Child Abuse in the Canadian and American Olympic Movement: Reforming Institutional Oversight of Amateur Sports

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Abstract

For many years, sexual abuse of young athletes quietly festered throughout amateur sport organizations in Canada and the United States. However, the veil has recently been lifted by the highly publicized testimonies of athletes sexually abused as minors by disgraced former USA Gymnastics (“USAG”) physician and Michigan State University professor Larry Nassar. The troubling details of these stories spurred investigations seeking to identify the causes behind the institutional failures to intervene in Nassar’s perpetration of abuse. The evidence gathered by these investigations alongside independent academic research reveal that unfettered predatory behaviour is a pervasive issue across the institutions responsible for overseeing the American Olympic movement and amateur sports. In addition, similar patterns of unchecked abuse have since been identified as plaguing Canadian Olympic and amateur sport organizations. This paper examines the institutional failures to address child sexual abuse occurring under the oversight of Olympic and amateur sport organizations in Canada and the United States. In both countries, efforts are currently underway to reform governance of these institutions to better protect minors participating in amateur sports. Accordingly, this paper also analyzes the policies implemented thus far and makes substantive recommendations on ideal federal level initiatives.

Keywords: Child abuse in amateur sports; USOC’s failure to address child abuse; Reform institutional supervision of amateur sports; Statutory deficiencies of the Ted Stevens Act; Procedural flaws of TSA and Canadian NSOs

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Part 1: Background and Introduction to the Problem

The Canadian and American Olympic movements have recently attracted scrutiny after multiple revelations demonstrated the failures of sports authorities to adequately address the sexual abuse of minors within amateur sports. In both countries, responsibility for Olympic and amateur sports reside with private non-profit corporations operating under limited federal supervision. Under this structure of self-regulation, Olympic success has substantially improved in Canada and the United States.¹ However, this success concealed a broken system where predatory behaviour flourished with minimal institutional interventions.

In the United States, the Protecting Young Victims from Sexual Abuse and SafeSport Authorization Act, 2017 (“SafeSport Act”) and the Moran-Blumenthal Senate Investigation were established in wake of the disturbing revelations associated with the abuses perpetrated by disgraced former USA Gymnastics (“USAG”) physician, Larry Nassar. Both of these federal responses were designed to address scathing criticisms of institutional complicity made by many survivors of Nassar’s abuse. In particular, these survivors directed their criticisms at USAG and the United States Olympic and Paralympic Committee (“USOC”) (Long, 2019). However, just two years after the passage of the SafeSport Act, many issues were proven to be unaddressed by the legislation. Thus, on October 30th, 2020, U.S. President Donald Trump signed the Empowering Olympic, Paralympic, and Amateur Athlete Act, 2019 (“EOPAA”), which contains additional reforms (The White House, Office of the Press Secretary, 2020).

In Canada, similar calls for greater protections of athletes are being made (Heroux, 2019). In response, the federal government organized the development of a draft Universal Code of Conduct to Prevent and Address Maltreatment in Sport (“UCCMS”) through coordination with various stakeholders. Sport Canada has taken the next step and required National Sport Organizations (“NSOs”) to adopt the UCCMS as a condition for future funding (McLaren, 2020). Current efforts are focused on identifying the ideal enforcement mechanism of the UCCMS and ways to expand its application to provincial stakeholders.

This paper will examine the reasons behind the failures of amateur sport organizations to adequately address child sexual abuse in both countries. It will also critique the recent reforms implemented thus far and provide recommendations on ideal federal initiatives. The paper is structured as follows. The remainder of Part I illustrates the regulatory context and outlines the evidence of widespread child abuse in amateur sports. Part II explains how flawed institutional designs manifested into a culture of unaccountability and proliferation of inadequate child protections in both countries. Part III argues for a more robust response from Congress due to the insufficiencies of the SafeSport Act and EOPAA. Part IV details the optimal approach for the application and enforcement of the UCCMS in Canada. Part V summarizes these findings.

¹ For U.S. Olympic success, see McPhee, J. “Report of the Independent Investigation: The Constellation of Factors Underlying Larry Nassar’s Abuse of Athletes” (2018), Ropes and Gray LLP at page 144. For Canadian Olympic success, see Harvey, Jean & Lucie Thibault, *Sport Policy in Canada*, ed (Ottawa: University of Ottawa Press, 2013), Chapter 6, pages 177-213.

A) Pre-2018 Legal and Regulatory Context

1) United States

Sports have not traditionally been viewed as a government matter in the United States (Koller, 2008, p. 196). Accordingly, unlike most countries, the United States does not have an official Ministry of Sport (McPhee, 2018, p. 140). Instead, the governance framework of Olympic and amateur sports is structured as a pyramid composed of private, non-profit organizations (Murphy, 2019, p. 161). Sitting atop the pyramid is USOC, which has exclusive jurisdiction over the Olympic and Paralympic movements. Directly beneath USOC are 47 National Governing Bodies (“NGBs”), each endowed with a legal monopoly to develop athletes in their respective sports. These NGBs sponsor a collection of clubs and coaches that ultimately work with the athletes, including children (Murphy, 2019, p. 161).

The current hierarchical structure of Olympic and amateur sports governance stems from the findings made by the President's Commission on Olympic Sports, 1975-1977 (“PCOS”) (McPhee, 2018, p. 140). The purpose of the PCOS was to identify the reasons behind the underwhelming performance of American athletes at the Olympic Games. The investigation found that Olympic and amateur sports were plagued by: disorganization; in-fighting between various institutions (e.g., the Amateur Athletic Union, the National Collegiate Athletic Association, USOC etc.) and; arbitrariness in the athletes selected to represent the United States at the Olympic Games. The PCOS concluded that the existing framework made it difficult for these organizations to “join together for the purpose of increasing athletic opportunities” (McPhee, 2018, p. 140). On the basis of these findings, Congress fundamentally restructured governance of Olympic and amateur sports with the passage of the Amateur Sports Act, 1978. The animating purpose behind the Amateur Sports Act was to increase participation in amateur sports, with the hopes of fielding more competitive Olympic teams in the future (McPhee, 2018, p. 142). This purpose was to be fulfilled through several means.

First, the Act established a vertical governance hierarchy by designating USOC as the entity responsible for overseeing Olympic and amateur sports. As a Title 36 corporation, USOC is a federally chartered non-profit and therefore subject to legislative revisions. Accordingly, USOC’s designation as the overarching authority for Olympic and amateur sports was achieved through the congressional expansion of its charter via the Amateur Sports Act (Hart, 2020, p. 2699).

A crucial component of this vertical structure is the power granted to USOC to decertify NGBs. The ability to grant and revoke monopolistic authority eliminated factional tensions which plagued the Olympic movement prior to 1978 (McPhee, 2018, p. 142). Upon recognition, NGBs are delegated the exclusive authority to develop amateur athletes within their sport and are free to manage day-to-day operations (e.g., hiring coaches, organizing national events, establishing processes for grievances etc.) Additionally, NGBs are responsible for nominating athletes and officials to attend the Olympic Games, subject to acceptance by USOC (which is routinely granted) (Hart, 2020, p. 2705). This vertical structure reflected the PCOS’ view that defusing tensions amongst amateur sports institutions was imperative to ending arbitrary selections of athletes to the Olympic Games.

