Fall 2000

Baseball in Canada

Samuel R. Hill
Scocan RSA Limited

Follow this and additional works at: http://www.repository.law.indiana.edu/ijgls
Part of the Entertainment, Arts, and Sports Law Commons, and the International Law Commons

Recommended Citation
Available at: http://www.repository.law.indiana.edu/ijgls/vol8/iss1/4
Baseball in Canada

SAMUEL R. HILL *

INTRODUCTION

Baseball scholars and historians have long accepted that Abner Doubleday did not invent baseball in Cooperstown, New York in 1839.1 Doubleday's baseball legend survives, however, as part of baseball folklore; Americans would likely deride the suggestion that a foreign country created baseball. Yet, Canadians recorded a "baseball" game played in 1838 in Beachville, Ontario.2 Does the Canadian record debunk the Doubleday baseball legend? The answer, in all likelihood, is no. The modern-day game of baseball most resembles the form of baseball developed in New York in the early nineteenth century.3 Canadian baseball, however, developed on a parallel and often intertwined path with that of its American counterpart, and played an instrumental role in shaping baseball as we know it today.

How did this quintessential "American" game flourish in the land of the frozen north? An even more important question for Canadian baseball fans is: Will the professional game survive in Canada? This Article will briefly describe the growth of baseball in Canada and discuss some of the issues facing professional baseball as it struggles to remain a viable industry in Canada in the global era of the game.

Samuel R. Hill is Executive Vice President, Business Affairs, and General Counsel of Scocan RSA Limited, a Canadian private holding company that owns, among other interests, SportHawk International, Inc., a private air charter company to professional baseball, basketball and hockey teams; Air Athletics, Inc., a sports facility management company; and the Toronto Thunderhawks of the National Professional Soccer League. Mr. Hill was primary counsel to the Toronto Blue Jays from 1998-2000; and, from 1992-1998, at his former law firm Proskauer Rose LLP in New York, New York, he acted as outside counsel to the NHL, NBA and Major League Soccer, among others. Mr. Hill is admitted to practice law in New York State and in Ontario, Canada.

3. Id. at 18-19.
I. EARLY BASEBALL IN CANADA

A. The Origins of Baseball in Canada

In the early nineteenth century, Canadians played a variety of bat-and-ball games, the most popular of which was a form of "townball," also played at the time in and around New England. Townball descended from rounders and other English bat-and-ball games that date back thousands of years to ancient fertility rites and spring celebrations. The popular Canadian ball games differed from what we recognize as Major League Baseball (MLB). In one commonly-played form of Canadian ball, the infield was square, five bases were used, and the ball could be thrown directly at the runner. "Soaking," whereby the ball was dipped in fluid to make it heavier and easier to throw faster and more accurately, was common. It is almost certain that the game played in Beachville in 1838 was townball, but given the number of different baseball-like games prevalent at the time, it may well have been a close cousin of baseball.

Early Canadian baseball fostered a tradition of community-bonding because baseball was an all-inclusive "folk" sport, rather than the organized and structured modern-day game. The burgeoning relationship between Canadians and Americans, however, encouraged Canadians to embrace the more American pursuit of pleasure and profit, which was at odds with the historically dour and serious ideal promulgated by the English forbears of Canada. The rules that form the basis of modern baseball—the "New York rules"—were imported into Canada in the mid-1850s after having been the standardized baseball rules of choice in the United States for some time. The introduction of these rules into Canada and their widespread acceptance

4. See id. at 16-17.
5. See id. at 15.
6. See id.
8. See RICHARD GRUENEAU & DAVID WHITSON, HOCKEY NIGHT IN CANADA, SPORT, IDENTITIES, AND CULTURAL POLITICS 65 (1993).
9. Id. at 64-67.
by the mid-1870s accelerated the international development of the game. Teams from Canada and the United States could now pit their skills against each other on a "level playing field," and assess their competitive abilities with reference to an objective standard.11

The railroad arrived in Canada at about the same time as the New York rules, bringing homesteaders, new immigrants, merchants, seasonal workers and others, many among them experienced ballplayers.12 Clubs were by this time traveling easily, and the cross-border railway system encouraged the growth and development of fierce north-south rivalries between teams from the two countries, particularly since the great distance across Canada inhibited much regular inter-provincial competition.13 Before long, there was an almost free flow of players across the border,14 confusing the issue of who (Americans or Canadians) had the most influence on the developing game.

Early Canadian baseball, played almost exclusively in Southern Ontario, rapidly shifted from its informal and rather amateurish beginnings to an organized, capitalistic industry. During the last quarter of the nineteenth century, organizations including banks, local merchants, unions, factories, and even temperance societies were investing in and promoting baseball. As a result, the game became increasingly commodified.15 At about this time, Canadian teams stepped up their recruiting efforts and started marketing themselves to Americans to encourage international play.16 Accordingly, the first recorded international match was played in 1860, between teams from Hamilton, Ontario, and Buffalo, New York.17 And, regardless of the "birthplace," if any, of baseball, it soon became apparent that Canadians could give their southern neighbors a good fight on the diamond. In fact, in 1877, the London (Ontario) Tecumsehs and the Guelph Maple Leafs joined the professional International Association, and London actually won the championship that very first year.18

11. See GRUNEAU & WHITSON, supra note 8, at 66-67.
13. See id. at 39.
14. See GRUNEAU & WHITSON, supra note 8, at 66 (discussing the active recruitment of American players by Canadian professional baseball teams in the 1880s).
15. Id.
17. HUMBER, supra note 2, at 25.
18. Id. at 39.
B. The Effect of Baseball on Other Early Canadian Sports

As early as the 1870s, baseball was heralded as the “national” game of Canada and even surpassed the popularity of hockey.19 Moreover, baseball fever in Canada was at its height in 1992 and 1993 when the Blue Jays won back-to-back World Series. It therefore came as a surprise to some when the Canadian Parliament “officially recognized” lacrosse in 1994 as the “national” summer game of Canada.20 Lacrosse, although a “traditional” Canadian sport, has never been more than a minor Canadian sport. Furthermore, the recognition of baseball as the national summer sport of Canada will always be impeded by the fact that baseball is the national summer sport of the United States. The friendly, but sometimes tenuous, relationship of Canada with the United States probably precluded the consideration of baseball by Parliament. Lacrosse was far less “American” and, with its native roots, fit nicely into the political landscape, given that Canada in 1994 was contemplating returning huge amounts of land to its aboriginal population.21

While lacrosse was among the “first” Canadian sports, neither it nor baseball would have been the sport of choice for English immigrants to Canada. Cricket had that honor. Cricket, however, was a sport of the elite and closely identified with the long-dominating influence and class conscious society of England.22 The rise and fall of cricket can be tracked by the amount of media attention it received. For example, cricket ranked third in sports coverage in 1885, but by 1915 had dropped to seventeenth, with only 0.3 percent of the coverage. In contrast, in 1915, baseball placed first in sports coverage in Halifax (37.6 percent), Edmonton (32 percent), Winnipeg (21.2 percent) and Montreal (18.6 percent). In Toronto, baseball placed second (behind hockey) in 1915 with 23.5 percent of the coverage.23

Both cricket and lacrosse fell by the wayside as baseball began to dominate the Canadian sport culture. Lacrosse and cricket never integrated

20. HUMBER, supra note 2, at 14.
21. It should be noted that lacrosse, although still a minor sport, has enjoyed a bit of a renaissance. Toronto now has a professional lacrosse franchise that draws over 10,000 fans per game and has won two championships in a row.
22. GRUENAU & WHITSON, supra note 8, at 41.
23. HUMBER, supra note 2, at 8.
successfully into Canadian life. Baseball, on the other hand, was accessible to men, women, and children of all ages, and the game cut across all class lines.  

C. The Evolution of Canadian Baseball

Even before baseball matured into a more organized game, it rapidly became an important means among Canadians of fostering community spirit and pride. And, as “urban” Canada grew, baseball often was an outlet for sectarian and ethnic tensions. By the end of the eighteenth century, organized baseball clubs existed in every Canadian province.

