

A Guide to Employment Contracts for Coaches

Disclaimer

The information in this handbook is intended as general legal information only and should not form the basis of legal advice or opinion of any kind. Readers seeking legal advice should consult with a lawyer.

1. Overview

In the last decade, amateur sport organizations have had to become much more businesslike in how they manage their affairs. Marketing, sponsorship, risk management, and dispute resolution are issues that demand an increasing amount of attention from volunteer directors and administrators.

Likewise, the coaching profession has evolved significantly in recent years. Today's coaches are no longer exclusively volunteers, and many have access to extensive training and professional development opportunities. Coaching is a viable career, and many individuals now make their living coaching in amateur sport, either as employees of sport organizations or as self-employed coaches offering their services for a fee.

This handbook is written for the paid coach who works part time or full time in coaching for a sport organization, club, educational institution, or a combination of these. The handbook also addresses many of the issues relating to the private coach - one who enters into a coaching, business, or profit-sharing relationship with an elite athlete.

The purposes of this handbook are threefold:

- to explain the critical distinction between an employee and an independent contractor
- to suggest some essential elements of the coaching contract
- to provide some basic information to help the coach negotiate a fair and effective contract with an employer.

It is important to emphasize that no two contracts for coaching services will be alike. Although all contracts will have some common elements, each contract *must* be tailored to suit the coach's particular circumstances. As a result, this handbook does not advocate a "model" contract. Rather, it provides some essential components of a contract and gives the coach the necessary information to negotiate contract terms that best meet his or her needs.

The following process is recommended to the coach who is ready to negotiate and execute a contract for coaching services:

1. Discuss and negotiate the desired elements of the contract with the employer.
2. Have the employer prepare a draft contract that reflects the elements that have been agreed upon.
3. Review the draft contract and make additions and revisions as appropriate.
4. Have a lawyer review and refine the contract.

Involving a lawyer is highly recommended; the fee paid to the lawyer to review and refine the contract will be well worth it over the long term.

2. Employee or Independent Contractor?

This section of the handbook discusses the differences between two types of employment: the coach as an employee and the coach as an independent contractor. Understanding these differences will give the coach direction in designing a working relationship with the employer that accurately reflects the reality of the job. Properly structuring this relationship is important for both legal and financial reasons for all concerned.

2.1 SHOULD I BE AN EMPLOYEE OR SELF-EMPLOYED?

An employee/coach is just like any other employee of an organization - someone who works for regular pay, with income taxes, employment insurance premiums, and government pension plan contributions withheld by the employer and submitted to the government in regular instalments. An employee/coach may participate in the employer's benefits and private pension program, may have a written job description, and may have a written employment contract or other written agreement with the employer.

A self-employed coach is an independent contractor who provides services to a sport organization, club, or institution for an agreed-upon fee. The self-employed coach may also enter into a contract with individual athletes. The terms and conditions of the relationship between the self-employed coach and the employer are set out in a written agreement. The employer pays the self-employed coach the full amount of the contract, according to the agreed-upon payment schedule, and does not withhold taxes or other payments. The self-employed coach is essentially his or her own employer and is responsible for making tax and other payments to the government directly.

There are advantages and disadvantages associated with each type of employment. Often the coach will not have an opportunity to choose one over the other, as it will be clear from the nature of the work to be done that the coaching position calls for an employee rather than an independent contractor or vice versa. However, where the coach *does* have the opportunity to negotiate one or the other arrangement, he or she will want to carefully consider the advantages and disadvantages of each *and be satisfied that the type of employment selected meets all applicable legal tests.*

Provided becoming an independent contractor is a possibility, in terms of the implications for the individual coach, there are three areas to consider:

- personal liability
- taxes, benefits, and pensions
- dismissal.

Personal liability This issue is primarily a legal one. Typically, an employer is responsible (or "liable") for the wrongful acts of employees acting within the scope of their employment duties. This is known as vicarious liability. In a situation where the negligent behaviour of an employee causes injury or damage to another party, the employer will be held *vicariously liable*, or responsible, for those losses - even though the employer may have done nothing wrong.

The underlying rationale for this legal principle is that the employer and employee are considered associated parties in the ongoing business of the organization. They may also be described as having a *master/servant relationship*, in which the employee is the servant or agent carrying out the directions and actions of the employer.

There is also a practical reason for this principle. From a public policy perspective, the vicarious liability principle provides an injured party with a source from which to collect damages in the event of a successful legal suit. Most employers would have the resources (usually insurance) to cover such damages, whereas the individual employee typically would not.