Second, the Act created a statutory right of athletes to participate and compete in amateur sports (McPhee, 2018, p. 141). This right imposed a corresponding duty on USOC to fairly and swiftly resolve alleged breaches of this right. Thus, if an athlete felt wrongfully excluded from competition by an NGB, USOC is ultimately responsible for adjudicating the merits of the claim. Athletes may appeal unfavorable USOC decisions to an independent arbitrator. The decisions of arbitrators are effectively binding, as courts will only apply limited scrutiny upon judicial review.² These provisions were intended to further reduce the risk of arbitrariness by granting a statutory right of participation to amateur athletes alongside a process to address grievances.

Third, the Act enumerated fourteen goals to be promoted by USOC. These included encouraging interest in physical activity, leading efforts to innovate sports medicine, and developing safety initiatives.³ USOC provides NGBs with financial and technical support in furtherance of these of these purposes (e.g., providing training centres, distributing grants, facilitating access to sports psychologists etc.). NGBs are also expected to promote these statutory objectives as an ongoing condition of their certification (Murphy, 2019, p. 141).

Fourth, Congress granted USOC an exclusive trademark on the word “Olympics” and its associated symbols. This right was conferred to USOC as a means to generate the revenues necessary to fulfill its statutory obligations, given the absence of funding from Congress. This trademark is a crucial asset for USOC as it generates licensing fees and attracts the interest of sponsors seeking to be affiliated with the Olympics (McPhee, 2018, p. 143).

While the Amateur Sports Act stipulated that no less than 20% of the seats on the Boards of USOC and its NGBs must be filled by athletes, further protections were enacted in 1998 to bolster the voice of athletes in governance (McPhee, 2018, p. 141). These protections were implemented through amendments of the Amateur Sports Act, which renamed it the Ted Stevens Olympic and Amateur Sports Act, 1998 (“TSA”) (Hart, 2020, p. 2703). First, because USOC’s charter restricts membership eligibility solely to NGBs, the TSA required USOC’s Board of Directors to liaise with the Athlete Advisory Council (“AAC”). The AAC is an organization of volunteers tasked with communicating the interests of athletes. Second, the TSA established the Office of the Athlete Ombudsman, which is responsible for providing independent advice to athletes free of cost (McPhee, 2018, p. 146). The TSA also further incorporated the Paralympics under USOC’s control; this addition made the United States one of four countries to have Olympic and Paralympic sports managed by its National Olympic Committee (Team USA Paralympic Programs, n.d.).

Throughout this period, USOC retained two distinct legal characteristics. First, despite being federally incorporated, Title 36 Corporations are classified as private, non-governmental agencies. Indeed, two leading decisions have confirmed USOC as a private entity. In *DeFrantz v. United States Olympic Committee*, D.DC 1980, the court held that pressures from the Carter administration to boycott the 1980 Moscow Olympics were insufficient to legally transform USOC into a government agency (Koller, 2008, pp. 198-200). Instead, the court examined whether government approval was necessary before USOC could take action and concluded that no such

² As Judge Posner stated in *Michels v United States Olympic Committee*, 7th Circ. 1984, “there can be few less suitable bodies than the federal courts for determining the eligibility, or the procedures for determining the eligibility, of athletes to participate in the Olympic Games” and; *Gault v. United States Bobsled and Skeleton Federation*, N.Y. App. Div. 1992.

³ In 2018, the Act was amended through the inclusion of a 15th purpose: to establish a safe environment free from abuse. A 16th purpose was added in 2020: to effectively oversee NGB compliance with policies of USOC, with special attention paid to those which address abuse.

assent was required. This view was confirmed and supplemented by the Supreme Court in *San Francisco Arts & Athletics, Inc. v. United States Olympic Committee*, U.S. 1987 (Koller, 2008, pp. 198-200).

Second, the class of claimants with standing to bring an action against the Board of a Title 36 corporation is significantly restricted to the Attorney General, other members of the Board, and in some jurisdictions, members of the organization (Hart, 2020, p. 2719). As a result, USOC benefitted from the limited number of ways it could be sued via corporate law. In addition, the TSA shielded USOC from civil liabilities specifically from (i) failures to uphold the statutory right of athletes to participate in amateur sports and; (ii) inadequate responses to sexual abuse within its ranks. In *DeFrantz*, the court ruled that the TSA clearly evinced congressional intent to negate a private right of action based on allegations that USOC failed to protect statutorily guaranteed participatory rights (Morton, 2016, p. 162). The 1998 amendment to the TSA confirmed the court's interpretation and explicitly negated a private right of action (Hart, 2020, p. 2706). Moreover, the absence of statutory language establishing a duty of care owed by USOC to Olympic and amateur athletes negated civil liabilities stemming from failures to address sexual abuse. This interpretation was recently confirmed by *Brown v USA Taekwondo*, Cal. Ct. App 2019. The Court of Appeal concluded that USOC did not owe a duty of care to the survivors of abuse perpetrated by a credentialed coach because USOC did not have a special relationship with either the abuser or the plaintiffs. However, the Court ruled that the NGB owed and breached a duty of care.

In sum, the TSA granted USOC broad powers to administer Olympic and amateur sports in the United States. USOC's legislative purpose was to increase public participation in amateur sports as a means to improving American performance at the Olympics. This purpose combined with the lack of congressional funding created a dual public-private mandate. USOC had a public responsibility to increase participation in amateur sports and a private sector obligation to generate revenues without government support. As a Title 36 corporation, USOC was free to pursue its mandate with limited legislative, judicial, and corporate oversight. Accordingly, its Board of Directors was accorded significant discretion to manage the affairs of amateur sports within the skeletal framework established by the TSA.

2) Canada

Regulation of Olympic and amateur sports is shared between the federal and provincial/territorial governments (Kidd, 2020, p. 2). While the Constitution is silent on physical activity, significant aspects of amateur sports have widely been considered health and/or education concerns, which are matters constitutionally allocated to the provinces (Harvey, 2013, pp. 37-68). Moreover, the Constitution grants the provinces authority to regulate local affairs; a prime example being community sports. However, the federal government is granted oversight over national and international matters. Thus, the federal government may regulate amateur sports through a variety of its jurisdictional powers such as taxation, immigration, and criminal law. The federal government may also financially support various sport organizations as a legitimate exercise of its spending powers insofar as these grants do not conceal attempts to interfere with aspects of sports

allocated to the provinces. Municipalities also play a role in supporting local clubs and coordinating logistics to support sporting events hosted within their boundaries. As creatures of the province, municipalities are barred from coordinating directly with the federal government without provincial assent (Harvey, 2013, pp. 37-68).

Under this constitutional framework, Olympic and amateur sports are administered through a variety of public and private stakeholders. Sport Canada is the federal agency responsible for financing and overseeing Olympic and amateur sports. It serves as a branch of the Department of Heritage and is legislatively authorized by the Physical Activity and Sport Act, 2003 (Kidd, 2020). The twin objectives of the Act are to promote physical activity amongst all Canadians and develop excellence in sports. These policy goals are referred to as the participation and excellence pillars, respectively. The participation pillar focuses on all Canadians whereas the excellence pillar targets elite athletes (Menard, 2020).