1. Ontario

Ontario became the undisputed baseball center of Canada largely because of the arrival in 1854 of the Great Western Railway linking Niagara to Detroit. Residents of Ontario for the first time could interact with their southern neighbors without too much difficulty. Cultures intermingled and, inevitably, all sorts of contests and competitions were held, baseball usually being included.

The town of Woodstock, Ontario fielded the best teams of Canada throughout the 1860s. In 1864, after disposing of all serious Canadian competition, the Woodstock team matched itself against the touring Brooklyn Atlantics at the New York State Fair, near Rochester. The game, heralded as the championship of the American continent, drew 4,000 fans who saw Brooklyn defeat Woodstock 75-11. While the Canadian game clearly needed some work, the experience led American and Canadian teams to begin competing at tournaments offering cash prizes. This led to the rapid commercialization of the game and fierce, win-at-all-costs rivalries.

By the 1870s, Canadian teams were as competitive as their American
counterparts, as witnessed by the victory of the Guelph Maple Leafs in the 1874 "World Semi-Professional Championship" in Watertown, New York, over the Ku Klux Klan team from nearby Oneida. By this time, American teams had started recruiting Canadian players. In 1877, both London and Guelph joined the professional International Association, which featured teams from St. Louis and Pittsburgh. That same year, the London Tecumsehs defeated the Pittsburgh Alleghenies to win the first major league championship ever by a Canadian team. This feat would not be repeated until 115 years later, when the Toronto Blue Jays won the World Series in 1992 and 1993. While most early nineteenth century Torontonians considered baseball as an underclass sandlot sport, by the mid-1880s Toronto baseball was as skilled and competitive as the game in the communities of southwestern Ontario. In 1885, several prominent Toronto businessmen formed a company to operate a franchise in the Canadian Baseball League. While that League would fold after one year, when Toronto and Hamilton joined the American-operated International League, the stage was set for Toronto to become the baseball center of Canada.

Baseball in Toronto has a storied past. Babe Ruth, as a pitcher for Providence in the International League, hit his only minor league home run (reportedly a 600-foot rocket) at Hanlan’s Point, Toronto, in September 1916 against the Toronto Maple Leafs baseball club. In 1925, the Maple Leafs, co-owned by theater proprietor Lol Solmon, who had the habit of stuffing team schedules into theater programs, raised $750,000 to build the 20,000-seat Maple Leaf Stadium at the foot of Bathurst Street, just a short distance across Toronto Harbour from the old Hanlan’s Point Park. The stadium was designed to accommodate an upper deck in the event a major league club came to the city. None ever did in Solmon’s lifetime.

30. See id. at 30.
31. Id. at 39.
32. See METCALFE, supra note 7, at 164-66.
33. HUMBER, supra note 2, at 7.
34. Id. at 151-55. Toronto entrepreneur Jack Kent Cooke got his start in professional sports in the 1950s with the Maple Leafs. Cooke tried to start the Continental League to rival the existing major leagues, but was unable to do so. He eventually sold the Maple Leafs and moved to the United States, where he became a media mogul and the owner of several sports teams, including the Los Angeles Kings hockey team and the Washington Redskins football team. Id. at 155.
2. Quebec

In Quebec, baseball did not start to attract an organized following until the mid-1860s. Once it caught on, however, its rapid acceptance into society was reflected by its inclusion in cultural celebrations. For example, a ball game was included in the 1876 St. Jean Baptiste Day (June 24) festivities at St. Hyacinthe. Various reasons have been suggested for the slow growth of baseball in Quebec. These include suppression of the sport by community leaders in fear of submersion by the dominant English culture, the popularity of other activities such as hockey, lacrosse, and bicycling, the harsh spring weather and rural life, which took ballplayers away from the parks and into the hayfields. For example, between 1867 and 1885, Montreal was home to sixty-three snowshoe and seventy-eight lacrosse teams, but only forty-six baseball clubs.

The sport eventually found its way into the French-Canadian community consciousness. Moreover, the sophisticated and cosmopolitan culture of Montreal appealed to many players, especially those from different countries. The combination of this "melting pot" of a city and the burgeoning regional passion for baseball made Montreal the perfect launchpad for the international expansion of MLB. The Montreal Royals were formed in 1928 when a group of investors purchased the International League Syracuse franchise. More than 22,000 fans, including Judge Kenesaw Mountain Landis; the renowned MLB commissioner, attended the team's opener. In 1931, the team was purchased by three Montreal businessmen, one of whom was Charles Trudeau, the father of former Prime Minister Pierre Trudeau. Tragically, before he could see the team play, the elder Trudeau contracted pneumonia during Royals spring training and died shortly thereafter.

The Royals were bought in 1938 by the Brooklyn Dodgers and soon became the leading farm team of the Dodgers. Between 1941 and 1958, the team finished first seven times, won the International League title seven times, and won the Junior World Series Competition against the American Association champion three times. The Royals, however, may be best

35. CLIFTON, supra note 25, at 3.
36. Id. See also HUMBER, supra note 2, at 109-10.
37. See HUMBER, supra note 2, at 139.
38. Id. at 113-14.
39. Id.
remembered for the signing of Jackie Robinson for the 1946 season. Robinson, the first black MLB player, played for the Royals during the 1946 season, and led the team to the International League title while creating a huge and loyal following in Quebec. Indeed, Robinson was so popular that his life-size bronze statue still stands in the Montreal Olympic Stadium.

3. British Columbia

In the west, British Columbia may have felt the American influence over its early baseball more keenly than the other provinces. Victoria was the departure point for the Fraser River gold rush, and between 1858 and 1859 saw its population grow from 300 to 20,000. Baseball “arrived” in Victoria with the Fraser River gold rush of 1858. The first record of a baseball game played in Victoria appears in March 1863. Within ten years, international matches were being played by teams from the city.40

British Columbia was isolated from the rest of Canada by the Rocky Mountains and sheer distance. And, while competition from the proximate neighbors was a big influence on the game, baseball did not flourish in British Columbia until the railroad was established in 1886. Vancouver had been an insignificant port city of 1,000, but its population grew to 13,000 within five years of becoming the western terminus of the Canadian Pacific Railway. One of the first signs of new prosperity in Vancouver was the importing of players by rail to play for the Vancouver Terminals baseball club. As in Ontario, the railroad also greatly influenced the growth of baseball throughout the interior of the province.41

4. The Prairies

Baseball was also introduced early in the Prairie Provinces of Alberta, Saskatchewan, and Manitoba. The game came to Lethbridge, Alberta with settlers from the United States and Eastern Canada, and was played as early as 1886. The first significant organized intra-provincial baseball league was the Western Canada League, which only involved teams from Alberta,

40. See HUMBER, supra note 2, at 93-95.
41. Id. at 95-98.
Lethbridge, Edmonton, Medicine Hat, and Calgary. Baseball did not arrive in Saskatchewan until after the North-West Mounted Police established a settlement there in 1873. The earliest record of a game was played outside Fort Battleford in 1876 between two makeshift teams. Similarly, modern baseball was introduced in Manitoba in about 1870. In Winnipeg, where the population swelled from 100 in the late 1860s to 5,000 in 1875, there was a thriving baseball culture by the mid-1870s.

5. The Maritimes

Maritime baseball also enjoyed early popularity. Indeed, rounders and townball were played by English and American expatriates in the Maritimes as early as the 1850s. Although the New York rules did not reach Saint John, New Brunswick, until 1872, the game by then had already become a popular recreation among the working class of the city. Nova Scotia has a record of an informal bat-and-ball game played in Dartmouth in 1841. In 1868, the Halifax Baseball Club was established, ushering in an era of extreme popularity for the game. Adding to the fans’ interest in the game were great Scottish teams from Cape Breton Island (one team fielded eight MacDonalds) and the intense rivalries between Catholic and Protestant teams. Barnstorming female squads also toured the province, including the Chicago Ladies, who visited Halifax in 1891 and beat an amateur Halifax team 18-15 before 3,000 paying fans.