The liability situation for the self-employed coach is quite different. An independent contractor is his or her own employer and is therefore responsible for his or her own negligent acts. Instead of having the protection of the employer's liability insurance policy (or other "deep pocket" such as cash or reserve funds), the contractor coach may be *personally liable* for his or her own actions and may also be responsible for any legal costs that might be incurred to defend a lawsuit from other parties, whether or not the lawsuit is successful.

The independent contractor clearly has legal obligations that the employee does not. These obligations will vary depending on whether the individual operates under an incorporated business or as an unincorporated sole proprietor, but in both cases they are significant. The prudent self-employed coach may wish to purchase liability insurance. And, depending on the terms of the contract with the sport organization, the contractor coach may be *required* to purchase this insurance.

Taxes, benefits, and pensions An employer is responsible for withholding certain payroll deductions on behalf of an employee, including income tax, employment insurance premiums, old age pension, and, in some provinces, health care. Employers also pay Workers' Compensation Board (WCB) premiums for their employees and are required by provincial and territorial employment laws to pay overtime wages or to provide time off in lieu of extra time worked. They must also pay wages on statutory holidays on which the employee does not work and provide the employee with a minimum number of paid holidays per year. Some employers may also contribute to additional benefits for employees, such as extended health care and retirement savings plans.

An independent contractor, on the other hand, receives none of these benefits or "perks." The independent contractor does not get paid for overtime or holidays. He or she is not covered by Workers' Compensation and, in many cases, must purchase personal health care insurance. The independent contractor is also responsible for setting up his or her own benefits and pension programs.

Tax advantages may be a factor to consider for the coach who opts for self-employment. With careful tax planning, it is possible to achieve higher earnings when self-employed than when employed, particularly if the self-employed individual has an incorporated company. There are two reasons for this tax advantage: first, many ongoing expenses can be legitimately linked to the pursuit of business and can be used to offset income before taxes, and second, except at very low income levels, the corporate income tax rate is typically lower than the individual income tax rate. Note however, that corporate income is really taxed twice, once when it goes into the company and a second time when it is removed from the company and goes to the coach as salary or a dividend. Determining the actual tax rate will usually require professional advice.

There are also disadvantages to self-employment, including the ongoing administrative work required to keep accurate financial records, to collect and remit taxes, and to submit annual tax returns. If the individual chooses to incorporate, there is some time and cost involved.

In evaluating the pros and cons of self-employment, the coach should always balance the possibility of tax advantages against the financial risks, which include the lack of benefits, disability insurance, and income security (whether through the stability of employment or through the fall-back protection of employment insurance).

Dismissal

This third issue relates to job security. Under provincial law, an employer must have "cause" to dismiss an employee without notice. Lacking cause, as defined by the law, an employer can terminate an employee only if the employer provides proper notice of termination as set out in employment law or the employment contract or, alternatively, if the employer pays the employee a lump sum in lieu of the required notice.

The relationship between the independent contractor and the employer, on the other hand, is governed solely by the terms of the contract the parties negotiate, and becomes a matter of contract law as opposed to employment law. Any dispute about the termination of employment that may arise is dealt with as a breach of contract, not as an employment matter. Ideally, the existing contract will contain clear terms about termination and dismissal. In the worst case scenario, involving a poorly drafted contract, the contract would contain no such provisions, and the contractor would have little recourse for obtaining any notice that the contract is to be terminated.

2.2 EMPLOYEE VERSUS CONTRACTOR: ARE YOU A CONTRACTOR?

If your employer pays you regularly, withholds taxes and other deductions, provides benefits, gives you paid holidays, and issues you a T4 income tax slip at the end of the year, you are probably an employee.

If you signed a written contract for services, receive an honorarium, stipend, or other lump sum, and your employer does not withhold taxes and other payments, such as EI or CPP, you *may* be an independent contractor. But you may, in fact, be an employee operating under the guise of an independent contractor. Not clearly establishing the legal status of an independent contractor can create serious problems for both the coach and the employer, as described in the case of the Flying Fins.

The Case of the Flying Fins

The Moose Jaw Kinsmen Flying Fins were a small swimming club that engaged a head coach for an annual stipend of \$12,000. Both the club and the coach believed that the relationship between them was one of independent contractor, not employer/employee. As a result, the coach was paid in lump sums and no deductions were withheld.

Revenue Canada eventually became aware of this arrangement and determined that the coach was really an employee, not a contractor, and demanded that tax, EI, and CPP be paid. This view was based on the club's ownership of tools (whistles, stopwatches, flutterboards), the absence of a chance of profit or risk of loss, and the extent to which the club controlled and directed the coach's activities.

The club went to court to appeal this decision, but lost, and in the end the club's directors and the coach had to sort out who among them was responsible for paying the arrears, plus penalties and legal costs.