Sport Canada is joined at the federal level by various National Sport Organizations (“NSOs”) and Multi-Sport Organizations (“MSOs”). NSOs are responsible for developing and supporting amateur athletes (Kidd, 2020). MSOs, such as the Canadian Olympic Committee, facilitate the delivery of services to national sport communities (Kidd, 2020). NSOs are recognized by Sport Canada as the governing body for their respective sport and receive federal funding through three avenues: the Sport Support Program; the Athlete Assistance Program; and the Hosting Program (Government of Canada, 2017). Approximately \$230 million is allocated across nearly 70 sport organizations. Sport Canada is partly advised on funding decisions by Own the Podium (“OTP”), an organization responsible for evaluating success of athletes. As a result, funding is not evenly allocated across NSOs, creating a competitive environment between the organizations (Heroux, 2020).

NSO are private, not-for-profit corporations with the autonomy to self-govern under limited government oversight. However, procedural fairness must be observed by NSOs when making decisions and may be reviewed by courts if protections are alleged to be inadequate (Findlay, 2000). Moreover, athletes are not members of NSOs. Instead, NSO membership is composed of provincial and local sport bodies (Findlay, 2000). To address the lack of voice athletes have in governance, AthletesCAN (formerly the Canadian Athletes Association) was established in 1992 as an independent organization tasked with representing their interests (Kidd, 2020).

Provincial Sport Organizations (“PSOs”) are not-for-profits recognized by the province as the governing body for a given sport (Government of Canada, Ministry of Tourism and Culture, n.d.). In order to be recognized, PSOs must be endorsed by their NSO. However, the power of NSOs to dictate terms to their PSOs vary significantly across jurisdictions. 43% of NSOs do not have jurisdiction beyond the national level. These NSOs cannot impose terms on their PSO counterpart or local clubs (McLaren, 2020). The remaining 57% coordinate policies with their PSOs, such as through contractual agreements (McLaren, 2020, p. 30). Athletes seeking to represent their province must be affiliated with a PSO.

The federal and provincial governments coordinate support for Olympic and amateur sports through the Canadian Sport Policy, 2012 (Menard, 2020). The mission of the policy is to establish

a “dynamic and innovative culture that promotes and celebrates participation and excellence in sport”. This policy provides a roadmap for inter-governmental coordination without infringing upon the autonomy of NSOs and PSOs (Menard, 2020).

In recent decades, several institutions were implemented by the federal government in response to a series of issues emanating from the sports community. These include the Canadian Centre for Ethics in Sports (“CCES”), established in 1992 and the Sport Dispute Resolution Centre for Canada (“SDRCC”) (Kidd, 2020). The CCES was established in the wake of the Ben Johnson doping scandal. Its primary mission is to administer and implement the Canadian Anti-Doping Policy (“CADP”) (Kidd, 2020). The CADP is not legislatively imposed upon amateur sport organizations; instead, it is voluntarily adopted as a condition of government funding. Once adopted and incorporated to the organization’s policies, the obligations of the CADP are passed down to athletes. Moreover, adhering to the terms of the CADP is a condition imposed upon athletes receiving funding from the Athlete Assistance Program. However, in addition to doping, the CCES proclaims a greater purpose to “promote a value-based and principle-driven sport system” (Findlay, 2000, p. 6). As a result, it has extended their operations to educate and spread awareness of other issues in sports, such as match-fixing (Findlay, 2000, p. 6).

In the context of sexual abuse, complaints are expected to be filed with the athlete’s sport organization. The organization is responsible for investigating the complaint. The federal government increased oversight measures in 1996 in response to the child sexual abuses perpetrated by former junior hockey coach Graham James. Moving forward, organizations receiving Canadian funding were expected to: (i) develop and publicize anti-harassment policies; (ii) appoint an arm’s length harassment officers and; (iii) submit annual reports to Sport Canada on compliance with these requirements (Kidd, 2020).

In sum, Olympic and amateur sport regulation is a shared function between the federal and provincial governments. As a result, the federal government cannot legislate large scale changes; a stark difference compared to the powers of the American legislature. Consequently, amateur sport organizations are granted significant deference to manage their own affairs. However, because these organizations are largely dependent on government funding, a pathway is available for limited federal oversight.

B) Evidence of Institutional Failures in Addressing Child Abuse in Amateur Sports

Quantitative studies on sexual abuse of minors have traditionally focused on intrafamilial contexts. As a result, academic research on interfamilial child abuse is relatively uncommon, with less attention given to the non-profit sector, such as amateur sports (Fasting, 2005, p. 2). However, despite the nascency of these studies, the data available nonetheless indicates that sexual abuse of minors is a serious problem within amateur sports in both countries.

In the United States, over 290 coaches and officials within American Olympic organizations were publicly accused of having committed sexual misconduct against minors since 1982 (Murphy, 2019, p. 157). Not all accusations are made public, however. For example, an investigation revealed that over 100 coaches quietly received lifetime bans in USA Swimming alone, most as a result of credible allegations of sexual misconduct against minors (Murphy, 2019, p. 174). Many of these abusers victimized multiple children, exemplified by the roughly 300 accusations levied against notorious abuser Larry Nassar (Moran, 2019). More broadly, a study conducted by the Foundation of Global Sports Development concluded that up to 20% of young athletes experience sexual harassment or abuse (Global Sports Development, 2019).

In Canada, 222 amateur coaches were convicted of sexual misconduct with minors between 1998-2018 (Ward, 2019). These crimes involved over 600 victims. Other studies have shown that roughly 2%-8% of young athletes are sexually abused, with 98% of perpetrators being coaches and trainers (Parent, 2020). Further, a survey conducted jointly by AthleteCan and the University of Toronto revealed that only 15% of national-level athletes reported abuse, bullying or discrimination (Francis, 2019). Since sexual abuse is a vastly underreported crime, these numbers are considered “the tip of the iceberg” (Ward, 2019).

The quantitative data is supplemented by examples of individual abusers, credentialed by American and Canadian Olympic organizations, who were free to exploit young athletes for several years before being held accountable. Larry Nassar first assaulted a minor under his care in 1994 and continued his predatory behaviour through 2014 while affiliated with USA Gymnastics (“USAG”) and Michigan State University (Dator, 2019). In 2010, Andrew King, former coach for USA Swimming was sentenced to 40 years in jail after pleading no contest to twenty child molestation allegations dating back to 1978 (ESPN, 2010). In the Canadian context, former national ski coach Bertrand Charest was sentenced to twelve years in jail after being convicted of sexually assaulting nine women during the 1990s, eight of whom were minors at the time (Revelstoke Review, 2017). Three of the victims were assaulted on multiple occasions during Charest’s time with Alpine Canada (Global News, 2019).

The years of liberty afforded to these abusers reveal flawed institutional designs that failed to encourage reporting and prevented officials from intervening when presented with credible allegations of abuse. In fact, many survivors have recently lambasted the culpability of USOC and American NGBs in failing to adequately address the abuse taking place under their oversight. Rachael Denhollander, a former club-level gymnast abused by Nassar while in high school, delivered a sharp rebuke of USOC and USAG during Nassar’s sentencing hearing:

This is what it looks like when institutions create a culture where a predator can flourish unafraid and unabated and this is what it looks like when people in authority fail to listen, put friendships in front of the truth, fail to create or enforce proper policy and fail to hold enablers accountable (Long, 2019).

