

# FIGHTING FOR CERTAINTY

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## THE LEGALITY OF MIXED MARTIAL ARTS IN CANADA

The popular mixed martial arts (MMA) type of full-contact, combat sports are among the fastest growing spectator sports in the world. While MMA has developed a large following of fans throughout North America, MMA engagements are actually prohibited under Canada's Criminal Code.

Section 83 of the Criminal Code defines a 'prize-fight' and makes it an offence to engage in, or promote a prize-fight in Canada. Under the section 83 definition, MMA contests are considered a form of 'prize-fight' and are therefore illegal. However, in its current form, section 83 carves out two exemptions to legally permit prize-fights. These exemptions have allowed several Canadian provinces to circumvent the general prohibition on prizefighting and host MMA events.

Recently, legislative amendments have been proposed to alter s.83 and uniformly legalize MMA fights in Canada. MMA's rapidly growing popularity, coupled with the savvy lobbying efforts of the world's largest promoter of MMA

events, the Ultimate Fight Championship (UFC), may have contributed greatly to the development of the proposed changes. The amendments, in the form of Bill S-209, were introduced in Canada's Parliament in the spring of 2012. If passed, the proposed legislation will allow the provinces to legally regulate and permit amateur and professional prize-fights, including MMA engagements.

### The Current Prohibition on MMA: Section 83

Section 83 (2) currently defines a prize-fight as,

An encounter or fight with fists or hands, between two persons who have met for that purpose by previous arrangement made by or for them, but a boxing contest between amateur sportsmen, where the contestants wear boxing gloves of not less than one hundred and forty grams each in mass, or any boxing contest held with the permission or under the authority of an athletic board or commission or similar body

established by or under the authority of the legislature of a province for the control of sport within the province, shall be deemed not to be a prize-fight. (Emphasis added)

In its present form, section 83 prohibits combative sporting contests if they:

1. Fall within the section 83 (2) definition of a "prize-fight"; and
2. Do not fall within the section 83(2) exemptions for certain types of boxing contests.

In addition to prohibiting the prize-fight itself, the offence created under section 83 extends to include ancillary staff, attending medical personnel and promoters.

### Amateur Boxing Allowed: Two Exemptions

While the current definition of prize-fights under section

83 is restrictive, the section provides two exemptions.

Amateur boxing contests are allowed, provided that each glove used by the competitors weighs at least 140 grams. Section 83 also provides an exemption from the prize-fighting offence in cases where the province has given permission directly or by way of a provincially established regulatory body. These exemptions mean that prize-fights can be legally undertaken in cases where:

- The fight is regulated by an athletic commission; and
- Cases where the fight is an amateur boxing match

### Competitor Safety: The Reason for Prohibition

Canadian courts have interpreted the reason for the offence created under s.83 to be the protection of the health of competitors in combat-sport contests. The prohibition on prize-fighting in Canada dates as far back as the late nineteenth century.

The legislative goal of protection is illustrated in the two exemptions; the judge in the Ontario case of *R v. MAFA* explained that the amateur boxing exemption is allowed because gloves of at least 140 grams in mass protect the combatants from serious harm. The judge also explained that the second exemption permits prize-fights in cases where the province can regulate to ensure that adequate safety standards are met.

Strong support for the protection of athletes in combative sports also comes from the Canadian Medical Association (CMA). As recently as 2010, an overwhelming majority of delegates at the CMA's annual conference voted for provincial governments to ban professional MMA entirely. The reasons given by the organization included an alleged increased danger of combatants receiving serious neurological injuries. The CMA expressed similar opinions in 2001 when the organization called for a ban on the sport of boxing.

#### MMA is Surprisingly Safe

Contrary to the opinion of the Canadian Medical Association, a 2008 study published in the *British Journal of Sports Medicine* found that combatants in professional, regulated MMA competitions have rates of injury that are similar to other combat sports. Further, a 2006 study at John Hopkins University School of Medicine indicated that in comparison to boxers, MMA athletes have a lower risk of being knocked unconscious, and thus a lower risk of receiving a traumatic brain injury.

#### The Application of Section 83: *R. v. Jay Chang*

In the fall of 2002, Mr. Chang promoted an event called the 'Extreme Fighting Championship' in Saint John, New Brunswick. Competitors in the event used punches and a variety of other arm and leg strikes.

Section 83(2) permits boxing contests if they are held with the permission of a provincially appointed athletic board or commission. The Province of New Brunswick had not established such a regulatory body, meaning that Mr. Chang's event was held without the permission of an appro-

appropriate authority. He was charged for violating section 83(1) by promoting, permitting and encouraging a prize-fight.