As revenues from local games grew along with the audiences, teams could afford better players. Demand grew for games with other Maritime centers and nearby New England towns, to which many young Maritimers had emigrated in search of work. Once again, the railway played an important part in the development of the game. The Intercolonial Railway from the United States to Halifax was completed in 1876 and helped produce great intra-province and international competitions.

42. Id. at 65-66.
43. See id. at 75-92.
44. See id. at 41-45.
45. See id. at 45-46.
46. See id. at 46-48.
6. Native Baseball in Canada

It is not clear when the native population of Canada was first introduced to baseball. One theory suggests that nineteenth-century American reservation schools may have played a part in the United States, and that the game was brought to Canada by former students. In Canada, the Mi'kmaqs of the Atlantic Provinces played a game called the "old fashion," similar to rounders, until the Second World War. The game became a community ritual. There are even references to a baseball game between Mi'kmaqs and others in the late 1870s in Nova Scotia.47

II. MLB Comes to Canada

A. Background

As baseball became firmly rooted in the collective consciousness of the Canadian people, the game began to flourish and grow increasingly commercial. Baseball in the United States was an established spectator sport by the last quarter of the nineteenth century, and Canadian "sportsmen" and others (some legitimate and many shady) were quick to emulate the Americans. By 1900, the mass appeal of baseball was matched only by that of hockey. A cross-section of the business community, including unions and factories, banks, local business, and schools, sponsored and promoted baseball. By the start of World War I, at least eighteen Canadian cities had been home to professional teams.48

With the popularity of baseball in Canada rapidly increasing, and in light of the MLB expansion from sixteen to twenty teams from 1960 to 1962, Canadians had reason to be optimistic that expansion north of the border might be in the works. In 1967, when major league owners announced that a new league format49 would be instituted and that it would accommodate two

47. Id. at 59.
48. DAVID L. BERNARD, supra note 16, at 217-20 (1992). Indeed, baseball was so popular early in the twentieth century that in some places, like Winnipeg, indoor winter baseball was successfully organized. See HUMBER, supra note 2, at 7-12.
new teams, Montreal was ready to step into the fray. The early 1960s and 1970s was a time when civic leaders believed that the international reputation of a city would be enhanced by the establishment of major professional sports clubs, the construction of accompanying playing facilities, and the hosting of world expositions and other major cultural events.50

At this time, Toronto and Montreal were trying to outdo each other in their attempts to become the “leading” city of Canada. Montreal had just hosted the internationally heralded Expo 67 and was gearing up to bid for the 1976 Summer Olympics. Baseball proponents believed that a major league franchise would help narrow the cultural and social differences between the United States and Canada by building economic bridges between the two countries.51 Moreover, the Canadian government has long recognized that professional sports help stimulate economic development and establish civic self-image.52 It was believed that a MLB team would result in closer economic and social integration with the United States. In Quebec, MLB was seen as an important link to the United States that would help integrate French-speaking Canada into the American way of life.53

Given the race to be “world class” between the cities of Toronto and Montreal and the provinces of Ontario and Quebec, and the ever-growing popularity of baseball, it is not surprising that the respective municipal and provincial governments would open the public coffers to construct monolithic sports facilities—the Olympic Stadium in Montreal and the SkyDome in Toronto. What could not have been foreseen, however, was that these venues would become the two most expensive, single-site sports projects in history. Olympic Stadium cost over C$1 billion and the SkyDome over C$625 million.

---

50. GRUENA & WHITSON, supra note 8, at 224; see also MARK S. ROSENTRAUB, MAJOR LEAGUE LOSERS 324-30 (1997).
51. ROSENTRAUB, supra note 50, at 324-25.
53. Id. at 325.
Even accounting for the currency exchange rate, no other North American facility (or one anywhere else for that matter) has ever come close in cost.  

B. MLB Looks North: The Establishment of the Montreal Expos

In late 1967 at a meeting of National League owners in Mexico City, Montreal city councillor Gerry Snyder presented the formal Montreal bid for a franchise. Other cities bidding for a franchise were Milwaukee, Buffalo, Dallas/Forth Worth and San Diego. Montreal had a good reputation as a baseball city, and its successful AAA franchise, the Royals, was a major selling point. Moreover, influential owners such as Walter O’Malley of the Los Angeles Dodgers, Roy Hofheinz of the Houston Astros, and John Galbreath of the Pittsburgh Pirates immediately pledged to support Snyder. O’Malley, who was president of the Dodgers and head of the expansion committee, had a long-time association with the city of Montreal through the Royals, the farm team of the Dodgers. In addition, the international exposure and goodwill that Montreal received after Expo 67, an enthusiastic and supportive local political leadership, and the market area for the team—more than five million people in Quebec and in the nearby United States—weighed heavily in favor of Montreal. In addition, the opportunity to expand to a new, untapped international market was particularly appealing to the National League owners.

On May 27, 1968, O’Malley announced that Montreal and San Diego had been accepted as National League members for the 1969 season. "If we’re going to expand, let’s really spread it out,” National League president Warren Giles reportedly said to the owners. In the newly re-formatted National League, Montreal was to join the Eastern Division along with the St. Louis Cardinals, Chicago Cubs, New York Mets, Philadelphia Phillies, and Pirates.

Winning the right to establish a team and getting the team off the ground were different stories, however. From the very beginning, finding financing for the team proved challenging. While MLB and the political leaders of the

54. ROSENTRAUB, supra note 50, at 321-22.
56. ROSENTRAUB, supra note 50, at 328.
57. Expos’ Official Web Site, supra note 55.
city were confident that baseball would be a success in French-speaking Quebec, investors were getting cold feet, with some withdrawing and the remaining group permitting deadlines to pass.58

In danger of losing the franchise, the desperate Snyder approached Seagram Company magnate Charles Bronfman, an original investor and vice-chairman of the board. Bronfman fronted the necessary money. While Bronfman cited his citizenship obligations as the reason for his largesse, he also demanded and received a $4.5 million tax-investment credit from the government in return for his bailing the team out.59 The club paid its initial deposit of $1.1 million by the August 15th deadline. But, with less than a week to go before the deadline, the team had nowhere to play. Only the last-minute suggestion by two Montreal sports reporters that Jarry Park (a small minor league stadium) be considered saved the team. Jarry Park was expanded to accommodate about 30,000 fans and for the first seven seasons was home to the Expos.60 On April 8, 1969, the Expos won their debut game 11-10 over the New York Mets at Shea Stadium. The season went downhill from there. The club finished with a 52-110 won-lost record. Although the club won seventy-nine games in 1973, the Expos in the early to mid-1970s were, for the most part, abysmal.61

The Expos’ move to Olympic Stadium in 1977 coincided with their improving fortunes on the field, where the team compiled the best overall record in the National League from 1979 to 1982. Fan support increased and attendance surpassed two million in four different seasons.62 In 1991, Charles Bronfman resigned. Claude Brochu, whom Bronfman had named president of the team in 1986, brought together thirteen private investors and the city of Montreal to buy the franchise in June 1991. That was a rough year for the team—the Expos spent the last month on the road after a concrete chunk fell from Olympic Stadium, and finished last in the NL East with seventy-one wins.63 The “good” years, however, were coming. From 1992 to 1997 the Expos had a winning percentage of almost 0.540, fifth overall in the majors behind only Atlanta at the top (0.615) and three American league clubs. The

58. Id.
59. Id. See also ROSENTRAUB, supra note 50, at 329.
60. Expos’ Official Web Site, supra note 55.
61. Id.
62. ROSENTRAUB, supra note 50, at 332.
63. Expos’ Official Web Site, supra note 55.
club also garnered awards for most friendly organization in 1997 (U.S. FANS), and organization of the year (1990, 1993 and 1996). The Expos' outstanding winning percentage during this period was a testament to the quality and skill of their personnel. In particular, Expos Manager Felipe Alou had, by the end of the 1990s, kept the payroll of the team to almost one-quarter of the average payroll of any MLB team. Indeed, the Expos easily had the highest "wins per payroll dollar" (actually, for each million dollars spent) from 1991 to 1996, at 5.66, compared with the major league average of 2.75 during that same period (the Yankees, with a miserable 1.87, were on the bottom).