This sentiment was reinforced by the final report of the Moran-Blumenthal Senate Investigation, which observed that “multiple institutions responsible for keeping amateur athletes safe...failed to respond to credible allegations against Nassar”. Additionally, the report concluded that these institutional failures extended beyond USOC and USAG, as many other NGBs similarly did not address abuse occurring within their ranks (Moran, 2019, p. 6).

In the Canadian context, athletes have appealed to the federal government to increase its oversight of amateur sport organizations; in particular, National Sport organizations (“NSO”). As one letter written by Canadian wrestlers to former Minister of Science, Sport and Persons with Disabilities Kristy Duncan, stated:

...regardless of the intentions of the NSO, the current system of NSO-led investigations has conflicts of interest that either directly bias the process or create the perception of bias. This has contributed to a strong sense of mistrust and a fear of reprisal that prevents adequate disclosure (Ewing, December, 2018).

This conflict of interest was confirmed by a settlement between Alpine Canada and the survivors of Charest’s abuse. While the precise terms of the settlement were not released, Alpine Canada admitted it prioritized the organization’s interests above the welfare of its athletes (Global News, 2019). This admission is consistent with allegations made by Allison Forsyth, a survivor of Charest’s abuse; that Alpine Canada pressured her to keep quiet to avoid the detrimental effects knowledge of the abuse could have on existing sponsorships. At the time, Charest was allowed to resign without license revocation, indicating Alpine Canada’s desires to quietly resolve the matter in-house (Pescod, 2019).

Taken together, the evidence demonstrates that sexual abuse of minors has plagued Olympic and amateur sport organizations in Canada and the United States. Children are being abused at exigent rates, with many perpetrators evading administrative and criminal sanctions for several years. While child abuse is not strictly confined to amateur sports, the inadequate policies of the institutions in charge significantly intensified the extent of the problem within their ranks.

Part II: Why Olympic and Amateur Sports Institutions Failed to Address Child Abuse

A) United States

The TSA accorded USOC broad discretion in the methods used to fulfill its statutory duties. This discretion enabled USOC to implement poorly constructed policies that allowed predators to flourish under its oversight. The factors responsible for these failures are broadly categorized into

the following: (1) the role played by USOC's evolution into a corporate model; (2) USOC self-serving, narrow view of its obligations to athletes and misconstrued understanding of due process and; (3) deficiencies in the TSA.

1) The Role played by USOC's Evolution into a Corporate Model

The decision-making structure of USOC began as a dispersed system allocating power to a House of Delegates with over 400 members. This grassroots model encouraged participation of athletes in governance. In 1990, the House of Delegates was replaced with a Board of Directors that now sits 15 members, in addition to the CEO. This transformation into a corporate structure enabled USOC to develop long-term direction and plans, such as leading innovations in sports medicine and modernizing Olympic facilities. However, the lack of congressional funding coupled with this corporate structure focused USOC's priorities on generating revenue. Since USOC's primary asset was the Olympic trademark, attracting sponsors seeking to be affiliated with the Olympic movement was viewed as a lucrative approach to generating revenues. Given the interests sponsors have in being affiliated with winning, the importance of achieving Olympic medals was intensified. This strategy ultimately proved successful, as the United States won over 100 medals and generated \$350 million in revenues from the 2016 Olympic Games (McPhee, 2018, p. 144).

While the corporate model served the interests of USOC's board, its focus on medals and revenues deprioritized the welfare of its athletes. Funding decisions to NGBs varied significantly based on expected medal counts rather than needs of athletes (McPhee, 2018, p. 144). Moreover, the natural cycle of the Olympics pushed athletes to the forefront of attention only once every four years, while administrators of USOC remained throughout the interim period. As a result, athletes were viewed as assets that could only produce a return of investment through elite performance at the Olympic Games. This diminished the voice of athletes and directed USOC's attention away from promoting their welfare. In effect, USOC prioritized its private sector interests to the significant detriment of its public sector obligations.

2) USOC's Self-serving, Narrow View of its Obligations to Athletes and Misconstrued Understandings of Due Process

At a congressional hearing investigating the Larry Nassar scandal, USOC lawyer Gary Johansen stated "USOC does not have athletes" in response to a question asking whether the organization viewed protecting minors from sexual abuse as a top priority (United States Government, Publishing Office, 2018). This statement reflects USOC's self-conception as an "organization of organizations", only responsible for athlete welfare during the short time between the date they are named to the Olympic team and the conclusion of those Olympic Games (Murphy, 2019, p. 157). At all other times, USOC believed the responsibility of athlete welfare resided with its NGBs (Murphy, 2019, p. 157).

USOC's narrow view of the obligations owed to its athletes stems from the absence of statutory language explicitly imposing a duty to create a safe environment free from sexual abuse. As a result, USOC exacted minimal oversight on NGBs; as former USOC CEO Scott Blackmun stated, producing high-performance athletes "is much more dependent on a healthy NGB than it is a healthy USOC" (McPhee, 2018, p. 149). Moreover, USOC feared effectuating change within NGBs through suspensions or decertification because of USOC's resistance to becoming involved in the direct supervision of a given sport. This fear stemmed from USOC's self-conception as an organization of organizations without athletes; from USOC's perspective, imposing changes on NGBs would undesirably create a direct relationship with athletes (McPhee, 2018, p. 149). The motivation for this position was clearly self-serving, as USOC wanted to avoid becoming formally responsible for athlete welfare. Thus, NGBs were delegated the freedom to independently construct policies towards vetting prospective employees and establishing a minimum standard of conduct. For example, USOC did not require NGBs to conduct background checks on prospective employees until 2006, while USA Swimming waited until 2011 to ban sexual touching between coaches and athletes (Morton, 2016, p. 153).

Moreover, USOC's delegation of authority resulted in a diverse patchwork of processes for addressing child abuse allegations emerging across NGBs. Many NGBs established policies that discouraged reporting of abuse and raised serious issues about the impartiality of the process. For example, USA Archery, USA Figure Skating, USA Water Ski and USA Water Polo required complaints to be submitted within 60 or 180 days of the alleged misconduct. While expediency is necessary to resolve claims of wrongful exclusion from competition (due to the need for certainty about team composition), these deadlines deter reports of sexual abuse (as survivors often require time to come forward) (McPhee, 2018, p. 158). Furthermore, lawyers for some NGBs were accorded dual roles of investigating and interviewing witnesses while later representing the NGB in arbitration or civil litigation. This breach of impartiality was even more direct in the procedures of USA Swimming, as the lawyer tasked with investigating allegations of sexual would later sit as the chair of the panel adjudicating the allegation (McPhee, 2018, p. 164). These practices clearly compromise the integrity of the investigatory process and undermine the willingness of survivors to come forward.

USAG also suffered from serious procedural deficiencies leading to a serious mismanagement of complaints. For example, an allegation would only be investigated if reported by the child or parent; third parties' complaints were not pursued (McPhee, 2018, p. 183). The defects of this policy were demonstrated when USAG refused to investigate a complaint reported by a coach against Marvin Sharp. Sharp was allowed to retain his USAG credentials for over four years until he later was convicted of child abuse and pornography charges (McPhee, 2018, p. 183). Moreover, USAG would also refuse to investigate complaints if the survivor wished to remain anonymous or refused to sign a written description of the allegations (McPhee, 2018, p. 187). Further, USAG would not pursue its own independent investigation if an accused official is acquitted, notwithstanding the higher burden of proof required in criminal proceedings (McPhee, 2018, p. 190). As a result, several coaches acquitted of sexual misconduct retained their credentials without a corresponding USAG investigation (McPhee, 2018, p. 190).

