International Municipal Lawyer's Association Conference

Lessons Learned – A Checklist for Bidding on Olympic Games and other Major Sporting Events

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You have been called into a meeting involving several City Officials and other people you don't know to receive the news that your municipality is bidding on the Olympic Games. As Legal Counsel for the municipality where do you start? Unfortunately, it is difficult to find outside counsel to assist you as very few lawyers have had this experience. In researching other municipalities who have bid on major sporting events you will likely find your best contacts to assist you.

The purpose of this paper is to set out some of the preliminary matters that must be tackled in order to properly represent your municipality. While the task is very daunting, it is also one of the most exciting challenges you may face as a municipal corporate lawyer. It is also very revealing, as competing for sporting events at the international level brings an entirely new meaning to the word "politics". Also, don't be surprised if legal counsel representing the other parties you will work with in bringing together the bid proposal, have known about this for a much longer time than you have and have been involved in the development of the bid concept right from the beginning. It should not be a surprise either that a number of these legal counsel will be former Olympic athletes themselves. Hosting a world sports event is a three stage process: first there is the bid stage, then once the games are awarded the preparations to host, and finally the clean-up including responsibility for any deficit or division of any surplus, and the

legacy or long-term impact on the City. This paper will substantially reflect experiences gained in working on Toronto's unsuccessful bid for the 2008 Olympics. Additionally, references are taken from the Agreements entered into for various Pan-American Games information made available at Toronto respecting the 1996 Atlanta Summer Games and the Vancouver 2010 Olympics Host City Contract.

Formation of a Bid Corporation

It is necessary to establish early on an arms length corporation to carry out the day-to-day tasks involved in the preparation of and the selling of the bid to the International Olympic Committee (IOC). Bid City Agreement setting out the roles and responsibilities of the bid corporation (BIDCO) will be the first of several Agreements to be negotiated. In addition to your municipality, the parties will include your Federal Government, State or Provincial Government, and National Olympic Association (NOA) at a minimum. The support of the NOA is critical as it will also be a party to the IOC Host City contract. It will be the BIDCO's responsibility to develop the bid proposal, to earmark the resources necessary to support the bid and come up with proposals to meet those financial needs, and to carry out any lobbying activities on behalf of the bid (in accordance with IOC Guidelines). While it is the municipality and not an alternate corporation or authority that will be required to execute all of the agreements with the IOC, the municipality can expect a real challenge to maintain control of the bid process.

There will be some very powerful and very assertive members of the BIDCO and NOA who will take very hard positions that are not always in the best interest of a municipality. Part of this is simply because they often lack a clear understanding of our culture and authority, so part of the

job of municipal staff will be to gently educate them. Some of the key issues that must be sorted out from the beginning include the following:

- Does your municipality have the necessary legal authority to participate in the formation of such a corporation? In the Province of Ontario for example, municipalities do not have the authority to form such a corporation. Ways around this include obtaining special legislation authority (as was done when Toronto bid on the 1996 Olympics) or have City Officials execute the necessary documentation in their personal capacity with the City providing full indemnity to them (as was done in the case of the 2008 Olympic Bid);
- Are there any benefits to incorporating federally as opposed to creating a state or provincial corporation – factors to be considered include the time required to complete the incorporation, requirements with respect to the filing of by-laws and obtaining other types of regulatory approvals, tax considerations, and the other preference of any or all of the parties;
- **Board of Directors** – it will be important to balance the needs and more significantly the wants, of all incorporators. The NOA must support the bid for it to be considered by the IOC and will use this power to ensure that it has the percentage and control over representation it believes it deserves. The NOA's representation will include its IOC members and a number of high profile former Olympic athletes to act as "ambassadors" for the bid. Don't be surprised of the NOA wants to be able to have approval of the nominees on the BIDCO of the other parties as well. Other levels of government who are providing financial assistance and government services necessary to support the bid (to be discussed further on) will also insist on substantial representation on the BIDCO

Board. Expect these parties to take a position that municipal representation is less important, despite the fact that the games are awarded to a City, and expect some significant pressure on this. Also, pressures from adjacent municipalities that will be called upon to host Olympic training and/or competition venues must be considered. They will be making a significant financial and community investment in the success of the bid and may insist on representation on the Board. Finally, all parties will need to agree at the outset whether representation can include sitting politicians or whether representation on the Board of Directors should be restricted to leaders of sports and industry. Usually the Mayor of the host City is an exception to any push to keep sitting politicians off of the Board of Directors of the BIDCO. Good luck!