The minuscule Expos payroll resulted from tough financial times. From 1989 to 1998, as average club revenues grew 66.5 percent, the revenues of the Expos grew only 19.5 percent. Average player payroll increased 186 percent; the payroll of the Expos decreased by twenty-nine percent. In 1998, when the Baltimore Orioles had a payroll of over $70 million the Expos had a payroll of only $9.2 million. Exacerbating the financial problems of the club, the Expos had the best record in MLB on the same day the Major League Baseball Players' Association went on strike and caused the remainder of the 1994 season to be cancelled. The Expos never recovered their momentum.

By 1997, the team was not a contender, as financial constraints had forced the Expos to let several key veterans go to other teams. Pedro Martinez's season was a bright spot, however. Martinez won seventeen games, had an ERA of 1.90 and 305 strikeouts in 206.2 innings pitched, and he became the first Expos pitcher and first Dominican to win the Cy Young Award.

That year, the owners of the Expos announced a campaign to build a new downtown ballpark. Under the guidance of Claude Brochu, they believed that the future of the team was in a downtown park; plans were initiated to begin raising funds for the project. However, Brochu was unable to secure the capital needed for the project and announced in October 1998 that he would step aside. Brochu eventually sold his shares in the club to Jeffrey Loria, a

---

65. Id. at Exhibit 2.
66. Id. at 2.
67. ROSENTRAUB, supra note 50, at 336-37.
68. Expos' Official Web Site, supra note 55.
New York art dealer, in November 1999. Following the transaction, the team seemed to experience a radical reversal in outlook and attitude, marked by the decision to boost the payroll of the club to $38 million. Plans for the new ballpark also were progressing. On March 24, 1999, the Quebec government had agreed to aid the team by absorbing interest payments on the $100 million loan it would require for the construction of the downtown ballpark. Furthermore, in February 2000, Montreal city council approved the construction plans for the new park. The new owners asserted that their agenda was, in effect, a continuation of the old (with the exception of the increased payroll). The majority owner of the club, Loria, stated that the club would adhere to Brochu’s plan for a $250 million, open-air, natural grass, 35,000-seat ballpark that would be located in downtown Montreal. The key to the proposal, from Loria’s perspective, was that the club would not have to pay for the park. Loria proposed that the business community contribute $100 million for seat licenses, with the remaining $150 million to come from the government. Given the apparent desire of the government, the public, and the media in Quebec for the Expos to stay, such a proposal did not seem out of the question at the time.

Just when things seemed to be getting brighter for the Expos, however, the public sector disavowed any intention of contributing any large sum of money to the club. Loria began to squabble publicly with his local investors about his perceived lack of interest in keeping the Expos in Montreal. The new ownership failed to secure any television or radio contract for the team, which meant a loss of a significant revenue source. Loria allegedly “refused” to conclude local broadcast agreements, leaving broadcasts of Expos games over the Internet as the only media outlet. Second, notwithstanding the MLB mandate that a park be central to future plans for the Expos, Loria did not renew an option on a parcel of land in downtown Montreal that had been set aside for over two years for construction of a new ballpark. Finally, in

69. Id.
70. Id.
71. Expos’ Brief, supra note 64, at 5.
72. Id.
73. Tracy Ringolsby, Montreal Expos A Big Weakness, ROCKY MOUNTAIN NEWS.COM, August 21, 2000, at 2.
75. Jeff Blair, Expos Fail to Renew Option on Ballpark Land: Loria Says He Still Intends to Build Stadium Downtown, But Move Adds Fuel to Perception That He Wants to Move Team Out of Montreal,
August 2000, the club reportedly passed a resolution permitting Loria to cover what would have been a cash shortfall of C$18 million. The move has been perceived by some as further indication that Loria will try to purchase the remaining interests in the club from his limited partners.\textsuperscript{76}

The media have speculated that Loria intentionally undermined his community standing and the financial base of the team to sell the team for a fast profit. There is no evidence that Loria did so, but the possibility is not far fetched. Eager purchasers are waiting impatiently in places like Northern Virginia and North Carolina (not to mention Mexico and Japan), and they certainly would pay a premium to obtain a franchise.

C. The Toronto Blue Jays

In 1977, the American League expanded by two teams. Seattle, purportedly granted a franchise in response to its lawsuit over the move of the Pilots to Milwaukee, was one. Adding a second team to balance the league clearly made sense.\textsuperscript{77} Other MLB team owners recognized the potential benefits of bringing American League baseball into the burgeoning English-speaking Canadian market. By 1977, the Greater Toronto Area (or "GTA" as it is now called) had a population of 2.8 million and Ontario had more than 8.3 million residents. A Toronto-based team would have a market size larger than that available to the Cleveland Indians, Baltimore Orioles, Texas Rangers, and Seattle Mariners.\textsuperscript{78} Given that franchise values were at an ebb, the Blue Jays joined the American League for a paltry expansion fee of only \$7 million. Labatt, the largest brewery in Canada, owned ninety percent of the team; the Canadian Imperial Bank of Commerce purchased the remaining ten percent. The team played its initial seasons in Exhibition Stadium, located on the shores of Lake Ontario.\textsuperscript{79}

Developing a good farm system and spending an abundance of cash helped the Blue Jays, in a relatively short period, rise from an expansion doormat to a championship squad. During the inaugural season of the Blue

\textsuperscript{76} Globe & Mail, Aug. 24, 2000, at 1.


\textsuperscript{78} Voigt, \textit{supra} note 49.

\textsuperscript{79} ROSENTRAUB, \textit{supra} note 50, at 343-44.

\textsuperscript{78} Id. at 344.
Jays, they compiled the worst record in the American League East. By 1980, however, the Blue Jays posted a fourteen-game improvement over 1979 and by 1985, they captured their first divisional title. From 1983 through 1993, the Blue Jays won more than one thousand games, had a winning percentage of 0.563, and captured two World championships.\footnote{Id. at 345.}

In 1977, 1.7 million fans attended Blue Jays games, and when the team was losing from 1977 through 1980, at least 1.4 million fans attended games. Attendance declined to 755,083 in the strike-shortened 1981 season, but soon rebounded. During the 1983 season, which was to be the first winning season for the Blue Jays, nearly two million fans attended Blue Jays games. More than two million fans attended again in 1984. The Blue Jays, playing in Exhibition Stadium, consistently attracted at least 2.4 million fans during this time. In 1989, playing more than half of their games at the SkyDome, the Blue Jays attracted almost 3.4 million fans. In 1990, almost 3.9 million fans attended Blue Jays home games.\footnote{Id. at 346-47.}

As of 1991, no major league team had ever drawn four million people to its home games. The Blue Jays, however, achieved this mark each year from 1991 through 1993. In 1991, the Blue Jays played to 97.8 percent capacity (the SkyDome has 50,516 seats for baseball) and in 1992 and 1993 respectively reached 98.4 and 99.2 percent of capacity. In 1994, when the strike ended the season with twenty-two home games remaining, the Blue Jays were on a pace to play before more than 100 percent of capacity.\footnote{Id. at 347.} Attendance, however, has never recovered; the strike crushed the team’s momentum. Fan attendance for the year 2000 is indicative. At the All-Star break, although the Blue Jays were tied for first place in the American League East, the club was drawing fewer than 25,000 fans per game.

\textit{D. SkyDome}

The race between Toronto and Montreal to become the better “world class city” was one of the main reasons that SkyDome was built. Olympic Stadium, which was a laughingstock, had been an attempt to establish an internationally
recognizable monument to sports. Toronto was prepared to succeed where Montreal failed.