Procedural defects existed at the USOC level as well. A complaint could only be submitted to USOC either through s.10 or s.9 of its bylaws. S.10 allows for complaints alleging that the NGB was in such grave violation of its duties under the TSA that it ceased to function as a competent organization. These complaints can only be made after the internal processes of the NGB are exhausted. Moreover, these cases are very complex, requiring a thorough understanding of the TSA as well as the bylaws of USOC and the NGB in question. As a result, s.10 complaints are rare, with only one or two cases on average proceeding before the USOC panel each year. In the context of a s.10 complaint, a survivor would have to prove that sexual abuse is sufficiently pervasive within the NGB that it ceases to function as a competent organization (McPhee, 2018, p. 148).

Athletes may also bring a complaint under s.9 of USOC's bylaws. This section is reserved for athletes alleging denial of their rights to compete. S.9 is an inappropriate avenue for athletes to raise issues of sexual misconduct for two reasons (McPhee, 2018, p. 148). First, the athlete has 6-months to submit their complaint to arbitration. If this deadline is not satisfied, the action is time-barred (McPhee, 2018, p. 149). This limitation period is ill-suited for sexual abuse claims, as many survivors, particularly children, require longer periods of time to understand the abuse and come forward. Second, the scope of s.9 is small; to be successful, a survivor must argue that the abuse amounted to a denial of their right to participate. If this connection could not be made, the complaint was rerouted back to the NGB (McPhee, 2018, p. 165). It is evident that USOC's processes to address grievances were designed to adjudicate claims relating to its statutory obligation to protect the participatory rights of athletes and were unfitted to address allegations of sexual abuse.

USOC and the NGBs justified these policies through an exaggerated understanding of the procedural protections owed to the accused. The TSA stipulates that USOC and its NGBs must provide basic due process to athletes and officials. The statutory due process requirements do not prohibit amateur sport organizations from reviewing third-party complaints, investigating allegations made by complainants wishing to retain anonymity, or breaches that occurred past an arbitrary deadline. Rather, the TSA ensures that coaches and officials accused of wrongdoing are granted procedural protections, such as a fair hearing, before the imposition of sanctions (McPhee, 2018, p. 181). It does not add conditions on when allegations of misconduct may be investigated by USOC or NGBs.

3) Statutory Deficiencies of the TSA

The pre-2018 TSA contained several deficiencies which contributed to the failures of USOC and the various NGBs to adequately respond to allegations of abuse. First, the absence of a duty to provide a safe environment free from sexual abuse insulated USOC from legal liability (Morton, 2016, pp. 162-164). While an implied duty existed between the NGBs and their athletes, the TSA relieved USOC of the responsibility of ensuring this duty was fulfilled. As a result, USOC was free to focus its efforts on generating revenues and develop high-end athletes without the concern that its neglectful approach to the welfare of its athletes would incur legal liabilities.

Relatedly, the animating purpose of the TSA was inconsistent with the responsibilities statutorily accorded to USOC. The TSA grants USOC exclusive jurisdiction over the development of amateur athletes to improve American performance at the Olympic Games. USOC's authority over amateur athletes and young children was granted as a means to fulfill its core purpose of developing elite athletes for international competition. Additionally, the statutory right to participate in amateur sports was also codified to further this purpose, instead of serving as an end in and of itself. Amateur sports viewed as a pipeline of elite Olympic athletes, rather than as an important aspect of society requiring competent oversight (Koller, 2018, pp. 1068-1072). Consequently, USOC primarily focused its effort and resources on achieving success at the Olympic Games rather than supporting amateur sports as an important social priority.

Furthermore, the TSA did not provide public funds to support the operations of USOC and the NGBs, forcing these organizations to secure the necessary capital entirely from the private sector. In fact, USOC is the only National Olympic Committee that does not receive government support. Moreover, USOC was allocated more responsibilities than it could sustain. For example, USOC is one of four National Olympic Committees tasked with overseeing its country's Paralympic sports (Koller, 2019). Thus, USOC was forced to secure private funding to support its vast statutory responsibilities that exceeded its contemporaries in the IOC.

Finally, the TSA did not provide athletes an adequate process to report allegations of sexual misconduct. The Act required USOC to swiftly and fairly resolve disputes concerning an athlete's right to participate. This design forces survivors to frame their abuse as a violation of their participatory rights before it can be viewed as a USOC matter. If an athlete failed to make this connection, USOC would reroute the complaint back to the NGB. As a former Chair of the AAC described, complaints of sexual misconduct were routinely "thrown back over the wall" to NGBs without any guidance regarding next steps (McPhee, 2018, p. 165). Additionally, athletes were skeptical and unconfident in the grievance processes due to the perception of a conflict of interest (McPhee, 2018, p. 166). Complaints of abuse were required to be reported to the entity responsible for credentialing the alleged perpetrator. The absence of an independent and impartial investigatory process is attributable to the framework established by the TSA.

A) Canada

The Canadian system of self-regulation allows NSOs and PSOs to operate with little oversight. Moreover, the federal government has strongly prioritized the participation pillar over the excellence pillar (Harvey, 2013, pp. 177-213). These two factors conspired to discourage reporting of sexual abuse in the following ways. First, the excessive focus placed by the government on athletic achievement diminished the voice of athletes and deprioritized their welfare. Second, weak oversight measures resulted in a disparate set of anti-abuse policies amongst various NSOs and PSOs, with some organizations neglecting to implement or disseminate knowledge of protective measures. Finally, the absence of a truly independent investigatory body dissuaded athletes from reporting abuses to the organization employing the alleged perpetrator.

1) Overemphasis on Athlete Success and the Diminished Priority of Athlete Welfare

Sport Canada has not equally prioritized its twin statutory purposes of encouraging physical activity amongst all Canadians and supporting the development of high-end athletes. Studies have demonstrated that Canadian physical activity levels have fallen while achievement in international competition increased (Harvey, 2013, pp. 177-213). This trend corresponds with policies which emphasized the development of elite athletes over investments encouraging physical activity in Canada.

SEQ Figure 1* ARABIC 1 Taken from Harvey, *supra* note 1 Chapter 6 pages 177-213

The decrease in physical activity is related to Sport Canada's practice of increasing funding for individual sports (e.g., track and field, wrestling, and swimming), to the detriment of team sports. This decision is connected to the fact that more medals are available in individual sports compared to team sports, which only award two medals (for the men's team and women's team). This policy has contributed to Canadian success in track and field, with Athletics Canada being viewed as a juggernaut amongst NSOs. Further directing Sport Canada's support disproportionately towards the excellence pillar is its decision to prioritize funding of sports that have relatively few participants (e.g., bobsled) as compared with larger team sports (Harvey, 2013, pp. 177-213).

OTP has intensified the overemphasis on excellence by making funding recommendations to Sport Canada based on athlete success. In response, Canadian NSOs vying for the limited public funding available have adopted a mirroring approach which prioritizes success over athlete welfare. Consequently, “viewing athletes as a tool or mechanism for profit, medal count, or reputation often takes precedence over their safety and well-being” (Heisler, 2019). This has diminished the voices of athletes and deprioritized welfare in favor of Olympic success. As one respondent to the joint UofT-AthletesCAN survey stated:

To truly advance safe sport Canada needs to take a long hard strategic look at how they are funding athletes. As long as the pressure and bottom line of money for medals exists, challenges around safety in sport will remain because the pressure to perform and the impacts of other people on other athletes to perform will continue (Francis, 2019).