- **Executive Committee** – as can be expected, the Board of Directors of the BIDCO can be quite large. In the case of Toronto, when the BIDCO was formed there were 98 directors. No corporation can succeed, and especially a corporation with the purpose of bidding on an international sporting events with such an unwieldy board. Early consideration must therefore be given to the creation of a smaller Executive Committee with powers to make decisions on key strategic issues quickly. Membership on the Executive Committee and the powers of the committee will be key to its ability to function. It is here that issues respecting voting rights and veto powers, the ability to hire and fire senior officials of the BIDCO, spending and marketing decisions any may more critical decisions will take place. It will also be the responsibility of the Executive Committee to signoff on a business plan for the bid and to establish accounting, auditing, travel, procurement and financial management policies;

- **Selecting Corporate Officers** – All parties will insist on a role in appointing the Chief Operating Officer and Chief Financial Officer of the BIDCO and in defining the responsibilities and authority of these positions. Unless the City has full indemnification from other levels of government the City will need to ensure that it has a significant role in choosing these individuals;
- **Other Committees** – an Audit Committee, Co-Marketing Committee, Venues Committee, Athletes Committee, Media Coordinator Committee to name a few;
- **Community Consultation/Involvement** – community commitment is seen by many municipalities and NOA's as critical to a successful bid. It may therefore be appropriate to address how this will be achieved i.e. how/what consultation and opportunities for public involvement will occur, in the BIDCO organizing agreement. In so doing local councillors, and especially those whose wards will host venues or infrastructure, will have some assurance that a process the municipality is comfortable with will be followed;
- **Name of the Corporation** – naming the BIDCO can be a very contentious issue. The name must identify the corporation with the City's bid and the games and year to which the bid relates. Again, this can become a contentious issue;
- **BIDCO as Agent** – generally this agreement will clearly state the relationship between the BIDCO, the NOA and the municipality. It is essential to consider the extent to which the BIDCO can bind the municipality in other agreements it enters into; and,
- **Transition** – the BIDCO agreement will also contain provisions to address the orderly transition from the BIDCO to the Organizing Committee for the Olympic Games (OCOG), where a bid is successful.

Preparing the Bid

Most municipalities that are large enough to bid on significant international sporting events are used to having fairly strong bargaining power when negotiating agreements with private sector industry, and even with other levels of government. When dealing with organizations like the IOC and your NOA however, one quickly learns that contracts prepared by the IOC must be executed substantially in the form you received them with very little to no opportunity to amend them in any way. The Host City Contract is the primary document setting out the relationship between the municipality, the NOA and the IOC respecting the Olympic Games. It is governed by Swiss law and you will therefore be required to understand how your municipality will be impacted by a contract based on a civil code jurisdiction rather than our common law based jurisdiction. The Olympic Charter and a number of IOC Guides and provisions that must be followed are incorporated by reference or as appendices to the Host City Contract.

Several months before the Host City Contract is executed you will be required to submit a binding undertaking wherein you agree, as a bidding City, to execute the Host City Contract without amendment, despite the fact that the IOC can make changes to the Host City Contract up until it is executed. Essentially what the Host City Contract does is set out all of the IOC requirements respecting the staging of the games, provision for accommodation, the sports and cultural programs, venues and training facilities, ceremonies and medals, ownership by IOC of all intellectual property, ticketing, media arrangements, marketing agreements and relationships, obligations respecting accreditation, provisions for medical facilities and anti-doping, and provisions to recognize the jurisdiction of the Court of Arbitration for Sports, which is an IOC affiliate, in the event of any sporting event controversies. Essentially, this agreement gives the

IOC rights to all the good stuff and gives the host City and the NOA responsibility for meeting the IOC's requirements, financing the games and indemnifying the IOC. At the time the BIDCO is established the NOA will transfer all of its responsibilities to the host City and to a lesser extent the BIDCO while retaining certain rights to market and plan the sporting events, among other things. The extent to which the host City will be responsible for providing the indemnifications and holding the financial liability for the games will depend on its bargaining position with other levels of government who may or may not share this responsibility. In the case of the Toronto bid, the City was primarily responsible for providing these indemnifications however this is not always the case. In other situations, such as the Vancouver bid, the City of Vancouver was able to obtain an indemnity from the Province that was not available to surrounding municipalities who were venues to some of the games.