In 1983, the Province of Ontario developed a new stadium initiative that would join together private enterprise and government to finance construction of a domed venue. The Province selected as its construction site the railway lands in downtown Toronto, adjacent to the CN Tower and the Toronto Convention Center, close to hotels, shopping venues, and the intersection of the subway system, commuter train service, and the waterfront expressway network. Contributions from the private corporations totaled $130 million, while a number of other private enterprises contributed another $15 million. In addition, the Municipality of Metropolitan Toronto contributed $30 million. The balance of the approximately $600 million total cost of constructing the stadium, enhancements, and surrounding infrastructures was funded by contributions from the Province, prepaid licence fees for SkyBoxes, and prepaid subscription fees for Club Seats.

For its contribution, each private corporation received exclusive advertising rights, promotion rights, preferred supplier rights, rights to a SkyBox, parking spaces, and other rights from the Province.

Construction commenced on the SkyDome in October of 1986. Before the stadium opened in 1989, a number of enhancements were added, including the state-of-the-art JumboTron scoreboard, the SkyDome Hotel, a fitness club, and additional restaurants. The final cost of construction of approximately $600 million also included the cost of demolishing the main water pumping station, reconstruction of a new one nearby, the building of new streets, bridges, and other area infrastructures. More than 12,000 man-years of work went into the construction of the facility.

---

84. Id. at 13.
85. Id. at 14.
86. Id. at 16.
III. **The Issues and Challenges Faced by Professional Baseball in Canada**

### A. Currency Exchange and Taxes

Operating a franchise in any professional sport is an exceedingly expensive proposition. MLB clubs are among the most costly because of their large rosters, domestic and international 162-game schedules, and responsibility for a comprehensive minor league farm system. Canadian teams, however, face more obstacles than their American counterparts.

First and foremost is the currency exchange rate, which for the past year has seen a Canadian dollar worth about sixty-five cents of an American dollar. Canadian teams, therefore, are impacted far more than the others by escalating player salaries (which can account for sixty to seventy percent of operating costs), because all MLB players are paid in U.S. dollars while most Canadian club revenues are received in Canadian funds. In 1998, approximately eighty percent of the revenues of the Blue Jays were in Canadian dollars, while almost eighty-three percent of club costs were incurred in U.S. dollars. As a result, each one-cent decline in the U.S./Canadian exchange rate cost the Blue Jays approximately $600,000 a year. In 1998, that exchange rate exposure cost the franchise a net of about $25 million, or seventy-one percent of the entire forecast season loss for the Blue Jays.87

The cost of building or renovating a new facility is also much higher for a Canadian owner. Canadian clubs, in general, are not entitled to receive grants, subsidies, or tax breaks, like those provided to American clubs by municipalities and other governmental bodies. In contrast, U.S. taxpayers absorbed an average seventy-seven percent of the building cost of MLB venues constructed after 1990. These venues cost an average of US$269 million.88 Public subsidies in the United States are not limited to facilities. For example, the city of Nashville, Tennessee paid the NHL Predators a lump sum of $20 million simply to locate in Nashville.89 Moreover, very few baseball teams in the United States pay municipal taxes. The U.S. federal...

---

88. Id. at 95.
89. Id. at 96.
government also has a program whereby local government can finance sport facilities with “tax exempt” bonds, where the interest from the bonds is exempt from federal income taxes and thus the interest rate is lower than on regular taxable bonds of equivalent risk. No similar program exists in Canada.

Moreover, as operating costs escalate, clubs need new sources of revenue to keep up with their expenditures. Renovated or new facilities can provide additional revenue opportunities, which include club suites, concessions, seat licenses, naming rights, signage, and sponsorships. The Canadian major league clubs likely will have to wait for new venues, however. The current Montreal ownership instability may have put plans for a new stadium on hold. The Toronto SkyDome is only a decade old, and while it has been called a dinosaur (largely as a result of the recent trend towards cosy retro-parks like Camden Yard in Baltimore), it appears to be in excellent condition and has the revenue-producing potential that the club owners need to operate profitably.

Taxes also increase Canadian operating costs significantly. The federal government collects a seven percent Goods and Services Tax (“GST”) on the gross price of each baseball ticket. For the Blue Jays, this tax amounted to $3.2 million in 1997. Ontario also has a 10 percent admission tax on all tickets, which cost the Blue Jays another $4.5 million that year. Amusement taxes cost the Blue Jays an additional $900,000 annually. The club must also pay $500,000 in employee health tax payments on behalf of their players who, due to residency restrictions, receive virtually no health benefits for themselves or their families. Business taxes paid to the City of Toronto also cost the Blue Jays $500,000 in 1997. In total, the Blue Jays in 1997 paid $15,700,000 in direct and property taxes to the government.

In addition, income taxes often play a major part in an athlete’s decision of whether or not to seek opportunities in Canada. MLB players on Canadian

---

90. Id.

91. Among the potential sources of revenue at SkyDome are luxury suites (Skyboxes), club seats, “in the action” seats (located directly behind home plate at field-level, closer than traditional grandstand seats), naming rights, concessions, stadium opportunities (such as amusement arcades), ample signage opportunities, and a hotel built into the facility.

92. SUB-COMMITTEE REPORT, supra note 52, at 99-100. In 1994, Revenue Québec sued the Expos for $8 million in provincial health-care premiums. The government demanded $8 million in taxes. Fortunately for the Expos, in September 1995 a provincial judge ruled that the team only had to pay for the time the players lived in the province, about 41 percent of the year. This saved the team more than $1 million a year. ROSENTRAUB, supra note 50, at 341-42.
teams are taxed based on their "duty days," or the number of days in the season. Revenue Canada will tax a player’s income based on the ratio of the number of days spent in Canada to the total number of days in the season. The result is that players for the Blue Jays and Expos have about forty-one percent of their income taxed in Canada, at the highest marginal rate. These taxes have even driven some teams to hold their training camps outside of Canada to reduce the number of "duty days" in the country, and have threatened the ability of some professional teams to attract top players. For example, Steve Francis refused to play for the Vancouver Grizzlies of the National Basketball Association after the club drafted him, forcing the team to trade him. Other athletes, like MLB pitcher Curt Schilling, recently traded from the Philadelphia Phillies to the Arizona Diamondbacks, have contract clauses preventing their teams from trading them to Canadian teams. Finally, Canadian immigration policy often makes it difficult for players’ immediate families, and particularly spouses, to work immediately in Canada.

B. The Expos: Hockey, Politics, and 'The Big Owe'

In 1978, Molson Breweries, the second-largest brewery in Canada, bought the storied Montreal Canadiens hockey team and instituted a huge marketing push geared around the team. While the Canadiens already had an established fan base, the new campaign served to pull fans from other sports. The success of the Canadiens—and of the advertising of Molson—in contrast with the struggle of the Expos, relegated the Expos almost to second-class standing among the sports teams of the city. Another significant blow to the fortunes of the Expos was the success of the Toronto Blue Jays, and the emergence of the Jays as English-speaking Canadians’ major league team of choice. When the Expos were the only Canadian major league team, they were able to attract a substantial following in Ontario. By the 1980s, the Blue Jays, owned by the other major Canadian brewery, Labatt, were highly competitive and also heavily marketed throughout Ontario and the rest of Canada. The success of the Blue Jays and the focus by Molson on the Canadiens signaled a period of

---

93. SUB-COMMITTEE REPORT, supra note 52, at 100.
94. Id.
95. ROSENTRAUB, supra note 50, at 333.
The popularity of the Expos was also hurt by the failure of some of the players to embrace the local culture. Integrating MLB into the Québécois culture is difficult and many players were not willing to try. Most major league players do not speak languages other than English or Spanish. And, since a trade to a team in the United States is always a possibility, players have little incentive to invest time and energy in learning the French language or the Québécois culture.

The political climate during this time also was changing. The Parti Québécois asserted nationalist pressures and demanded focus upon French culture and values. Baseball, with its Anglo-jock culture, was not representative of that political goal. With cultural and image problems compounded by rumors of drug use by players during the late 1970s and early 1980s, and declining levels of attendance, the Expos were having financial troubles. A reduction in payroll followed, which kept the club solvent but drove free agents to other teams willing to pay higher salaries.