2) Self-regulation Leading to Inconsistent Compliance with Anti-harassment and Anti-abuse Initiatives

The 1996 measures requiring recipients of Sport Canada funding to implement publicly accessible anti-harassment policies and appoint independent harassment officers left the substance of these policies to the discretion of the sport organization. As a result, each NSO has adopted its own measures, leading to a patchwork of protections across Canada. These individual set of policies varied in adequacy, particular at the provincial level. While Sport Canada was permitted to dictate terms to NSOs, many NSOs are only able to provide guidance to their PSOs. Moreover, in some cases, local clubs have lamented the lack of direction provided by their PSO and NSO partners. A lack of resources at the PSO and local levels further intensifies this problem; for example, Judo Quebec only has six full time employees (Ward, February 2019).

A 2016 study conducted by the University of Toronto found that anti-harassment policies were not available to the public in 29% of the PSOs and 14% of NSOs reviewed (Donnelly, 2018). Moreover, of the policies available, only 27% of PSOs and 39% of NSOs mentioned the availability of a harassment officer. In many cases, the organization’s CEO or another staff member was designated the harassment officer (Donnelly, 2018, p. 18). In other cases, independent investigators are required to submit their report to the CEO, who has the power to decide what happens next. These practices are clear violations of the requirement for these officers to be arm’s length and spirit of independent investigations.

The lack of government oversight is largely responsible for the inadequate rate of compliance amongst Canadian sport organizations. Although NSOs are required to report their compliance annually, Sport Canada has never revoked funding despite the existence of breaches. Therefore, the threat of funding revocation is empty and reveals inadequacies in government oversight.

3) Absence of Independent Investigatory Process

The current Canadian framework for addressing sexual abuse of minors requires reports to be submitted to the survivor's organization. This process has had a chilling effect on the willingness to report abuse due to a fear of reprisal and/or lack of confidence the organization will conduct its investigation free of bias. As some athletes reported, successful coaches have often been allowed to operate with impunity due to the funding they bring into the organization. Some experts have compared the current underreporting of sexual abuse with the failures to hold Ben Johnson accountable despite the widespread knowledge of his doping activities amongst his peers, coaches, physicians, and government officials (Ewing, November 2018). Johnson was "the fastest man in the world...and so, nobody said anything" (Ewing, November 2018).

Former and current athletes have made the establishment of an independent investigatory body their top request from the government. The top recommendation by athlete respondents to the joint UofT-AthletesCAN survey was the establishment of an independent body. Some critiques of the current system included:

Telling NSOs about a concern means putting them in a position where they have to incriminate themselves.

Only having reporting systems in the NSO is not sufficient because it is not always in their immediate self-interest to handle it properly, nor do most NSOs have the skills or capacity to deal with them. I believe that the mechanism should be directed through a body that is based in law and completely independent.

One centralized, independent reporting agency... would take the burden off NSOs and PSOs that are under-resourced or unwilling to manage (Francis, 2019).

Allison Forsyth believed that had an independent body existed during her time with Alpine Canada, it likely would have prevented Charest's abuse because she "didn't have a safe place" to report the abuses (Kane, 2019). This sentiment was also shared by Olympic gold medallist Erica Weibe who stated that current processes do not create a safe space for athletes because of the fears that making a report to their NSO could jeopardize their Olympic dreams (Ewing, November 2018).

The conflict of interests inherent to the current system proved to exist in the case of Alpine Canada's mishandling of allegations made against Charest. However, the widespread perception of bias is equally damaging because it discourages reporting. Given that sexual abuse is already an underreported crime, the perception of bias is a significant institutional impediment that further suppresses reporting and allows abusers to inflict harm unabated.

Part III: Analyzing the Optimal Solution within the American Context

A) Reforms made by the SafeSport Act and EOPAA

Congress passed two reforms aimed at repairing the deficiencies responsible for the failures of amateur sport organizations to identify and address child sexual abuse. The first of these statutes was the SafeSport Act. The Act established the U.S. Center for SafeSport, an independent organization exclusively responsible for investigating allegations of child abuse by members of USOC. The Center has the jurisdiction to impose a variety of sanctions on abusers, including permanent bans from the sport. The Center's decisions may be appealed to an independent arbitrator. Funding is primarily provided by USOC, with Congress only contributing a \$2.2 million grant spread over three years that cannot be used to fund investigations (Madden, 2020).

Moreover, the Act established a mandatory duty to report suspicions of child abuse to authorities and the Center for SafeSport, with failures to do so carrying criminal liabilities. Further, it amends the TSA by adding the additional purpose to provide a safe environment free from all kinds of abuse. This extends USOC's duties to athletes beyond simply protecting their participatory rights. As it pertains to NGBs, the Act requires the implementation of policies to proactively train adult employees on child abuse detection; protect complainants from retaliation and; implement reasonable procedures which limit one-on-one interactions between adults and children. The Center is authorized to audit NGBs to ensure compliance with these policies.

However, within two years of its implementation, it became apparent that the SafeSport Act was insufficient at resolving important issues. First, the independence of the Center for SafeSport was questioned because it was primarily funded by USOC, one of the organizations subject to its oversight. The Center also receives a significant percentage of its operating budget from NGBs, which are also subject to its oversight (Madden, 2020). Relatedly, the Center faced severe budgetary concerns that restricted the number of investigators it could hire to accommodate the rapidly growing number of complaints. Cases ballooned by 55% in just over one year since the Center opened, with 234 new cases per month (Townes, 2019). The Center reported an anticipated \$10.5 million operating budget for 2019, falling short of the estimated \$16-\$35 million it needs to effectively manage its growing caseload (Townes, 2019; The Guardian, 2019).

Additionally, while a private right of action was created, its application was narrow and confined to an NGB's failure to abide by the mandatory reporting and training requirements. Moreover, due to the significant budget constraints on the Center, its auditing powers were not exercised to ensure that these limited duties were fulfilled by NGBs (Applewhite, 2018). This left USOC as the entity best positioned to ensure NGB compliance. However, the vagueness of the SafeSport Act failed to stipulate the degree of scrutiny expected to be exerted by USOC. This issue was compounded by the fact that the SafeSport Act did not address the issue of athletes lacking influence in governance.

Finally, the SafeSport Act failed to satisfy demands for congressional oversight of USOC. For example, the AAC requested the creation of an Office of the Inspector General to annually audit USOC and report directly to Congress (Senate Commerce Subcommittee, 2018). Others have criticized Congress for deflecting blame through the establishment of the Center for SafeSport,

absolving itself of accountability (Madden, 2020). These calls for congressional oversight were justified by the dismissive and unrepentant comments made by USOC CEO Sarah Hirshland in response to the scathing Ropes and Gray report. Hirshland stated that the report did not implicate any wrongdoing of the USOC's Board of Directors, strongly demonstrating that the organization is incapable of internal reform and needs oversight (Roeder, 2020).