Issues Impacting Municipalities (in addition to the Games Venues)

I have attached to this paper a list of some of the key issues I have identified that will be encountered in putting together agreements to support an Olympic bid. The BIDCO will assume primary responsibility for negotiating agreements for training and competition venues as well as agreements to stabilize pricing for hotels and other services that will be required for athletes, the media, the Olympic family and the fans of the sporting events who will attend. A municipality may or may not be involved in this role. There will be some key expenditures that a municipality will be required to make and the most critical of these need to be addressed in greater detail.

- **Infrastructure** – key to a successful bid is the ability to provide for the full sports program to be held within a fairly compact area. One of the technical strengths of the

Toronto bid was that all competition venues were to be located within one hour of the Olympic Village, which was to be located on the waterfront in the Eastern Portlands of Toronto. The Olympic Stadium would have been walking distance from the Olympic Village. While it is preferable that training facilities also be easily accessible, they can be spread a little further a field. Sufficient security provisions and adequate transportation infrastructure network is critical to all bids. The Toronto bid was unique in that it proposed 27 competition venues to be located within 5 "Olympic rings" located on the Toronto waterfront within a few kilometres of each other. This would require expansions to highway and transit infrastructure as well as water access via ferry service. All levels of government were required to bring money, land, available security and emergency service resources to the table, among other things. Given the huge volume of people that must move from location to location during the staging of the games, appropriate transportation infrastructure is critical. To a large extent this means public transit. There is a six year space between the awarding and actual hosting of the games to allow for this infrastructure to be constructed. It will be beyond the financial ability and beyond the long term needs of most municipalities to provide for all of the necessary public transit resources. The municipal transit authority will be instrumental in making arrangements with other municipalities for the loan of buses and commuter trains for the duration of the games, and for the necessary human resources to operate them. To the extent that new equipment can be acquired, it will be necessary to set out the frame work for this so that municipal procurement policies are followed. Given the profile of such events it will also be very important that Trade Agreements entered into by other levels of government

and/or statutes effecting procurement are followed as the size of such a contract will likely generate greater interest than usual in a municipal procurement.;

- **Land Use and Regulatory** – changes will have to be made and by-laws amended to accommodate hosting the event. Zoning by-laws may need to be amended to allow for the construction of venues, and statutory requirements for public hearings and potential appeals will need to be taken into account. Noise, sign, idling, traffic by-laws and by-laws respecting hours of operation and the service of alcohol will have to be relaxed to meet the requirements of the IOC and/or the reality of the crowd expectations;
- **Public Legacy** – one of the fundamental principles for preparing a successful bid is the establishment of a public legacy. In other words, what will be left behind for the municipality? Sydney, Australia is a great example of how the Olympic Games were used to rehabilitate and reuse very contaminated brownfields site creating a wonderful revitalized area that will benefit the City and the nation for years to come. Likewise, the 2008 Toronto Olympic bid was premised on developing as its primary site an old location on the waterfront near the City's downtown that had been seriously contaminated as a result of its use by oil refineries a century ago and has had very little active use since then.

When the City of Calgary hosted the winter Olympics in 1988, the City had a surplus that allowed it to partially pay for the maintenance of the newly constructed Olympic for a number of years to come. This was instrumental in allowing Calgary to develop itself as a winter training facility for athletes and many of its facilities are still well used for this purpose today.