The final humiliation, however, was Olympic Stadium (or “The Big O,” also known as “The Big Owe” because of its massive debt service). Olympic Stadium was designed to be the first retractable dome stadium, but the roof was not completed when the building opened in 1976. When the roof was finished in 1988, the mast that was designed to lift a removable section on and off the stadium was the most striking feature of the edifice. The mast, fifty-five stories tall, is the tallest inclined structure in the world. Unfortunately, the retractable roof system failed, and thus the mast has been relegated to tourist attraction. As if that were not enough, in September 1991 a fifty-five-ton block of concrete fell from the stadium to the street.

C. The Canadian Broadcasting Policy

The Canadian Broadcasting Act establishes the broad objectives of Canadian broadcasting policy, providing that “the Canadian broadcasting system should serve to safeguard, enrich and strengthen the cultural, political,
social and economic fabric of Canada." The revenues from the sale of broadcasting rights are a significant part of the financial health of baseball teams and are key to the competitiveness of teams as MLB franchises. In fact, the second most important source of revenue for the teams after ticket sales is television rights fees. Unfortunately, there has not always been an abundant market for broadcasting rights to Blue Jays and Expos games, and the teams have had an extremely difficult time selling rights to all their games. When rights have been sold, they have been severely undervalued. For example, the local television rights to the Expos brought in less than $1 million in 1998—$140 million less than the local television revenues for the New York Yankees during that year.

This difficulty has been compounded by Canadian broadcast policy. The conventional Canadian television networks will continue to play a relatively minor role in acquiring sports properties because they have become primetime centric networks, focused on dramatic and comedic series and network news. This trend will only be reinforced by the new television policy that requires conventional networks to broadcast at least eight hours of "priority programming" per week during primetime. Under this policy, "priority programming" does not include sports. As a result, the only substantial outlets for Blue Jays and Expos games are the specialty sports channels, such as CTV SportsNet and TSN/RDS.

D. The Broadcast Woes of the Expos

The financial situation of the Expos took a turn for the worse in 1999. While the 1999 Expos broadcast revenues were the lowest in MLB, the 2000 broadcast situation has been an unmitigated disaster. The new owners of the Expos reportedly refused to accept the relatively low fees for broadcast rights that the club has managed to garner in the past. Local media outlets, however, also balked, demanding that the team rebuild its fan base before seeking...
higher rights fees.\textsuperscript{105} The result has been that the Montreal Expos had no television contract and no English radio broadcasts in 2000. The club completed a one-year contract with their French-language radio flagship CKAC only three hours before the first pitch of the season. The games could be heard in English only through Internet broadcasts over the web site of the Expos. It is interesting that radio listeners in 2000 numbered from 3,000 to more than 20,000, which rivaled and sometimes surpassed the number of radio listeners in 1999.\textsuperscript{106}

RDS and TSN halted negotiations with the Expos allegedly because of the owner's excessive demands. Reportedly, RDS believed that the Expos were not being realistic in demanding higher rights fees than RDS paid for its most valuable property, the Montreal Canadiens. According to RDS, on average the Canadiens draw twice the audience of a baseball game and four times the advertising revenue.\textsuperscript{107}

\textit{E. Rogers Communications: The 21st Century Fox of Canada?}

In 1995, Interbrew SA, a Belgian brewery, purchased Labatt, and thus became the owner of the Blue Jays. In September 2000, Interbrew sold the majority of its stake in the club to Rogers Communications ("Rogers"), a Toronto-based cable and television broadcast distributor.

There has been much speculation that Rogers intends to establish a partnership with, or purchase, a "content" provider (i.e., an owner of television programming) to carry Blue Jays games. If that were the case, Rogers could capitalize on the popularity of the Blue Jays by using the same vertical integration techniques Rupert Murdoch's News Corporation used to gain entrée to the American sports broadcasting market. Murdoch's purchases of the Los Angeles Dodgers, partial interests in the New York Knicks and Rangers, and options on holdings in the L.A. Lakers and Kings, enable him to offer viewers sports programming through the distribution channels of Murdoch's Fox television network.\textsuperscript{108}

\textsuperscript{107} See Todd, \textit{supra} note 74.
Using the Blue Jays as a programming leader also would solve the "Canadian content" problem. Canadian broadcasters are required to carry a certain amount of "Canadian" programming. This often takes the form of run-of-the-mill dramas and other, typical prime time television fare, most of which (subjectively speaking) is pretty dull, and is rated accordingly. Sports, with its unpredictability of performance and outcomes, garner consistently solid ratings. Blue Jays games qualify as "Canadian content," and thus provide quality prime time content from April through September (or later, if the team makes the playoffs).109

Rogers' strategy appears to be to use the cable sports channel CTV Sportsnet ("Sportsnet") as the main carrier of the Jays in an integrated sports-media alliance that would also include Rogers' Toronto television station CFMT. Rogers could air games on CFMT and use Sportsnet as a national carrier, which Rogers could purchase by exercising a right of first refusal that it holds on CTV shares.110 Key to this strategy is the decision of the Canadian Radio-Television and Telecommunications Commission (CRTC) held earlier this year that CTV, owned by telecommunications giant Bell Canada Enterprises (BCE), must sell its forty percent interest in Sportsnet because it had acquired the other major Canadian cable sports channel, TSN.111

This strategy has its obstacles, however. Foremost among them is that the CRTC has a policy against permitting cable operators like Rogers from owning cable channels.112 Without a cable channel, the Jays become a less-attractive property.

---


110. Sportsnet's ownership agreement gives its shareholders, such as Rogers, a right of first refusal on shares that come available. However, Molson would not be able to make the purchase because it has agreed to sell its approximate ten percent interest to Rogers. Fox Sports, an American company, also is bound, as government regulations would prohibit it from increasing its current twenty percent ownership above thirty percent. See, e.g., Ian Jack, CRTC tells CTV to Sell Sportsnet, NAT'L POST, Mar. 25, 2000, available at 2000 WL 16226652.


Accordingly, a CRTC decision scheduled for the fall is vital to Rogers' plans. The federal regulator will rule on whether BCE, which is also in the cable distribution business as the owner of the Bell ExpressVu small-dish satellite system, can retain ownership of TSN and RDS. Consent of the CRTC to the proposed purchase would appear to signal that Rogers' proposed acquisition of Sportsnet would be approved. Indeed, it would be inconsistent for the regulators to allow the largest telephone group in Canada to control a TV network and a stable of speciality channels such as TSN, but prevent Rogers from controlling Sportsnet because of concerns about vertical integration.113

IV. CAN CANADIAN BASEBALL BE HELPED?

A. Government Involvement

In 1997, the Canadian government created the Sub-Committee for the Study of Sport in Canada (the "Sport Sub-Committee") to study the role and impact of sport on Canadian economics and culture. As part of its mandate, the Sport Sub-Committee studied Canadian professional sports and made recommendations with respect to the potential scope of, and rationale for, increased governmental involvement in the sector.114 The Sport Sub-Committee recognized that sports "are an important source of social cohesion, enabling all individuals in the community to share the same passions and dreams." It also acknowledged that high-level commercial sport is an important contributor to the Canadian economy. Indeed, the Sub-Committee found that the economic contribution of commercial sport goes far beyond the people directly employed by the professional teams. Commercial sport also creates "spin-offs" for the broadcasting, manufacturing, and tourism industries.115

The economic benefits to a city of having a major league team was illustrated by a 1991 study showing that the Toronto Blue Jays and the SkyDome provided 2,700 direct jobs and 500 indirect jobs, with a net GDP

114. SUB-COMMITTEE REPORT, supra note 52, at 2-3.
115. Id. at 101.
contribution estimated at C$97.3 million. The Montreal Expos had a GDP estimated at C$105.3 million, of which C$37.9 million came from outside Montreal, and created roughly 1,252 jobs, of which over 451 were attributed to expenditures by people coming to games from outside of Montreal.116