The passage of the EOPAA was a small step in the right direction offering band-aid solutions to systemic problems. The Act prohibited members of USOC from working for the Center for SafeSport within two years of leaving their position (Senate Olympic Investigation, 2019). Moreover, USOC was statutorily obliged to provide fixed \$20 million payments to the Center annually (Senate Olympic Investigation, 2019). These measures were intended to remedy concerns about the Center's independence by closing a potential revolving door and eliminating discretion from USOC's payments to the Center. The EOPAA also imposed a wider set of duties on USOC and explicitly stipulated a private right of action (Moran, 2019). If USOC was negligent in exercising its obligation to ensure NGB compliance with statutory duties, it could be sued by the injured parties.

The EOPAA attempted to heighten oversight by raising the minimum percentage of seats required to be filled by athletes on the USOC's Board to 33%, in addition to increasing the frequency of the submission of reports from every four years to annually. The headlining provision, however, was the power Congress granted itself to decertify USOC and/or its NGBs for non-compliance (Moran, 2019). This provision may lead to the concern that the IOC will view this power as a violation of its charter requiring National Olympic Committees to be independent from government.

B) Congress must Establish and Oversee a New Entity Exclusively Responsible for Youth Amateur Sports

The combined measures of the SafeSport Act and the EOPAA create the appearance that Congress has accepted greater responsibility for the oversight of amateur sports, when in reality little has changed in this regard. The provisions enabling Congress to decertify USOC and/or NGBs does not substantively alter the relationship between these organizations and the federal government. Congress was always able to decertify USOC because it was a creature of congressional legislation. Thus, the passage of an intermediate statute that formally declares the decertification powers of Congress does not achieve the stated purpose of increasing federal oversight.

Congress' true intentions were reflected in its decision to compel USOC to increase funding for the Center of SafeSport rather than raise its own contributions. This decision proved Congress remains keen on avoiding direct responsibility for child abuse in amateur sports. Prior to the implementation of the EOPAA, many athletes expressed concerns that forcing USOC to substantially increase its contribution to the Center would come at the expense of other programs geared towards athletes. This concern is even greater during non-Olympic years because of the consistent losses reported by USOC. These concerns notwithstanding, Congress remained

steadfast in its position to deny public funding for the Center while granting USADA, a parallel entity, \$9.5 million each year (Dure, 2019). As a result, the perception of a conflict of interest continues to exist (as USOC still funds its watchdog) with the added concern that this increased funding will lead to cuts of other programs geared towards athletes.

Despite its flaws, the establishment of the Center for SafeSport is a small step in the right direction. However, governance of Olympic and amateur sports suffers from systemic problems requiring fundamental reforms rather than the flurry of surface-level remedies provided by the SafeSport Act and EOPAA. Specifically, Congress must carve-out oversight of grassroots level sports from USOC and allocate it to a newly established entity with this exclusive responsibility. Thereafter, Congress must increase federal oversight of grassroots participation by making this new entity directly accountable to the government. Grassroots sports development must be reconceptualized from the narrow view of being a non-government matter, to include the recognition of child welfare concerns. Accordingly, this new entity must be accountable to either the United States Children's Bureau or a newly established federal agency with the hybrid expertise of child welfare and sports. The creation of this new entity will effectively narrow USOC's responsibilities, allowing it to focus on its proven expertise in developing elite Olympic athletes.

1) The Need to Establish a New Non-profit Corporate Entity Responsible for Overseeing Amateur Sports at the Grassroots Level

Since its inception, USOC has been accorded private and public sector responsibilities through its dual mandate of developing sports at the grassroots level and cultivating elite Olympic talent (Koller, 2019). USOC has unquestionably been successful in the latter purpose, as American achievement at the Olympics has skyrocketed since 1978. However, this success coincided with a decline in the participation of amateur sports by the general public and widespread abuse of young athletes under the oversight of various NGBs (Koller, 2018, pp. 1068-1072). USOC's emphasis on private sector priorities over its public interest mandates is largely attributable to the animating purpose of the TSA. The TSA grouped Olympic sports with grassroot participation because the cultivation of elite talent was viewed as requiring hands-on development of athletes from childhood (Koller, 2019). Thus, Congress viewed the development of grassroots participations in sports narrowly as a means to achieve greater Olympic success, rather than as an important social priority in and of itself. Consequently, USOC followed this mandate to the extreme and woefully neglected the welfare of children participating at the grassroots level.

Furthermore, studies have concluded that, without government oversight, organizations with such dual functions are incentivized to prioritize private interests over public values (Koller, 2019). In many cases, these organizations view their public mandate as a burden and seek to evade related responsibilities as much possible. This is exemplified by USOC's prioritization of medals and self-serving approach to the duties it believed were owed to athletes. This is also evident in USOC's stated mission is to "support U.S. Olympic and Paralympic athletes in achieving

excellence...thereby inspiring all Americans” (Koller, 2018, pp. 1068-1072). The only possible connection USOC’s stated mission has with grassroots development is through the language of “inspiring all Americans”, which is tenuous at best. Carving out USOC’s public interest responsibilities and allocating it to a new non-profit will better ensure both interests are promoted equally.

Finally, resource and logistical restraints also call for the creation of a separate entity responsible for grassroots development of sports. USOC currently has a vast range of responsibilities via the 16 purposes enumerated in the TSA. For example, the 1998 amendment added oversight of the Paralympic movement to its mandate, making USOC one of four National Olympic Committees tasked with this responsibility. These growing set of obligations did not come with congressional funding. Therefore, some of the enumerated purposes were necessarily underserved in favor of others. In fact, USOC is the only National Olympic Committee that does not benefit from federal funding (Koller, 2019). While USOC was structurally incentivized to prioritize private sector interests, the lack of congressional support coupled with its vast responsibilities certainly made the problem worse.

USOC has demonstrated great achievement in improving American success at the Olympics. However, it has also failed to address child abuse occurring within amateur sport organizations. These failures are a product of deficiencies in the TSA, the structural incentives of corporations with dual public-private functions, and the lack of support from the federal government. Congress should therefore allocate the responsibility of increasing public participation in amateur sports and grassroots development to a new non-profit entity. This will transfer oversight of children in sports away from USOC, allowing it to focus on its strengths in facilitating Olympic success. Importantly, this new entity must be funded by Congress in order to avoid the same financial pressures that pushed USOC to prioritize medals over athlete welfare.

2) The Need for Increased Federal Oversight

Amateur sports constitute the only child-populated domain that is self-regulated (Kidd, 2020). This has been justified by the traditional view that sports are not a government matter. Under this pretense, the federal government has abdicated responsibility for overseeing and ensuring the welfare of children participating at the grassroots level. This resistance extended to the point where Congress refused to contribute meaningful funding towards the Center for SafeSport, opting to instead compel USOC into providing the necessary capital. Congress has thus demonstrated comfort with the perception amongst many that the independence of the Center for SafeSport is compromised insofar as it furthers the federal government’s desires against becoming involved in governance of amateur sports. There are two main problems with the federal government’s stance.

First, the federal government has exerted influence and pressures on amateur sport organizations when it suited its purposes. For example, the many implicit and explicit pressures imposed by the Carter Administration coercing USOC to withdraw from the 1980 Moscow Games are well documented in *DeFrantz v United States Olympic Committee* Supp. 1181 (D.D.C. 1980). Moreover, Congress has guided the American response to doping issues and contributes \$9.5

million to USADA. In fact, the very creation of USOC is attributable to the federal government's intentions to becoming more involved with amateur sports through eliminating institutional impediments to American achievement at the Olympic Games. Thus, the federal government has not been consistent with its approach to non-involvement; instead, it picks and chooses when involvement furthers its purposes.