*Moose Jaw Kinsmen Flying Fins Inc. v.
Minister of National Revenue (1988) 88 DTC 6099.*

There are four underlying tests typically used to determine whether an individual is an employee or is self-employed:

- the control test
- the integration or organization test
- the economic reality test
- the specific result test.

No single test determines employment status; the tests are used in combination and are applied to the circumstances of each individual case.

Control test

The greater the degree of control and independence the worker has in the workplace, the more likely that person would be considered an independent contractor. The degree of control depends on the circumstances of the case and often varies with the type of work and skill of the worker. Several factors, such

as the authority to make decisions, hire assistants, define the scope of the work, set one's own schedule, or terminate the working relationship, will influence the degree of control the individual has.

In the coaching context, control would also include the extent to which the coach has authority to determine coaching methods and to make coaching-related decisions. Control would be influenced by the lines of authority and accountability. Is the coach expected to "report" regularly to an individual such as the technical director or the president? Does the coach need to obtain permission from the executive to implement a certain training program? The more the employer dictates coaching activities, the less control the coach has.

**Integration or
organization test**

This test examines whether the tasks performed by an individual form an essential part of the organization's day-to-day business. If the tasks are "integral" to the business, it is likely that an employer/employee relationship exists. On the other hand, if the tasks are not integral to the regular daily operation of the business, that is a strong argument that an independent contractor/client relationship exists.

This test is also influenced by whether the contractor provides the same or similar services to other clients at the same time. If the contractor *does* provide similar services to others, this is evidence that the contractor is truly independent.

**Economic reality
test**

This test deals with the possibility of financial risk. It has several facets including control, ownership of tools or equipment, and chance of profit and risk of loss.

The matter of control has already been discussed. In coaching, ownership of equipment is a particularly important consideration. Does the coach supply his or her own whistles, stopwatches, clipboards, first-aid kit, or other training or coaching devices and supplies? Does the coach provide forms, documents, and training logs? Or is the coach entirely reliant upon the employer to supply all the necessary equipment and supplies to carry out the task? A self-employed person would likely pay for his or her own equipment and supplies (and claim them as an expense against taxable income); an employee would have these supplied by the employer.

Similarly, a self-employed coach would likely include in a contract a certain amount for administrative expenses (including out-of-pocket expenses such as meals, travel, accommodation). An employee, on the other hand, would be reimbursed by the employer for out-of-pocket expenses.

Self-employment usually creates an opportunity for profit and the risk of loss that is normally absent from the consideration of employees. A contractor who performs competently will be financially rewarded under the terms of the

contract. Conversely, if a contractor's work does not satisfy the terms of the contract, contract payments may be withheld. Likewise, an independent contractor would not get paid if he or she were unable to complete the work due to illness, adverse weather conditions, or other factors beyond his or her control.

Specific result test This final test relates to whether the work is project specific or ongoing. An employee/employer relationship generally exists when an individual provides services to an employer over a period of time, without any reference to a specified result or task. If, however, an individual is hired under a contract for services for a specific time period, to achieve a specific result, or to do a specific task, the relationship may not be viewed as one of employee/employer. A short term contract to coach a team to prepare for and compete at a major competition could be construed as a contract that has a specific result in mind. The four tests described above were initially developed by Canada Customs and Revenue Agency (formerly Revenue Canada) in the context of allocating responsibility to pay or deduct taxes. In a recent case, with broader implications, the Supreme Court of Canada validated these tests as proper factors to consider but the Court phrased the test more simply. The central inquiry should be whether the person engaged to perform the services is performing them as a person in business on his or her own account? If the answer is "no" then the person is an employee. If the answer is "yes" then the person is a contractor.

The primary consideration driving most requests by coaches to create a "contractor" relationship is the more favourable tax treatment accorded to independent contractors. However, the consequences of making a mistake regarding the correct interpretation of a coach's status can be quite serious for both the purported "contractor" and for the employer. For instance, the employer may have to pay all outstanding employment insurance and pension plan contributions, perhaps with a fine. The "employee" will have many, if not all, of the previously submitted expense deductions challenged and may have to pay additional amounts to the government as penalties and fines. Mistakes also impact workplace safety insurance as the calculation of premiums is dependent on the number of employees an employer engages. Importantly, most employment standards legislation specifies that the enumerated benefits accrue to every employee and thus "contractors" who are deemed to be employees after the fact are entitled to all the protections of this legislation.