The Sport Sub-Committee also found that Canadian cities with professional teams possess an intangible competitive advantage over those without with respect to attracting foreign tourists and businesses, and help enhance the international status of Canada. In this regard, the Sport Sub-Committee asserted that major sports are “part of the amenities vital to the definition of cities as global players on the world economic and cultural stages.”117 Moreover, the Sport Sub-Committee identified Canadian professional sport as a key element in the development of grassroots sports talent in Canada. The Sport Sub-Committee stated that, for example, while Canada has always developed the best hockey players in the world, “it is important to preserve this expertise and to develop equal expertise in other sports.”118

1. Government Proposals

The Sport Sub-Committee offered some comprehensive and ambitious proposals, recommending that the government initiative be directed through five key strategies:

1. Implementing the “Canadian professional sport stabilization program” to “assist Canadian franchises that are viable and to reduce the effect of”119 the Canadian/American

116. Id. at 25.
117. Id. at 101.
118. Id.
119. Specifically, the Sport Sub-Committee recommended that:
   a) Small businesses be permitted a 100% entertainment expense deduction for the purchase of tickets, premium seating or suites at professional games rather than fifty percent as currently permitted; and either
   b) Professional sports franchise revenue be subject to a credit (10 percent of the first $50,000,000 of such revenues, less twenty-five percent of such revenues in excess of $60,000,000) and that this credit be deductible from tax otherwise payable to the federal government; or
   c) Capital cost allowances arising from investment in a sports facility be deductible in full in any year the franchise played there, and the right to utilize such deduction
currency exchange rate and the impact of public funding for American facilities. This program would be in place for two years, and would be available to franchises which met certain criteria, including:

a. minimum employment requirements;

b. a profitability test based on the team’s revenue base and costs;

c. demonstrated long-term viability as a franchise;

d. socio-economic benefits to the local community;

e. financial assistance required to compete with its international competitors; and,

f. development and training of employees in the field of sport marketing, administration, broadcasting, and merchandising.\textsuperscript{120}

The team also would have to demonstrate financial involvement and support in the local community as well as in the promotion of fair and ethical amateur sport, including the commitment to the availability of its facilities for such sports.

2. The federal government would attempt to negotiate a Canada-U.S. protocol of income tax harmonization for professional athletes. This protocol would seek to abolish the “duty days” measure currently in force and eliminate the gap between U.S. rates and Canadian rates.

3. The federal government would change its immigration policy in order to allow professionals in the sport industry and their families to immigrate easily to Canada to work.

4. The CRTC would examine the possibility of permitting more channels for broadcasting local professional games on pay-per-view.

5. The federal government would monitor subsidies to sport franchises in the United States and advise provincial governments of the status of professional sport financing in North America to permit the creation of an effective

\textsuperscript{120} Id. at 103-04.
Canadian policy regarding such subsidies. The government would consider the possibility of launching a challenge against U.S. government sports subsidies under the North American Free Trade Agreement (NAFTA) where appropriate.  

The Sport Sub-Committee further recognized that the media is essential to the creation of a healthy sport industry, and not just for the enhanced visibility of athletes and teams. The Sub-Committee found that sport is a significant means of attracting viewers because “sport overpowers all other programming in providing an incentive for viewers to subscribe to cable and satellite television.”

The Sport Sub-Committee also made recommendations regarding Canadian broadcasts, including, among other things:

- Foreign programming services that have strong U.S. sports components should not be allowed to broadcast in Canada.
- The media and government should work together to create a broad-based public awareness campaign that promotes and advertises the benefits of sport and recreation.
- The CRTC should extend mandatory simultaneous signal substitution to specialty services.
- The CRTC should encourage broadcasters to co-operate in providing Canadians with the best possible Canadian programming.
- The CRTC should initiate a study of sport on Canadian television.

121. _Id._ at 104-05.
122. _Id._ at 106 (quoting _Money is the Name of Every Game: The Paymasters, ECONOMIST_, June 6, 1998, at 18).
123. _Id._ at 108-11. The purpose of the study on sport and Canadian television would be two-fold: “(1) to analyze Canadian sport content compared with American sport content (programming involving Canadian teams or athletes) on channels available in Canada and (2) to evaluate the market share of broadcast Canadian sport.” _Id._
2. Is NAFTA a Solution?

To improve the stability and profitability of local professional teams, local governments, particularly in the United States, often have offered public subsidies to team owners and leagues, usually in the form of free land for a facility, zoning concessions, or negligible rents. It has been suggested that the Canadian government and Canadian professional sports teams "level the playing field" by asserting rights under NAFTA. NAFTA is a comprehensive trade agreement concerning goods, services, and investments that is intended to create a North American free trade zone. NAFTA constrains the ability of Member States to pick and choose the location of an industry by giving preferential treatment to any investments or investment opportunities without giving preferential treatment to similar investments or investment opportunities within all the Member States. In other words, a Canadian hockey team located in a Canadian city has to be treated the same as a competing hockey team located in an American city. By permitting inducements to sports teams to be offered by American cities that are unavailable in Canada, the U.S. government arguably violates NAFTA principles.

In particular, two potential obligations under NAFTA may have been violated by American subsidization of professional sports teams. First are "performance" requirements. NAFTA prohibits a government from providing a benefit conditioned on an agreement to use local goods or services. In the present context, it has been argued that an agreement to keep a sports team in a particular location (i.e., an anti-relocation clause) would violate NAFTA's performance requirements provision because it is an inducement to keep an investment, or to operate an investment inside a particular place.

The second alleged NAFTA violation by the Americans has to do with

124. GRUNEAU & WHITSON, supra note 8, at 225.
125. MILLS & LINCOLN, supra note 52, at 96.
126. Id. at 45. Under the proposed argument, NAFTA would apply to sports because sports are deemed "investments" under the agreement. Proponents of NAFTA cite the example of the Nashville Predators as violating the treaty. The Predators were given a $20 million dollar "gift" from the City of Nashville as an inducement to locate the franchise in Nashville. Under NAFTA, this constitutes an illegal "predatory practice." Id. at 96-97.
127. Id. at 45 (quoting Testimony of Barry Appleton (June 4, 1998), SUB-COMMITTEE REPORT, supra note 52, at 6).
"national treatment." National treatment means that, for example, Canadians in the United States must receive the best treatment given to American investors anywhere in the United States in similar circumstances. In essence, the national treatment argument would prohibit an American municipality from making a subsidy available only to a small segment of the business community (e.g., a sports team). And, if such a subsidy were offered, local businesses cannot be preferred over foreign ones.\footnote{128} NAFTA violators are subject to two potential remedies. The first would allow the Canadian government to bring a challenge before a NAFTA panel against the American government. Under this remedy, a panel would determine whether NAFTA has been violated and would act accordingly, although no compensation would be awarded.\footnote{129}

The second route available is the "investor remedy." Under this process, Canadian investors could challenge, before a special no-fault compensation panel, any potential violations by the United States of the investment chapter of NAFTA. If the panel were to determine that Canadian teams were being denied their NAFTA investment rights in the United States, the Canadian teams could be entitled to compensation.\footnote{130} The no-fault compensation panel, however, is not a substitute for the courts. It will not strike laws, rules or regulations, nor change the provisions of any municipal and/or state benefits provided by American localities. The purpose of the no-fault compensation panel is strictly limited to judging whether the purported wrongful activity complied with NAFTA and awarding compensation where appropriate.\footnote{131}

\footnote{128} Id.
\footnote{129} Id. (quoting Testimony of Barry Appleton (June 4, 1998), SUB-COMMITTEE REPORT, supra note 52, at 7).
\footnote{130} Id. (quoting Testimony of Barry Appleton (June 4, 1998), SUB-COMMITTEE REPORT, supra note 52, at 7-8).
\footnote{131} Testimony of Barry Appleton (June 4, 1998) SUB-COMMITTEE REPORT, supra note 53, at 8. In fact, compensation awarded under NAFTA would be payable by the United States federal government, not by the state or local government whose activity created the violation, and not by the professional sports team that was the beneficiary of the American conduct. Furthermore, any negative determination under NAFTA will not affect the activities of any state or local government because state and local governments are not parties to NAFTA. The federal government entered into NAFTA and is the party responsible for policing and paying compensation due under the agreement. Id. at 8.
3. The Future?

