



## **The Legality of Mixed Martial Arts in Canada: Fighting for Certainty**

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The popular Mixed Martial Arts (MMA) type of full-contact, combat sports are among the fastest growing spectator sports in the world.<sup>1</sup> While MMA has developed a large following of fans throughout North America, MMA engagements are actually prohibited under Canada's Criminal Code.

The Criminal Code of Canada is federal legislation that provides a uniform criminal law for all of Canada's provinces. 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.<sup>2</sup> (Emphasis added)

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<sup>1</sup> City of Vancouver, Standing Committee on City Services and Budgets, *Mixed Martial Arts-Sanctioning by the Vancouver Athletic Commission*, December 2009 <

<http://former.vancouver.ca/ctyclerk/cclerk//20091217/documents/csbu1.pdf> >

<sup>2</sup> Criminal Code, R.S.C., 1985, c. C-46, s.83(2).

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. Specifically, section 83 prohibits involvement in the following activities as they relate to prize-fighting:

- Participating as a combatant in a prize-fight;
- Promoting a prize-fight; or
- Attending a prize-fight as an aid, second, surgeon, umpire, backer or reporter.

While the current definition of prize-fights under section 83 is restrictive, the section provides two exemptions.

### **Amateur Boxing Allowed: The Two Exemptions under Section 83**

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.<sup>3</sup>

### **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.<sup>4</sup> The prohibition on prize-fighting in Canada dates as far back as the late nineteenth century.<sup>5</sup>

The legislative goal of protection is illustrated in the two exemptions granted under section 83; amateur boxing contests where the participants wear gloves of a certain minimum weight and prize-fights which are sanctioned by, and under the regulation of, a commission or body appointed by the province.

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<sup>3</sup> Each glove weighing no less than 140 grams.

<sup>4</sup> See *R. v. M.A.F.A.Inc.*, [2000] O.J. No. 899 (Ct. J.) (QL).

<sup>5</sup> *R.v. Pelkey* (1913), 6 Alta LR 103, 21 CCC 387.

The judge in the Ontario case of *R. v. M.A.F.A* explained that, the amateur boxing exemption is allowed because gloves of at least 140 grams in mass protect the combatants from serious harm.<sup>6</sup>

In *R. v. M.A.F.A* 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 Canadian Medical Association's annual conference, voted for provincial governments to ban professional MMA entirely.<sup>7</sup> The reasons given by the organization for its position on MMA 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.<sup>8</sup>

### **MMA is Surprisingly Safe**

Contrary to the opinion of the Canadian Medical Association, a growing body of research suggests that combatants in professional, regulated MMA competitions have rates of injury that are similar to other combat sports.<sup>9</sup> Further, in comparison to boxers, participants in MMA have a lower risk of being knocked unconscious, and thus a lower risk of receiving a Traumatic Brain Injury.<sup>10</sup>

Possible explanations for the findings include:<sup>11</sup>

- In MMA, fighters can submit or “tap-out” before receiving a serious injury. In boxing, the fight usually ends when one competitor is rendered unconscious from blows to the head, or when a referee calls a stop;
- Blows to the head are less common in MMA than in boxing. A large portion of an MMA fight usually takes place on the ground with combatants using grappling and wrestling techniques. This reduces the incidence and frequency of concussive blows;
- MMA fights are heavily regulated. Canadian jurisdictions that currently allow MMA contests are doing so under the Unified Rules of MMA.<sup>12</sup> These widely accepted rules are in use by several athletic commissions in the U.S.A. as well as other jurisdictions internationally. The Unified Rules of MMA help act to protect the safety of MMA competitors.

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6 Supra note 5 at 43.

7 Daniel Girard, “Doctors Want Ban on MMA”, (August 2010). <<http://www.thestar.com/sports/mma/article/852091--doctors-want-ban-on-MMA-martial-arts>>.

8 Canadian Medical Association, Office for Public Health (2002). <[www.cma.ca/index.cfm/ci\\_id/3385/la\\_id/1.htm](http://www.cma.ca/index.cfm/ci_id/3385/la_id/1.htm)>.