In summary, the focus of all these legal tests is to discover the true nature of the relationship, regardless of what it might be called on paper or what the parties believe the relationship to be. Even a written contract that states that the relationship is one or the other will not conclusively establish that relationship if the nature of the work proves it to be otherwise. Set out below are some ideas to assist the coach who wants to be sure his or her claim to be a contractor will withstand serious scrutiny:

- Ensure the employer makes no statutory deductions and provides no benefits whatsoever such as health, dental, overtime, lieu days or paid vacations, etc.
- Hours of work should not be monitored.
- Be careful how the reporting/supervisory structure is designed. True contractors receive little direct supervision as they go about performing their tasks (they are the experts - which is the reason they were hired!) although they typically do report to some official of the organization that hired them.
- Avoid exclusivity clauses if at all possible.
- Structure the pay arrangement so there is some chance of profit (build in a commission or bonus scheme) and conversely some risk of a loss (perhaps tied to poor results or failure to finish a task on time).
- Have all termination rights mutual so the same notice is due to each party on termination.
- Where possible and sensible, work away from the employer's business. Alternatively, structure some "rental" of the premises used by the contractor.
- Avoid stating general "duties" the coach should perform. Instead, list all the specific tasks the contractor is responsible to get done and the time frame in which he or she is to do them.
- Avoid job titles within the organization. Contractors should not serve as a volunteer or Director and must avoid business cards indicating an association with the employing organization - all these factors have been considered evidence of an employment relationship.
- To the extent the contractor is using the employer's equipment arrange a "rental" or some service fee paid back to the employer.
- Keep the term of the contract as short as possible to perform the required tasks. The longer the term the more it begins to look like an employment relationship.
- There should be no reimbursement for the contractor's normal business expenses. Such expenses should be built into the fee paid to the contractor. The contractor should submit an invoice each month for payment. The payment of wages without an invoice is a clear indication of an employee relationship.
- Contractors should arrange all their own insurance at their own expense.
- Consider having the contractor incorporate and have the corporation contract with the employer for the required coaching services.
- GST should be charged to the employer if the supplier (coach) is not exempt.

Understanding the significant differences between the two models of employment gives the coach a clearer idea of the risks faced as an independent contractor. Understanding these risks will help the coach negotiate more effectively for a contract that is legally valid and personally beneficial.

3. The Coaching Contract: Basic Elements

This section of the handbook explains some of the basic components that should be included in a coaching contract. Clearly, a written contract is *essential* if the coach is self-employed as an independent contractor. A written employment contract is *strongly* recommended if the coach is an employee.

The following information is presented in very general terms and would be applicable to all types of employment contracts. Specific recommendations to the coach negotiating a contract are presented in Section 4.

Obligations of the parties to contract in good faith

Each party has an obligation to deal honestly with the other. The employer must be clear in representing the availability of work, the nature of the work, the wage, and the conditions of employment. The employee must accurately represent skills, qualifications, and history of past employment. The same honesty is required of parties entering into a contract for services. A contract can be voided if it is shown that one party substantially misled the other.

A word about criminal records ...

Other than in federally regulated businesses and activities (which do not include sport), no law in Canada precludes an employer from asking a prospective employee whether he or she has a criminal record - even if that record is unrelated to the work to be performed. However, both provincial and federal human rights legislation prohibits employers from dismissing, refusing to hire, or otherwise penalizing a person simply because he or she has been convicted of a criminal offence that is not connected with the employment.

Enforceability

In all cases, the contract should be reviewed and signed prior to commencing the work. The contract is enforceable only if both parties agree freely and voluntarily to be bound by its terms. If one party misrepresents important conditions to the other, uses its power to impose unfair or unreasonable provisions on the other, or commits a fraud on the other, the contract may not be valid.

However, this does not preclude one party from being in a stronger bargaining position than the other, in order to obtain more favourable terms in the contract. In fact, it is a rare contract that arises between two parties of equal power and strength. A contract can be voided on this basis only if there is a blatant and coercive imbalance between the parties.

Defining the parties

An employee is hired in his or her own personal capacity. An independent contractor may choose to enter into a contract in his or her own personal capacity or as an incorporated company. Incorporation provides certain tax and liability advantages, as mentioned in Section 2. However, incorporation also involves additional costs, inconvenience, and paperwork. A coach considering incorporation should consult with a lawyer and an accountant to obtain an

accurate picture of the costs and relative advantages and disadvantages of incorporation.

The other party to the employment contract is usually the incorporated sport organization, club, or institution (although the president, member of the executive committee, or executive director signs the contract on behalf of the organization).

Before entering into a contract for services, the contractor should be satisfied that the organization is stable and operating on a sound financial basis. A simple check can be made by talking with other suppliers or contractors. The contractor-to-be can also ask to see financial statements and an annual report, although the organization is not obliged to supply them.

Ensuring that the employer is solvent is particularly important for the independent contractor, because he or she will have limited recourse in the event the organization becomes bankrupt and is unable to make the necessary payments to fulfil the contract. This is somewhat less important for the employee, because the law imposes an obligation on directors of organizations to *personally* fulfil payroll and certain related obligations.

