, disability, life insurance, and retirement. It should be noted that not one coach had negotiated for all of these benefits. Nine (53%) (eight males and one female) had negotiated a vacation clause, with vacation ranging from two to five weeks. All coaches who had vacation clauses were granted paid vacations. Only two (12%) coaches had negotiated for maternity or parental leave clauses, while seven (41%) coaches (all males) had disability clauses in their contracts.

Travel

Travel is an implicit expectation of a national team coach, and all of the coaches agreed that this was true for them. However, only 10 coaches (59%) had clauses in their contracts about required travel associated with the job of being national coach. In all cases, the contracts stipulated that the required travel would be paid for by the NSF. Eleven coaches (65%) had contract clauses around travel for identification of athletes in different parts of the country. Sixteen (94%) were expected to travel to international events with their athletes or team, yet only 10 had travel clauses in their contracts.

Other issues

The contract section of the survey revealed important gender differences and general contract problems.

Gender Differences

1. Males tended to be hired as employees of organizations, while females tended to be hired as independent contractors. When females were hired as contractors, they were paid honoraria, while male contractors were salaried.
2. Almost twice as many males as females had specified review periods built into their contracts.
3. Twice as many males as females had termination clauses where grounds for termination were clearly outlined.
4. Four times as many females as males had expectations for record-keeping outlined in their contracts.
5. Twice as many males as females had contracts that outlined benefits packages.
6. Males had typically negotiated for vacation clauses, while females had not.

General Contract Problems

1. Contract length. One-third of the sample had to renegotiate their contracts annually.
2. Probationary periods. Two-thirds had contracts that did not include probationary periods.
3. Evaluation/performance appraisals. Evaluation procedures were not clearly outlined, or procedures were outlined and not done.
4. Cure periods. No coach had negotiated a cure period for a breach of contract.
5. Severance. No coach had negotiated a severance package in the case of early termination.
6. Confidentiality/non-disclosure. Less than 50% of the coaches had non-disclosure agreements in their contracts.
7. Mediation/arbitration. More than 80% of the coaches did not have clearly defined mediation procedures included in their contracts.

Clearly, a lot of work needs to be done in the area of developing solid contracts for high performance coaches in Canada. We all have responsibilities as coaches to ensure that we are being treated as professionals. We do no favours for ourselves, or the people following us, by not paying attention to details when negotiating contracts. The contract problems we have discussed indicate that not enough attention has been paid to this area. Are there risks in this approach? Certainly, coaching at the high performance level appears to lack professionalism. If the top coaches are not treated as professionals, what is happening to coaches at different phases in our athlete development model such as club coaches and developmental coaches? What message does it send to younger individuals who may consider coaching as a potential career path? We must be better advocates of coaching agreements and contracts. Although the message of this article is directed toward coaches, there is also a strong message for government agencies involved in sport, provincial and national sport organizations, coach advocacy agencies, and other employers of coaches. Each has a unique role to play in the professionalization of coaching. Coaches with solid contracts, working in agencies with positive, well-constructed policies that help to improve their working conditions, are more likely to have positive work-life balances. These coaches, in turn, have enhanced possibilities of being successful and creating win-win situations for employers, employees, and the athletes they are serving.

How to Get the Contract You Deserve

The following points were presented by Heather Barnett to the participants of the 2003 national women coaches retreat. These areas should be considered in negotiation meetings before the signing of any agreement:

1. If there is a specified term for the contract, consider the inclusion of an automatic renewal clause.
2. In the area of remuneration, consider the addition of a bonus clause and something pertaining to overtime.
3. Know a great deal about the job description before entering into a contract. This knowledge is the only way that the coach can be certain that the proposed remuneration is appropriate. The job description should include specific guidelines on hours, overtime, and travel.
4. Pay close attention to the area of termination, watching especially for terms such as "grave misconduct". A code of conduct more clearly defining this area can be attached to the contract. A good example is Alpine Canada Alpin, which has developed a list of behaviours it considers to be "grave misconduct". This list is attached to all employee contracts.
5. Strongly consider the addition of a cure period.
6. Have a sound knowledge of the budget, expenses, and related policies. This knowledge will enable you to determine if you have adequate resources to meet the expectations of the job.
7. Have a clear understanding of whom you report to - an individual or a committee - and how decisions are made within the organization.
8. Be aware of the level of control or discretion you have over the athletes and of the current discipline policies that are in place.
9. Have full knowledge of the benefits package being offered, and negotiate for benefits in cases where associations are not considering offering benefits.
10. Make sure that workers' compensation, insurance liability, and an indemnity clause are included in the contract.

Be proactive. Do not wait for your employer to come to you. Let them know what you expect to see outlined in the agreement. Really know the job description. Be aware of your bargaining power (What is your relative bargaining position? Are you in a strong position? A weak position?). Be aware of when you have to back down. To increase your awareness in these areas, enter into negotiations having already defined to yourself what your bottom line is; you will then know when to walk away. Listen to what the employer has to say and take time to think about it. Confirm negotiations in writing as they proceed. If coming off a successful season, raise your expectations for remuneration. Talk about your successes during the negotiation meeting.

Clearly, we are developing greater insight and knowledge about employment contracts for coaches. Nonetheless, it is very apparent that coaches need to develop stronger negotiation skills to ensure that key clauses are included in contracts to enhance their employment situation. Coaches need to realize their unique worth and become greater advocates on their own behalf. Williams (1993) "[Getting Past No: Negotiating Your Way from Confrontation to Cooperation](#)" is an excellent resource on negotiating strategies.

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About the Authors



Sheilagh Croxon

Sheilagh Croxon was named as Synchro Canada's national coach in April 1998. She was responsible for the design and implementation of Synchro Canada's Centre of Excellence. Her coaching accomplishments include two bronze medals at the 2001 World Aquatic Championships and a bronze medal at the 2000 Olympic Games. She was an assistant coach of the 1996 Olympic team that won a silver medal and won eight national titles as head coach of the Olympium Synchro Club from 1986 to 1998. She is recognized nationally and internationally for her ability to conceptualize and develop unique team routines.



Dru Marshall

Dru Marshall has a doctoral degree in exercise physiology and is the assistant dean, undergraduate program, in the Faculty of Physical Education at the University of Alberta. She coached within the national field hockey program for over 20 years, and was the head coach of the national women's field hockey team from 1996 to 2001. She is one of three field hockey coaches to have achieved NCCP Level 5 certification and has won numerous coaching awards. She is the author of many publications and technical reports and has conducted research on a wide range of topics including eating disorders in high performance athletes, coaching women athletes, and obesity and health.