Even though Toronto was not successful in its bid to host the 2008 Olympic Games, the City was able to develop a legacy of sort in the development of Olympic Spirit Toronto. Olympic Spirit Toronto opened in August, 2004 and is a 52,000 square foot complex housing several interactive simulators and activities relating to Olympic athletes. It is the first permanent Olympic Spirit Centre in the world and has proved to be a major tourist attraction for the City of Toronto;

- **Reducing the risk to the Municipality** – as previously noted, the municipality will be responsible for indemnifying the IOC and the NOA against all liability associated with the bid and where successful the hosting of the Olympic games. As municipalities rely substantially on tax dollars fro this purpose it s very important to take all steps necessary to make the bid and the games as risk free as possible. In the preliminary agreements with the NOA it will therefore be important that the municipality maintain the ability to walk away from the event in the event that it does not receive sufficient levels of support, both financial and otherwise, from other levels of government. To address this it is also important to determine early on who will own the facilities that will be left after the games. It is usually without doubt the municipality that will own and assume responsibility for all transportation infrastructure including roads and public transit infrastructure. When it comes to competition and training venues this can sometimes be determined based on ownership of land or contribution to construction costs. Where other levels of government are funding the construction of capital facilities on municipal lands even where on municipal lands however there may be some insistence that the

facilities be sold so that some of the capital expense can be recovered after the games. The expectations should be known at the outset.

It should also be anticipated that most available construction contractors and material suppliers will be stretched to capacity in meeting the needs of the Games. In addition to the Games themselves, private businesses will be looking to expand facilities such as building new hotels and restaurants in anticipation of the crowds that will come to view the games and the boost in tourism that can be expected for future years to come. Consideration therefore should be given to negotiating and fixing guaranteed constructions prices for key venues at the bid stage. To the extent that competition and training venues can be negotiated as turnkey operations, the municipality can substantially reduce its risk of cost overruns relates to these facilities.

- Public Support – community consultation through public information sessions, surveys, workshops, community meetings, opinion polls and other mechanisms are very important to developing a bid that can be supported by municipal politicians. Don't be surprised if the BIDCO and possibly even the NOA do not share the City's keenness in soliciting public input and form moulding the bid proposal to address public concerns. In 1990, when the City of Toronto submitted its bid for the 1996 Olympic Games which the City of Atlanta successfully bid on, Toronto learned the impact of public comment when a local group called "Breed not Circuses" strongly opposed the bid. This group was very successful in its organizing efforts attacking the bid on the basis that all level of government should be doing more to support low income housing and social benefits

rather than such sporting events. This group not only campaigned at home but strongly lobbied IOC members and attract the attention of the international media. When Toronto bid on the 2008 Olympic Games a great deal of time and attention was put into making these concerns before they could event be voiced.

- Issues List – attached to this paper is a copy of a draft issues list prepared by the City setting out the required input from all levels of government; and,
- Useful Information – attached to this paper is a list of useful websites on where to find information respecting the key documents you will need to work with.

Impact on the City

While there are certainly a lot of benefits to be gained by a municipality in successfully hosting a major international sports event such as the Olympic Games or the Pan-American Games, there are also a number of risks and the number of other side effects that must be considered. In addition to the ever-critical spectra of a financial burden, some of the "other" issues that must be thought out at the time a bid is proposed include the following:

- Can the City sustain facilities constructed for the Olympics in the long term, and if not what will happen to them? If kept, who will pay to maintain them and how will they be funded? i.e. user fees, government subsidy, legacy fund.
- Will the games require the dislocation of low income tenants and if so, what arrangements need to be made for new low income housing, for expropriation of lands?
- What will happen to the Olympic Village? i.e. can the Olympic village provide new affordable housing stock or will it be positive turned in to high-end condominiums?
- Will the games provide any long term environmental legacies?

- What local social/activist groups are there in your community that may try to influence or stop the bid? What impact will these groups have on how your municipal council responds to bid issues?
- How strong is your Council support for the bid?
- Is the political climate at all levels, but especially at the local level, stable enough to sustain the momentum between the time the bid is submitted and the games are awarded? Is it strong enough to sustain the momentum until the games take place?
- Are City officials and politicians both united behind the bid?
- How will staff ensure that City Council will be provided with sufficient information to enter into the bid process with "eyes wide open"?
- Do senior staff and City politicians share the same vision of the bid?

As Legal Counsel for the municipality you must also be prepared to answer the following ethical questions:

- What is my role (vs. the role of other City officials) in the negotiation of the bid and related agreements?
- Who do I take instructions from i.e. the City Manager or Council or someone else?
- Who do I inform (if anyone) if I have any concerns with activities of the BIDCO?
- What is my role with the BIDCO? the OCOG?
- Do I speak up if I don't agree with what the BIDCO is saying to Council, or the IOC Evaluation Team?