Job duties of the coach

One of the first clauses a contract should establish is a description of the position and the scope of the job. The contract should identify the job title and should describe *in detail* and as broadly as possible the responsibilities and duties of the position. The job description is a key part of the contract, upon which many other sections of the contract will depend.

Key items in the coach's job description ...

Employers and coaches should be as detailed as possible in documenting the coach's job responsibilities. Key areas to be covered include integral coaching tasks, such as instruction, scheduling, athlete evaluation, and supervision of competitive events (at home and away). Areas that shouldn't be overlooked include general supervision during training events, staffing (if the coach has assistants), coordination of equipment, and maintenance of coaching certification. If the coach's responsibilities include an administrative role (which might be the case in a smaller club), then these tasks should be identified (e.g. registration, budgeting, negotiating with facilities, attending meetings, promotion and publicity, fund-raising). If the responsibilities include travelling with and supervising the team at competitions, these duties should be listed. As a general rule, the job description should outline specific tasks to be performed. General statements - "shall abide by the rules of the association," "implement the policies and regulations of the club" or "carry out duties in a professional manner" - should be avoided.

Legally, a job description is important because it defines the scope of employment duties for the purposes of assigning liability (responsibility) for actions. An employer is only liable for the actions of employees that fall within their defined scope of duties. It is for this reason that the job description must be accurate and broadly worded.

Authority of the coach	Following closely on the description of duties, the contract should also define the scope of the coach's authority. Does the individual have the authority to make and implement decisions, or only to implement decisions made by others? Does the individual have the authority to hire assistants? What is the coach's role in developing and applying selection criteria, implementing discipline, and designing and scheduling training programs? The contract should clearly set out what the coach is authorized to do and where this authority comes from.
Exclusivity	To avoid potential conflicts of interests, some contracts contain clauses that prevent the employee from offering coaching services to other clients. Such clauses may be legitimate if the coach's position is clearly full time, but otherwise the coach should not agree to any restrictions on being able to coach elsewhere if it does not effect his or her job performance. It is important for contractors to retain the right to work for any third parties during the term of a contract - even if they have no intention of actually doing so..
Reporting relationship	The contract should specify who the coach communicates with and reports to in the organization, as well as how often and in what format (written or verbal). Ideally, this person (or group) will understand the technical aspects of coaching and will also have a formal role in the coach's evaluation and in any decisions about the coach's continuing relationship with the organization.
Compensation	This part of the contract deals with much more than simply the pay that the individual has negotiated. A contract between employee and employer should include all forms of compensation that have been negotiated, including regular salary, overtime pay, benefits (extended medical and dental coverage and disability insurance), car and per diem allowances, holiday structure and pay, the employer's contribution to a pension, the employer's contribution to professional development and coaching accreditation, future salary increments (whether fixed in advance or performance-based), and bonus structure. The contract should also specify the schedule for payments (e.g. weekly, biweekly, monthly) and the method of calculating payments. A contract between independent contractor and client should specify the amount of payment that has been negotiated and the frequency of payment. The contractor may also wish to negotiate a bonus package or other reward for achieving certain performance objectives.
Duration	An employment contract is typically open ended in its duration, although an "anniversary date" of employment is established for purposes of performance and salary review. A contract for services is rarely, if ever, open ended. Such contracts are most often for a fixed term of less than one year or terminate when the specified tasks are completed. It is possible for a contract for services to contain clauses relating to the renewal of the contract for an additional period. The renewal option usually

does not require that the whole contract be opened up, but only that certain limited aspects of it be reconsidered, such as the term, additional tasks or levels of compensation.

Renewal

The contract should be specific about how the renewal process, if applicable, will occur. For example, is the decision to renew a joint decision of the two parties or solely at the discretion of the employer? Is the decision to renew formally linked with the review of the contractor's performance? Ideally, the contract should set out timelines so that the decision to renew (or not renew) is not left to the last moment. Instead, the contractor should be given ample notice that the contract is not being renewed, so that he or she can pursue other opportunities. It may be possible to include a clause that extends the contract at a specified rate of remuneration until such time as notice to not renew the contract is given or until the contract is successfully renegotiated.

Performance review

Performance review is an often overlooked area, both in policy and in practice. The contract should specify how the individual's performance is going to be evaluated - not only what criteria will be used in the evaluation and how they will be weighted, but also who will carry out the evaluation, at what times, and in what format (written or verbal). Will the performance review process provide the coach with an opportunity for input or feedback? Performance reviews are critical because they form the basis upon which major decisions are made, including decisions to penalize, terminate, or reward employees or contractors.