9 Ka Ming Ngai, Frederick Levy & Edbert B. Hsu, “Injury Trends In Sanctioned Mixed Martial Arts Competition: A Five-Year Review 2002-2007” (2007), Br J Sports Med. <<http://bjsm.bmj.com/content/early/2008/03/04/bjism.2007.044891.abstract>>.

10 Gregory H. Bledsoe et al, “Incidence of Injury in Professional Mixed martial Arts Competitions” (2006), Journal of Sports Science and Medicine. <<http://www.jssm.org/combat/1/18/v5combat-18.pdf>>.

11 Mr. Massimo Pacetti, Liberal MP for Saint-Léonard—Saint-Michel (Québec), House of Commons 41st Parliament. November 23rd 2012, <<http://openparliament.ca/debates/2012/11/23/robert-goguen-1/>>.

12 Supra note 1 at 3.

Notwithstanding the growing popularity and the relative safety of regulated, professional MMA events as compared to boxing, prize-fighting remains an offence that is enforced by Canadian courts.

### **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.<sup>13</sup> 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, responsible for the control of combative sports. This meant that Mr. Chang’s event was held without the permission of an 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 two elements existed:

1. That Mr. Chang’s event fell within the definition of a “prize-fight” under s. 83; and
2. That Mr. Chang’s event was not saved by the exemptions under s.83.

The judge found the event was a prize-fight because it satisfied all three of the s.83 elements of a prize-fight. Specifically, that contestants were involved in a fight, fists or hands were used and the contestants had met for the purpose of the fight by way of previous arrangement.

On the issue of whether Mr. Chang’s event fell within the s.83 exemption for boxing contests, reference is made to the 2000 Ontario case of Ontario case *R. v. M.A.F.A. Inc.* 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.

The judge in *R. v. M.A.F.A.* found that MMA contests did not fall within the exemption.<sup>14</sup> This finding was applied in *R. v. Chang*.

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. Judge Brien also stated that such regulation is the purview of federal and provincial legislators.

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<sup>13</sup> *R. v. Jay Chang*, 2003 NBPC 11. <<http://www.canlii.org/en/nb/nbpc/doc/2003/2003nbpc11/2003nbpc11.htm>.

<sup>14</sup> *Supra* note 5.

## **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.

Many of the combat sports that are recognized by the Olympic organizing committee are becoming increasingly popular in Canada. These include martial arts such as Judo, Karate and Tae Kwon-do.<sup>15</sup> 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. Legalizing and regulating such combat sports could potentially reduce the demand for unregulated and unsafe 'underground' events.<sup>16</sup> Instead, provincially sanctioned events could be a large source of revenue for provinces and municipalities.<sup>17</sup>

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 economic 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 from the event.<sup>18</sup> 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.

## **Federal Regulation of MMA: The Proposed Amendments to Section 83**

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)'.<sup>19</sup> If passed, Bill S-209 would extend the existing section 83 exemptions for the offence of prize-fighting. 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.

## **Bill S-209 and Amateur Combative Sport Contests**

The Bill is intended to extend current section 83 exemptions for amateur prize-fights and facilitate provincial regulation of amateur combative contests. The drafters of Bill S-209 hope to achieve these objectives in the following three ways:

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<sup>15</sup> Supra note 11.

<sup>16</sup> Dr. Shelby Karpman, "MMA Ban Would Take Sport Underground" CTV.ca (August 2010). <<http://www.ctvnews.ca/MMA-martial-arts-ban-would-take-sport-underground-1.546192>>.

<sup>17</sup> Ibid.

<sup>18</sup> Chris Doucette, "UFC Pumps Millions Into Economy" Toronto Sun, (September 2012). <<http://www.torontosun.com/2012/09/09/ufc-pumps-millions-into-economy>>.

<sup>19</sup> Bill S-209 An Act to Amend the Criminal Code (Prize-fights), 41st parliament, 1st Session.

<<http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Mode=1&Language=E&billId=5462885&View=0>>.