Moreover, the development of grassroots participation should not be viewed as purely a "sport" matter. The nature of amateur sports presents many structural factors that provide opportunities for abusers to exploit children. For example, young athletes often view coaches as parental figures and rarely question their tactics. Moreover, parents are prone to granting blind deference to the decisions made by coaches. Coaches also spend a significant amount of time with athletes in private settings away from third-party oversight (Parent, 2020, p. 6). These general risk factors are intensified by the policies of some NGBs to exclude friends and family from observing training sessions, in the interest of avoiding what they view as unnecessary distractions (McPhee, 2018, pp. 117-118). As a result, sports at the grassroots level present a serious risk to child welfare. Accordingly, the traditional view of amateur sports at the youth level should be expanded to include a child welfare concern.

Federal oversight of this new entity could be allocated to the United States Children's Bureau, tasked with preventing and mitigating child abuse with state partners. However, this agency lacks the requisite expertise to effectively oversee the general responsibilities of this new entity to increase grassroots participation. Thus, Congress could create a new federal agency staffed with this hybrid expertise. Direct oversight and accountability provide more tools for Congress to hold this new entity accountable, beyond the blunt instruments of decertification currently at congressional disposal (Koller, 2019).

Finally, this proposal will redirect the United States away from a potential conflict with the IOC. Under this proposal USOC will retain its independence because government oversight will be confined to the new entity designated autonomy over amateur sports at the grassroots level.

Part IV: The Ideal Blueprint for Safe Sport Reform in Canada

Unlike many other countries currently reforming governance of amateur sports, jurisdictional constraints have prevented the Canadian federal government from enacting change through national legislation (McLaren, 2020, p. 1). This is because jurisdiction over maltreatment in sports is constitutionally allocated to the provinces/territories. Thus, in order to mirror the approach of other countries and consolidate oversight into a single "super non-governmental organization" coordination amongst the federal and provincial/territorial governments "the likes of which has never been seen in Canada" would need to occur (McLaren, 2020, p. 59).

Nevertheless, several recent reforms imposed by the federal government have been underwhelming. For example, many praised the recent policy announcements made by former Minister of Sport Kristy Duncan requiring NSOs to appoint independent harassment officers and report allegations of abuse as a condition of funding (Hesiler, 2019). Despite the forceful rhetoric, this announcement was a mere restatement of existing requirements and did not offer anything

new. Moreover, the federal government announced the opening of a helpline for complaints of sexual harassment and abuse. This helpline however has proven vastly ineffective, as it received just 60 calls in its first few months of operations. Further, many callers are simply rerouted back to their NSO, reinforcing existing concerns about the absence of an independent investigatory body (Ward, 2019).

One promising step taken by the federal government is organizing the development of a national Universal Code of Conduct to Prevent and Address Maltreatment in Sport (“UCCMS”). The CCES was tasked to draft the original version of the code, which has since been revised by other groups. The purpose of the UCCMS is to establish a singular harmonized standard to prevent and address various types of abuses in amateur sports across Canada. Sport Canada has already modified its Contribution Agreements by requiring NSOs to adopt the UCCMS by March 31st, 2021 as a condition of future funding (McLaren, 2020, p. 2). Some NSOs have already taken this step. Thus, the remaining concerns involve the design of the enforcement structure and questions regarding the scope of individuals covered by the code.

Lessons from the American rollout of the Center for SafeSport offer helpful guidance. First, to instill public confidence, the administrator of the code must be independent from the organizations it oversees. The need for independence rules out the SDRCC as a potential option, because of its legislative requirement to have at least 3 of the 12 seats on its Board of Directors be filled by athletes. Moreover, independence demands that the federal government be responsible for financing the entity ultimately designated to administer the code. This is crucial to avoid attracting the same criticisms levied against the relationship between USOC and the Center for SafeSport. Ultimately, the ideal organization to administer the UCCMS is the CCES. The CCES was responsible for drafting the fundamental structure of the UCCMS (thereby demonstrating relevant institutional expertise) and its broad mission to promote a principle-driven approach to sports complements the duties attached to administering the code. Adjudication of alleged breaches of the UCCMS should be outsourced to the SDRCC (McLaren, 2020, p. 16).

Finally, there is a concern that the UCCMS will only protect national level athletes. Ideally, each province/territory would consent to the jurisdiction of the body ultimately designated as administrator of the UCCMS to manage allegations of maltreatment involving PSOs and/or local clubs. Some provinces have indicated their intentions to transfer jurisdiction to the body ultimately appointed as administrator of the UCCMS (McLaren, 2020, p. 32). If others do not agree, there is a risk that inconsistencies will emerge across Canada regarding the scope of individuals covered by the UCCMS, with provincial athletes not retaining coverage in some jurisdictions (McLaren, 2020, pp. 34-40).

A possible solution is to have PSOs voluntarily adopt the UCCMS. However, the federal government cannot compel NSOs into forcing their PSO counterparts to adopt the UCCMS. Moreover, 43% of NSOs do not have jurisdiction beyond the national level (McLaren, 2020, pp. 34-40). Thus, while the remaining 57% of NSOs are positioned to facilitate the adoption of the code by their PSO counterparts, many others are less certain. Despite these concerns, there is reason for optimism. Most PSOs have strongly supported the idea of a uniform national code of conduct (McLaren, 2020, p. 42). This support for the UCCMS will likely be even stronger if the federal government funds its operations, thereby producing cost-savings for PSOs and their local clubs. PSO concerns centre on the tight timelines under which they are expected to fundamentally

revise their policies (McLaren, 2020, p. 96). Thus, some have proposed the gradual imposition of the UCCMS, allowing lagging PSOs to join the framework at a time best suited for them (McLaren, 2020, p. 94). A staged approach to the implementation of the UCCMS offers the best approach to generate genuine buy-in from PSOs (as opposed to forcing a strict deadline upon them) and protect as many athletes as possible.

Part V: Conclusion

The institutions tasked with overseeing public participation in amateur sports and organizing national representation at the Olympic Games are responsible for creating an environment that permitted the unfettered abuse of young athletes. The complicity of these institutions is a product of minimal federal oversight of grassroots level amateur sports and the excessive emphasis placed on Olympic success by government authorities in each country. While Olympic success has ballooned under this system of self-regulation in both countries, these achievements have come at the expense of athlete welfare.

In the United States, the deficiencies identified by this paper in the governance of amateur sports require reforms greater than what has been provided so far by the SafeSport Act and the EOPAA. In addition to the establishment of the Center for SafeSport, this paper calls for Congress to increase oversight by allocating responsibilities of grassroots level amateur sports to a newly chartered entity. Moreover, this new entity must be accountable to the federal government. In the Canadian context, jurisdictional limitations imposed by the Constitution prevent the enactment of reforms through federal legislation. Thus, this paper endorses the ongoing efforts to establish a national code outlining a single standard for the appropriate treatment of Canadian athletes. The implementation of this code must endeavour to protect as many Canadian athletes as possible. Moreover, the code must be administered by a truly independent entity. While child abuse remains a serious social problem, these reforms will ensure that predators are stripped of freedoms they previously enjoyed in amateur sports.

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