Place of work

The contract should specify where the work is going to take place. If travel is a requirement of the position, the contract should specify how travel costs are to be compensated. If temporary relocation to another area is a requirement, the contract should clearly specify what relocation expenses will be covered and how.

Non-competition clause

A non-competition clause protects the employer from a former employee or contractor using knowledge and experience acquired during the course of employment to compete unfairly against the employer. Although such clauses are quite legitimate, they should only target those employees or contractors whose knowledge of the employer's business could damage the employer's place in the market or relationship with its clients. Generally, the more specialized and complex the services, and the more an employee or contractor is in a position to influence or solicit the employer's clients, the more likely a non-competition clause will be upheld by a court, provided it is otherwise reasonable.

Confidentiality provisions

Confidentiality provisions, which are common in contracts, serve two purposes: to ensure that the employee or contractor who has access to the employer's confidential information keeps it confidential both during and after the contract and to prevent the parties from discussing details of the contract once it is terminated. A contract can also stipulate confidentiality about the details of a dispute between the two parties, the reasons for dismissal, the terms of any settlement, or the amount of severance pay. Confidentiality provisions work both ways; they can be beneficial to the employer and the employee or contractor.

Termination

To avoid potential misunderstandings, both parties should agree upon and identify the grounds that will justify a termination of the contract (in the case of an independent contractor) or are cause for dismissal (in the case of an employee). An employee terminated for cause is not entitled to notice or pay in lieu of notice. However, an employee dismissed without cause is entitled to receive notice of the pending dismissal or a lump sum payment in lieu of such notice. The amount of notice to be given on termination should be negotiated by the parties and clearly specified in the contract.

When an employee is terminated without cause, and therefore with notice, both parties should know the length of that notice period well in advance. The best strategy is to include it as part of the contract. Unless there is a prior agreement between the parties accepting a longer notice period, often called "reasonable notice", the employer may try to insist that the employee is entitled to only the minimum notice period set out in the provincial or territorial employment legislation. In many provinces this is one week's notice for each year of service up to a capped amount.

The statutory provision represents a minimum period of notice, but this may not be reasonable in certain circumstances. Seniority, complexity of the job, and inducement to leave a previous position of long standing are just some of the factors that should encourage the employee to negotiate in advance for a longer period of notice. However, if the contract calls for the minimum statutory period, and the employee has agreed to this, these other factors will not be considered.

Likewise, if a contractor is terminated, it may be appropriate for the contract to include a short notice period, which is rarely longer than 30 days.

What happens on termination for an employee with a fixed term contract is more complex. The amount of the termination package should be clearly identified in the contract whether it is (i) a set period of notice or (ii) a pay out of the remaining contract term. Ideally, the termination payment should be the remaining amount of the contract paid out in full but this is not always possible to negotiate. The payment could be based on salary at the time of termination and could include a prorated share of any bonus that may have been earned. The termination package might also include any statutory entitlements, such as a continuation of health care premiums during the contract's term. The most important thing is to negotiate and agree in advance how any termination situation will be handled.

Whether the notice of termination is actually given or a payment is made in lieu is usually up to the employer. Most employees prefer that their entitlement to notice takes the form of a lump-sum payment or a series of structured payments. A lump-sum payment is preferable as it allows a clean break from a situation that, if extended, may become difficult for both parties.

Indemnification Employees are indemnified by their employers for legal costs and damages they

and insurance might incur, if such losses arise from the employee properly performing his or her job duties. Typically, an employment contract does not make reference to this because it is a clear entitlement under the law.

Independent contractors are typically not indemnified by the organizations with which they have a contract. It is not in the organization's best interest to indemnify a person over whom they do not exercise control. However, it is not uncommon for the employer to seek an indemnification back from the coach who is an independent contractor.

Arbitration Arbitration is a process whereby the parties submit a dispute to an impartial third party for decision after hearing from both sides. The parties agree in advance which disputes may be arbitrated (termination decisions that effect employees are usually not arbitrated) and agree to be bound by the decision of the arbitrator. Arbitration is intended to avoid the delay, the expense, and the formalities of ordinary litigation in resolving common disputes.

An arbitration clause is recommended for all contracts, for several reasons. One of these is that arbitration enables the dispute to be settled outside the organization and away from personalities that may have clashed and from views that have become entrenched. Arbitration is also a cost-effective way to resolve disputes, particularly if it appears that the parties are headed toward litigation.

Two critical aspects of the arbitration clause are that arbitration shall be compulsory rather than optional for certain disputes and that the arbitrator's decision shall be final and binding on the parties.

Severability This is a minor housekeeping item. Generally, where one clause in a contract is found to be void, the whole contract is effectively voided, unless the parties agree otherwise. Thus most contracts have a severability provision, which results in severing any void clause from the remainder of the contract and ensuring the whole agreement is not struck down.