- 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, Tae Kwon Do, Kick-Boxing. This allowance is subject to the province's discretion; the province can require that the sporting event obtain a provincial license.
- 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.
- Providing a continuing exemption, in cases where the province decides to issue a licence for other amateur combative sports.<sup>20</sup>

### **Bill S-209 and Professional Combative Sport Contests**

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.<sup>21</sup>

### **Status of Bill S-209**

The Bill was introduced into the Senate on March 15<sup>th</sup> 2012. Since that time The Bill has passed the Second Reading, Committee and Third Reading stages in the upper house. To date (March 4<sup>th</sup> 2013), Bill S-209 had completed the Second Reading in the House of Commons and had been referred to Committee in that House on November 28<sup>th</sup> 2012.<sup>22</sup> After the Committee stage, the Bill will be returned to the House of Commons for final debate. If approved it will then receive Royal Assent and be passed into law.

### **Provincial and Municipal Regulation of MMA**

Several Canadian provinces and municipalities have permitted prize-fights in combat sports by establishing Athletics Commissions mandated with the regulation of combat sports and MMA.

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<sup>20</sup> The term 'Other Combative Sports' refers to those combative sports not listed on the Olympic or Paralympic program, nor on the provincial designated list of permissible amateur combat sports.

<sup>21</sup> Robert Goguen, Private Member's Business, House of Commons. November 23rd 2012.

< <http://openparliament.ca/debates/2012/11/23/robert-goguen-1/> >.

<sup>22</sup> Supra note 19.

The provinces of Manitoba, Ontario, Nova Scotia and Quebec and the municipalities of Calgary, Edmonton, Prince George and several other municipalities in British Columbia currently sanction MMA events.<sup>23</sup> Please see Table 1.

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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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Supra note 1.

## How Provinces Regulate MMA in Canada

Province	Method of Regulation
Alberta	<ul style="list-style-type: none"> <li>• Combat Sports are regulated through a Commission, authorized under the Municipal Government Act;</li> <li>• Section 535.1(1) of the Act, entitled "Protection of Sporting Commissions" defines a "commission" to be one established by by-law, for controlling and regulating any of "boxing, wrestling, full contact karate, kickboxing, any other sport that holds contests where opponents strike each other with a hand, foot, knee, elbow or other part of the body"</li> </ul>
British Columbia	<ul style="list-style-type: none"> <li>• MMA is sanctioned at the municipal level in Prince George, Nanaimo and other small municipalities;</li> <li>• Those municipalities sanctioning MMA events are doing so pursuant to their authority under the Community Charter; the Act provides, in section 143(2), that "council may by bylaw establish an athletic commission to make rules regulating professional boxing, wrestling and similar activities, contests and exhibitions";</li> </ul>
Manitoba	<ul style="list-style-type: none"> <li>• Regulates combat sports through a provincial Boxing Commission, created pursuant to the Boxing Commission Act;</li> <li>• The Act provides provincial authority to specifically regulate all "combat sports", which explicitly includes martial arts;</li> </ul>
Nova Scotia	<ul style="list-style-type: none"> <li>• Regulates combat sporting events through a Provincial Athletic Commission;</li> <li>• The Nova Scotia Boxing Authority Act and Regulations defines "boxing" to include "combat sports" which means a sport involving full body contact between contestants in which a contestant uses a fist, whether open or closed, or a weapon held in a fist, and includes but is not limited to the following martial arts: kickboxing, shoot fighting, karate, tae kwon do and jujitsu.</li> </ul>
Ontario	<ul style="list-style-type: none"> <li>• Amateur MMA are regulated by Kickboxing Ontario.</li> <li>• Professional MMA is regulated by the Ontario Athletics Commission under the Athletics Control Act and Amendments.</li> </ul>
Quebec	<ul style="list-style-type: none"> <li>• Regulates combat sporting events provincially, through the Quebec Athletic Commission;</li> <li>• The provincial Act Respecting Safety in Sports defines "combat sports" to include boxing, kickboxing and "MMA boxing", and provides for the types of blows or actions which are not allowed;</li> </ul>