The Sport Sub-Committee's proposals were intended to spearhead "a federal strategy aimed at creating a favorable environment for promoting the vitality and stability of professional sport in Canada within the North American market." Instead, shortly after the Sport Sub-Committee issued its report in November of 1998, the federal government proposed a budget that did not incorporate or accept any of its own Sub-committee's recommendations. Why the immediate flip-flop? It appears, simply, that the politicians heard enough backlash against the recommendations to cause them to bail out.

Clearly, the politicians believed that the voters—who in the past decade suffered through the World Series cancellation, NBA and NHL lockouts, contract holdouts, player violence, franchise relocation, and skyrocketing ticket and merchandise prices—were outraged at the suggestion that public money should be spent to bail out rich owners and their rich players. As the financings of the SkyDome and the Olympic Stadium suggest, however, the level of the public's willingness to spend tax dollars on professional sports may have much to do with timing and the prevailing political and cultural climate. The Sport Sub-Committee, however, made many observations and recommendations for enhancing professional sport in Canada and ensuring its long-term vitality. Rather than dismissing them out of hand as "tax cuts to rich non-Canadians," as the government and media did when they first were announced, the proposals should be studied carefully with reference to one fundamental question: Do Canadians want professional sports teams to stay in the country?

Some of the Sport Sub-Committee's recommendations would be difficult, if not impossible, to implement. These include negotiating an international protocol that would protect the earnings of multi-millionaire athletes, and succeeding on a NAFTA claim against American municipalities. Other Sport Sub-Committee proposals were more realistic. Increased marketing of sports, including widespread and concerted action at the grass-roots level to increase youth interest, must be considered. Canada has a relatively sparse, widespread population, the youth of which currently play soccer more than any other

sport. The popularity of soccer among children, and the lack of interest in the
game among North American adults, is a testament to our culture with its
compressed time periods. Youth Soccer, from a parent’s perspective, usually
involves driving (or walking) a short distance to the local field and returning
home an hour or so later. Little league baseball games, in contrast, usually
take more than two hours to play. Baseball also involves (at least at the
beginner level) more practice time to develop the baseball-specific skills of
throwing, hitting, and catching. And because soccer also involves more
running than baseball, and thus tires children more than baseball, it will be
favored by parents who want the children in bed early.

Grass roots marketing of baseball in Canada is therefore essential. MLB,
after seeing an overall decline in youth participation in baseball over the last
twenty years, has already begun this process (witness the introduction at the
2000 All-Star game of the players and their children). In Canada, much more
can be achieved. The number of off-season player appearances must be
increased. A greater number of children and youth leagues, tournaments, and
competitions need to be created and sponsored. Huge blocks of tickets, for
good seats, need to be given or continue to be given at discount rates to
children’s and other groups.

Improving the atmosphere at the ball park is also extremely important.
Often in Canadian ballparks, the atmosphere resembles that of a funeral.
Whether it be from strategically placed “fans” that generate cheers and other
noise, or more active mascot involvement, fans need to be entertained.
Anything interactive that can take place during lulls in the action of a game
could help. Expanding the marketing staff with inexpensive employees (such
as students and interns) adds to the bottom line only slightly, and in the long
run is worth it. Such marketing initiatives, however, are for the most part
“band-aid” solutions. The Canadian disaffection for baseball goes deeper than
can be cured by game day events and free tickets for grammar school children.
Adults are not watching the game (especially in Montreal), and children are
not playing it. Enhanced marketing is a start, particularly in the absence of
other meaningful proposals.

One Canadian cultural characteristic has always created an obstacle to the
success of professional baseball in Canada. Canadians seem to be “band
wagon” fans. The 2000 Blue Jays were in a race for the wild-card spot, but
attendance was flat. It will take sustained glory for attendance even to
The last time the Blue Jays won championships, the club payroll was the highest in MLB. It now is in the middle. In these expensive times, the new owners of the Blue Jays and the new owners of the Expos may not want to top the $100 million Yankees payroll, but some high-priced (and hopefully charismatic) talent would provide some entertainment, which ultimately could help fill some seats.

Baseball leaders see revenue-sharing as a means of helping franchises survive lean years until they can again become financially competitive. MLB utilizes a revenue sharing-system that granted the Expos $9 million in 1997. Moreover, MLB shares all-national U.S. television, radio, trademark and promotional revenues equally among the teams. In 1997, revenues from the U.S. clubs represented fifty-one percent of total Expos revenues, and in 1998 these revenues exceeded sixty percent.133

Baseball could also implement collective solutions, such as salary caps. These solutions would require the agreement of the owners and players. The players consistently have asserted that they never will agree to salary caps. Recently, the MLBPA exercised its option to extend the terms of the collective agreement between the players and clubs to the end of the 2001 season, but labor-management problems over salaries are looming on the horizon of MLB.

CONCLUSION

There are those who claim that the illustrious history of professional baseball—indeed, all professional sports—in Canada is about to draw to a close. Currency disparities, economic trends, and an apathetic market combine to make ownership of a major professional sports team in Canada a huge financial burden that many believe can never be surmounted.

Player salaries have reached such tremendous levels that only a select number of teams can compete economically for the top talent. This, in turn, has lead to a lack of competitive balance on the playing field, and not

133. See generally Richard Justice, Baseball: With the Ante Constantly Rising and High-Payroll Clubs Holding all the Cards, Major League Baseball May Not Be Bluffing When It Says Teams Could Be Headed for This Discard Pile; Time to Fold?, HOUSTON CHRON., Aug. 27, 2000, at 21, available at 2000 WL 24507934 (One MLB owner reportedly has said: “The Pirates and Expos turn a profit because of revenue sharing . . . That’s a joke.”)
surprisingly, a lack of success in the front office for the financially-challenged clubs. While there is a great deal of talk among the baseball powers-that-be regarding the necessity of “fixing” the economics of the sport, there seems to be very little chance of reversing, or even retarding in the slightest, the upward spiral of player salaries and team costs.

In Canada, clubs are presented with somewhat of a Catch-22. They are “small market” teams (hit doubly hard by the currency exchange) and thus must draw significant numbers of fans to garner sufficient gate, advertising, and media revenues. To attract and appease fickle Canadian fans, the teams must win. In order to win, the clubs must expend huge sums to obtain and retain popular stars. Yet, when a Canadian club tries to meet this challenge head on, as Toronto did recently by signing superstar (and fan favorite) Carlos Delgado to a four-year US$68 million contract extension, it is likely to incur the wrath of other owners for contributing to the accelerating costs of MLB ownership.

Toronto, however, fares better than its French-Canadian cousin. The Expos are in danger of losing the club’s top corporate sponsor, Labatt Breweries, unless the team secures a broadcasting agreement for 2001. Moreover, sole ownership of the club reportedly is to be assumed in the near future by Loria, who continues to waffle about the future of the team in Montreal.

Given the deep pockets of Rogers, the economic logic of the proposed broadcasting model, and the past successes of the Blue Jays in both creating a winning club and filling the ball park, it is likely that the Blue Jays will survive and perhaps even thrive well into the twenty-first century. Montreal,

---


135. Bob Elliot, New Jays Owners Are Okay by Bud, TORONTO SUN, Nov. 10, 2000, available at http://www.slam.ca. While Commissioner Selig announced his personal approval of the purchase by Rogers Communications of the Toronto Blue Jays, he and the other MLB owners deferred approving the transfer of ownership reportedly because Rogers had not supplied enough “information” to MLB in support of its application. It is rumored that the deferral was a way for MLB to chastise the Blue Jays for making Delgado the highest-paid player in baseball. Id.

136. See Top Sponsor Threatens to Leave Expos, CANADIAN PRESS, Nov. 17, 2000, available at http://cbc.ca. Labatt’s sponsorship agreement is reported to be worth C$2 million, or one-tenth of the Expos’ estimated losses in 2000. Id.

however, is a different story—with no broadcast partner, huge losses, and American owner with no ties to the city and hungry suitors clamoring from the south, the death knell may already have sounded for MLB in Quebec.