4. Negotiating a Contract: Recommendations for the Coach

The following points are intended to help coaches (whether employees or contractors) negotiate the best possible contract for themselves. These points do not necessarily represent a complete list, nor are they presented in order of priority. As well, these recommendations must be read in conjunction with the previous section, which explained some general elements of a contract.

As mentioned in the Overview, we strongly recommend that coaches negotiate the terms of the contract, have the organization prepare a draft contract, revise the draft as appropriate, and have a lawyer review the final product.

Don't start the job until the contract is in place

The beginning of the relationship between a coach and an employer is a time when the relationship is at its most positive; the coach is viewed most favourably and has considerable influence. It is clearly the best time to negotiate and execute the contract. Take advantage of this time to negotiate the best deal for yourself! Don't simply accept a contract that is presented to you; negotiate for what you consider is in your best interests. And don't put off negotiating the contract in the interest of getting started on the coaching job, with the idea that the details and paperwork can be sorted out later on. All too often, misunderstandings and disputes follow. Above all, resist pressure to sign the contract in a rush, for whatever reasons.

Make the contract as detailed as possible

In all respects, the more detailed the contract is, the better. Even if things are rosy at the outset and it doesn't appear that anything could possibly go wrong, continually ask yourself what *could* go wrong, and negotiate the contract to anticipate as many situations as you can reasonably foresee. Although it is signed at the *beginning* of a relationship, the contract must be especially detailed and clear about how the relationship will *end*, because this is when most disputes will arise.

A coach's comment ...

Many coaches are so thrilled to get the coaching job in the first place that they pay little attention to the matter of negotiating the contract, or they assume that the contractual details will be taken care of. They end up not being properly protected.

Use an appropriate title for the contract

For independent contractors, the title of the contract should be "A Contract for the Provision of Coaching Services" or something similar. The employee may wish to title the agreement something like "Employment Contract."

Be political - learn all you can about the organizational culture of the organization you are about to work for

Enter into your new working relationship with eyes and ears open. The organizational culture of an organization will depend very much on the personalities involved. Over time these personalities may change, and in the future you may find yourself dealing with people who have different styles and agendas. Recognize that the board of directors is likely to support the executive director, technical director, or other board member - and not the coach - in the event of a dispute. Be particularly wary of finding yourself striving to achieve goals and objectives that have ceased to be a priority for the organization. If the focus is changing (for example, from elite competition to developmental programs), it may be appropriate to revisit your contract and renegotiate certain terms, particularly those related to your performance review.

A coach's comment ...

Part of being "political" involves knowing who has the power within an organization. Some organizations are driven by the board, others are driven by staff, and still others (usually local clubs) are controlled by parents. In terms of your coaching contract, look for a direct link with those who control the organization.

Be clear about lines of reporting

The contract should spell out very clearly the lines of reporting. Do you report to the technical director, high performance chair, executive director, or executive committee? In the case of a small club, you may be expected to report to the president. Does the person you are reporting to have a sufficient grasp of the technical aspects of coaching? If you are not completely satisfied with the reporting arrangement being proposed, suggest some alternatives. If at all possible, arrange to report to individuals who will be involved in your evaluation and who will be making the decisions about continuation of your contract.

Sort out what, how, and how often you will report. Keep in mind the practical and logistical aspects of reporting. If you are with a national organization and are expected to report to someone who lives on the other side of the country, how realistic and how expensive will it be to report on a regular basis? If you are expected to supply a detailed written report at regular intervals, be sure that this report can be prepared within the time allotted to you, while you are carrying out your regular coaching duties. If the board is responsible for the key decisions that affect coaches and coaching, be sure that you have opportunities to respond directly to it, rather than having your input filtered through a staff person.

A coach's comment ...

The higher up you go, the more important your communication skills will become. You will need these skills to communicate with athletes on the one hand, and with members of the board on the other. Good communication and people skills will help you resolve many contractual issues and avoid potential disputes.

Seek a contract with a long duration

The duration of the contract will depend on your personal situation and on the needs of the sport organization. If you are leaving stable employment to take up a new coaching position, you should seek the longest term possible or insist on open-ended employment. As well, you should be sure that the tasks you have been contracted to provide are realistic and consistent with the duration of the contract. For example, if the team you are contracting to coach is in a building phase, high performance goals may be unrealistic in a short period of time. You may need a longer period, perhaps four or five years, to reach the goals. The contract term must give you the opportunity to do the job properly. If a longer fixed term has been negotiated, make sure that the inclusion of a termination clause, which may allow for early termination without compensation only in the event of "cause", does not preclude a full payout of the contract if termination is

without cause.

A coach's comment ...