Mr. Chang was found guilty. To arrive at his decision, the presiding judge had to be satisfied that Mr. Chang's event fell within the definition of a "prize-fight" under s. 83 and that the event was not saved by the exemptions.

The judge found the event was a prize-fight because contestants were involved in a fight in which fists or hands were used and the contestants had met for the purpose of the fight by way of previous arrangement.

**THE LEGISLATURE'S RECOGNITION OF PROFESSIONAL BOXING AND MMA, AND THE EXCLUSION OF ALL OTHER COMBAT SPORTS AT THE PROFESSIONAL LEVEL, MAY BE DUE TO THE HIGH DEGREE OF POPULARITY AND THE DEMAND FOR THESE TWO COMBATIVE SPORTS AT THE PROFESSIONAL LEVEL.**

On the issue of whether Mr. Chang's event fell within the s.83 exemption for boxing contests, reference is made to *MAFA*. In that case, the accused organized a kickboxing contest in Toronto's west end. The event had not been sanctioned by the Athletics Commissioner of Ontario and was therefore not regulated by Boxing Ontario, the provincial regulatory body that governs the sport of amateur boxing in Ontario. The accused was found guilty of violating section 83 of the Code.

In his closing remarks in the case of *R. v. Chang*, Judge Brien opined that if the type of combative sport contest in question has become popular enough

to reach the point of public acceptance, then such combative sport contests are in need of regulation to protect the contestants.

#### Regulation Not Prohibition

Notwithstanding the prohibition on prize fighting, the section 83 exemptions have provided a way for the provinces to host MMA events. Hosting such events has proven to be a lucrative undertaking and has assisted the spread and development of combat sports in Canada.

The economic incentive for hosting large MMA events was sufficient to induce Ontario's provincial leadership to lift the ban on MMA in 2010. The Ontario government said in a press release that a single MMA event could attract around 30,000 people and generate \$6 million in econom-

ic activity within the province. A study conducted by the UFC after their first event in Toronto (UFC 129), claims that closer to \$30 million was generated.

Many of the combat sports recognized by the Olympic organizing committee are becoming increasingly popular in Canada. These include martial arts such as kick-boxing, judo, karate and taekwondo. Modernizing Canada's criminal code to permit the practice of these sports will allow for their regulation and for the implementation of adequate safety standards, as this would potentially reduce the demand for unregulated and unsafe 'underground' events.

The growing popularity of several forms of combat sports, coupled with the considerable financial incentives for hosting MMA events, prompted the introduction of the Bill S-209 amendments.

#### The Proposed Amendments

In 2012 the proposed amendments to Section 83 were introduced in the Canadian Senate under Bill S-209, An Act to amend the Criminal Code (*Prize-fights*). If passed, Bill S-209 would extend the existing section 83 exemptions. The new exemptions would allow both amateur and professional fights in combative sport contests other than boxing. Bill S-209 would also grant the provinces authority to regulate both amateur and professional prize-fights in combative sports.

The drafters of Bill S-209 hope to achieve these objectives in the following three ways:

1. By allowing amateur combative events for any sport that is listed on the Olympic or Paralympic program. Combative sports in this category include: judo, karate, taekwondo and kick-boxing. This allowance is subject to the province's discretion; the province can require that the sporting event obtain a provincial license.
2. Empowering the provinces to develop a designated list of permissible amateur combat sports. The province would retain the discretionary right to require that a license be obtained for each designated amateur combative sport contest.
3. Providing a continuing exemption, in cases where the province decides to issue a licence for other amateur combative sports.

In addition to the allowances made for amateur combative contests, the amendments proposed under Bill S-209 also specifically contemplate professional MMA contests. The Bill states that a professional MMA contest that was licensed by a province would be an exception to the prize-fighting offence in section 83 of the Criminal Code.

Interestingly, the exemption for professional MMA or boxing contests does not extend to any other professional combative sports. According to Mr. Robert Goguen, Parliamentary Secretary to the Minister of Justice, the legislature's recognition of professional boxing and MMA and the exclusion of all other combat sports at the professional level, may be due to the high degree of popularity and the demand for these two combative sports at the professional level.

As counsel, the impending regulation of MMA and combative sports in general will be felt most acutely in areas related to insurance and sponsorship. Due to the perception of greater violence, liability agreements will have to be carefully crafted to appease promoters, insurers and sponsors. Inevitably, as time passes, MMA will have many of the same challenges that all high impact sports face.

With much hard work and determination, MMA has established its seat at the main table of major sports in North America. It is an example of how a new and emerging sport, through its grass root popularity, can influence policy making and legislation.

While the current legal framework remains uncertain in Canada, with the pending legislation amendments, the future bodes well for the combative community in North America.



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