These are all important issues you will be called upon to face as others may get carried away with the overwhelming emotions that are generated by this experience.

While other parties may tell you this is not a "little league" municipal project, it is important to keep grounded throughout the process and assume the responsibilities of your position, while still having fun and being helpful.

LIST OF ISSUES RELATED TO THE CITY'S BID

Olympic athletes village, Media, Olympic family, Judges, Referees, Sponsors, Spectators – hotel price central plans
By-laws – review regulatory and land use by-laws and revise as necessary
Consultation – identify key citizen groups most impacted by the bid – develop key consultation strategies – develop an "action plan" for keeping local media and citizens informed of the progress of the bid – solicit volunteers
Cooperation with service areas which are the primary responsibility of other levels of government
Cultural program – City should lead plans for this as will showcase the City to the world
Declaration regarding no competing events – IOC requirement
Dispute Resolution Mechanisms – all levels – varied
Emergency services – fire, police, ambulance – impact
Environmental Assessments and compliance with environmental legislation
Financing and debt approvals
Heritage protection
Housing – tenant dislocation prevention; Assessment Act; new affordable housing stock
Immigration – Work Permits for volunteers – Visas – recognition of IOC Olympic Accreditations
Import/Export of Goods/Customs arrangements
Intellectual Property – protection of IOC rights – use if the Olympic official marks of the IOC and NOA
Legacy – contributions to NOA sports funds – municipal legacy, including future maintenance of facilities that will remain after the games
Liquor Permits and possible extensions
Local pressures – increased pressures on community, social and health services (long term and short term) will need to be addressed

Marketing Programs – IOC and NOC requirements and restrictions - coin program, stamps, lottery – recognition of IOC and NOC sponsor partnerships - advertising and sign by-law amendments to comply with above - galas and auctions
Medical/Health Support – IOC medical/health service requirements – veterinary support – IOC Medical Commission and doping controls needs – laboratory in City
Media – IOC and NOC requirements
Noise and traffic - impact on those living near venues
Official Languages – IOC and national requirements
Parks, Conservation Authorities – potential venues and authorizations
Policing and security – local, state/provincial, national – military security
Protocol – international security arrangements and accommodations
Strategic Land Assembly – official plan amendments; zoning; infrastructure; land assembly; expropriation of leasehold and freehold interests and associated costs; community improvement plans or other development incentives
Telecommunications – CRTC regulation - IOC requirements
Tickets – affordable – IOC requirements
Transportation – local, regional transit – highway infrastructure – water taxis – airport capacity development
Venues – competition and training venues – construction agreements and financing – adjacent municipal facilities
Waterfront Development – Port Authority, Coast Guard

List of Websites

Olympic Charter, Anti-doping and sports, (International Olympic Committee)	**Olympic Charter:** http://www.olympic.org/uk/organisation/missions/charter_uk.asp http://www.olympic.us/12699.htm http://www.acnoa.org/ http://www.olympic.ca/EN/newsletters/2e.shtml **Anti-doping and sports:** http://www.wada-ama.org/en/dynamic.ch2?pageCategory_id=47 http://www.olympic.org/uk/index_uk.asp http://www.usantidoping.org/files/active/what/usada_guide.pdf http://www.usolympicteam.com/12946.htm http://www.usoc.org/National_Anti-Doping_Poliicies_August_13_04.pdf
Canadian Olympic Association, United States Olympic Association	**Canadian Olympic Association:** http://www.olympic.ca/splash.html **United States Olympic Association:** http://www.olympic.org/uk/organisation/noc/noc_uk.asp?noc_initials=USA http://www.usolympicteam.com/
Pan American Games	http://www.panamgames2003.com/ http://www.internationalgames.net/panamegamsum.htm
Common Wealth Games	http://www.sportengland.org/index/news_and_media/commonwealth_games_2006.htm

World Cup Soccer	http://www.wldcup.com/ http://www.world-cup-info.com/
Olympic Spirit Toronto	www.olympicspirit.ca