The sport organization will try to sign you up to a one- or two-year contract. This isn't long enough to develop a team and bring about significant improvements in performance. To get the job done, you need four or five years.

Be specific about performance evaluation

The contract should be very specific about how your performance will be evaluated. You should insist that all performance reviews be conducted in writing, on the basis of agreed-upon criteria at agreed-upon intervals (usually once per season). These criteria should relate back to the job description set out in the contract and to the mission and objectives of the organization. You should also ensure that there is a mechanism for your feedback to be incorporated into the results of your evaluation.

Be sure the contract states who will be involved in the evaluation

Will the review be conducted by a single individual (technical director or high performance director) or by a larger group, such as the executive or the board of directors? Will athletes play a prominent role in the evaluation? Generally, such an approach is not recommended because it puts the athletes in an awkward position; a negative evaluation may represent personality differences more than performance according to pre-determined criteria. The timing of the evaluation will also be important. Psychologically, the worst time to evaluate a coach might be immediately following a competitive season, because the evaluation may reflect judgments about how well the athletes performed, rather than how well the coach performed.

Be clear about out-of-pocket expenses

The contract should specify how out-of-pocket expenses are to be covered. One approach is for you to be subject to the travel and expense policies of the organization as they apply to other employees, directors, and volunteers (e.g. modes of travel, quality of hotel, and per diems). Another approach is for you to include an administrative expense allowance in your contract payment to cover all expenses. If you are required to relocate for extended periods of time (at a centralized training camp, for example), the contract should specify how relocation expenses are to be covered. As much as possible, the contract should clearly set out the competitions and events in which you are expected to participate and how the costs of this participation will be covered.

Determine who pays for ongoing professional development

You may wish to negotiate professional development opportunities, such as continued NCCP training or coaching workshops/conferences, as part of the contract. If the position *requires* that you satisfy certain training and licensing requirements (e.g. first aid, CPR, NCCP courses, requirements of international federations), this should be stated in the contract, and you should expect the

employer to cover the costs of obtaining or maintaining these qualifications or, at least, provide paid time off to fulfil the requirements.

Examine non-competition clauses carefully

Non-competition clauses are uncommon in coaching, and the few that do exist are designed to prevent former employees from drawing athletes away from other coaches, not to prevent the coach from working at all. In the rare event that you encounter a contract containing a non-competition clause and you cannot negotiate its removal, you will want to make sure it is for as short a period as possible - anything less than one year is usually considered reasonable. The geographic territory covered by the clause should be clearly defined and should be as localized as possible (certainly no wider than necessary to protect the employer's legitimate interests). The clause should go no further than preventing the employee from soliciting current clients (i.e. athletes) of the employer.

Be specific about what constitutes cause for dismissal or termination and identify notice periods

Be as specific as possible in your discussions with the employer about what will constitute cause for *dismissal* (of an employee) or cause for *termination of the contract* (of an independent contractor). It is very important to realize that any employee may be terminated at any time, with or without cause, provided the employer satisfies its legal obligations regarding termination notice that exist at law or are specified in the contract. For this reason termination provisions in the contract are critical to protecting the employee's interest.

A coach's comment ...

Your contract should contain a communication and dispute resolution mechanism to handle situations of conflict between athletes and the coach. Such a mechanism would outline how and where athletes could make complaints ... If they complain directly to the board, the coach may be doomed, because he or she has just lost every opportunity to resolve the dispute internally. Matters should go to the board only as a final recourse.

The contract should specify what notice period is required for termination of the contract without cause. As an employee you may wish to negotiate a sliding scale of notice, which increases with years of service with the organization. Years of service should be accurately defined. A common error in many agreements is that they do not address whether previous part-time or contract work should be considered in calculating years with the organization. The contract should be quite specific in identifying what types of previous service will be considered in determining potential entitlement to termination notice.

Define details of severance entitlement

The contract should set out circumstances of termination that would not normally amount to cause (for example, a re-organization within the organization or elimination of the coaching position) and specify a termination package for such circumstances. For a fixed term contract, you should insist that termination for any reason short of "cause" will trigger a specified termination package or will

require a payout of the remaining term of the contract in full. A simple clause could be inserted in term contracts that states that dismissal for any reasons other than cause will give rise to a payment representing the full amount of the contract outstanding.

Reinforce independent contractor status

If you are an independent contractor and derive no insurance coverage through the organization, the contract should contain a provision as follows: "The coach is an independent contractor and should not for any purpose be deemed to be an employee, agent, servant, or representative of the [employer/organization]." This statement may reinforce your status as an independent contractor rather than an employee (although it is not determinative of such status). Such a clause is not advised if you are named as an insured on the organization's insurance policy, as this may void whatever insurance was to have been provided.

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