

ONTARIO COURT OF JUSTICE

PROVINCIAL OFFENCES COURT

HER MAJESTY THE QUEEN

- against -

MICHAEL MCNAMARA AND MARTIN MCNAMARA

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ATHLETICS CONTROL ACT, s. 13(2)

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PROCEEDINGS AT TRIAL

BEFORE HIS WORSHIP MR. P. SOLOMON
on Wednesday, January 27, 2010,
at NEWMARKET, Ontario

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APPEARANCES

MS. J. HOOEY

Counsel for the Ministry of
Business and Consumer Services

MR. R. STANWICK

Counsel for the defendants

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Wednesday, January 27, 2010

MS. HOOEY: Good morning, Your Worship...

THE COURT: Good morning.

MS. HOOEY: ...it's Hooey, uh, initial J., H-O-O-E-Y.
I'm here on the, uh, McNamara matter. It's a
continuation from yesterday.

MR. MORTON: Yes. And perhaps, if I could, Your
Worship, my name is James Morton, M-O-R-T-O-N. I am
counsel and I'm retained for the sole purpose of the
examination of the next Crown witness.

THE COURT: Thank you. Good morning.

MR. MORTON: Yes. Thank you, sir.

MS. HOOEY: Crown calls Ken Hayashi.

KEN HAYASHI - Sworn

MS. HOOEY: If you remain standing, it makes it
easier for everyone...

A. Yes, I - I...

MS. HOOEY: ...to hear you.

A. I'll remain standing.

MS. HOOEY: Okay.

EXAMINATION IN-CHIEF BY MS. HOOEY:

Q. Uhm, what do you do for a living?

A. I'm the athletics commissioner for the Province
of Ontario.

Q. And what are your responsibilities?

A. To licence professional kickboxing and boxing
events.

Q. And how long have you held that position?

A. Since 1995.

Q. And, uh, did you hold any position before that?

5

A. I was the assistant to the commissioner prior to that.

Q. And, uh, how long were you the - the assistant to the commissioner?

10

A. Uh, from 1991.

Q. To...?

A. To 1995.

Q. All right. Uhm, the office of the athletics commissioner falls under which, uh, ministry?

15

A. Ministry of - of Consumer Services.

THE COURT: I'm sorry, minister...?

A. Ministry - Ministry of Consumer Services.

MS. HOOEY: Q. The - uh, His Worship is behind you and the - the sound..

20

A. I'll - I'll...

Q. If you turn your body...

A. I'll turn...

Q. ...a little bit, that'll - that'll help. Thank you. And, uh, you said boxing and kickboxing? How would you describe, uh, kickboxing?

25

Q. In the regulations we call it striking with the hands and feet. Uhm, they're allowed to kick above the waist. They're in a boxing ring. Uhm, they wear boxing gloves and they're allowed to strike with either the hands or feet. But again, all kicks must be above the leg [sic] -
*30 above the waist.

Q. Okay. Thank you. Uhm, so, if a - a person, or persons, want to promote a professional boxing event, what do they have to do?

5 A. They're required to take out a licence with my office. Uhm, they have to have general liability insurance. There's a event fee. There's a two percent gate tax that they're required to pay.

CLERK OF THE COURT: Sorry, two percent what?

10 A. Two percent gate tax.

CLERK OF THE COURT: Thank you.

15 A. They have to show me a letter from the place of venue 30 days prior to the event so that we know that the event is actually booked and will take place. Twenty-one days out from that, they're required to put up a security deposit for medical monitoring fees. If a fighter loses by a knock-out or a T.K.O., there's an automatic 60 day suspension.

CLERK OF THE COURT: T.K.O.?

20 A. T.K.O., technical knock-out, or a knock-out. And they're automatically suspended for 60 days. And, depending what the doctor's order, they may be required to have a CAT scan, and EEG, a psychometric evaluation, uhm, if it's - if it's a head blow or if it's a kidney blow, the
25 appropriate test may be an ultrasound to the kidneys depending on - on the - the type of injury that the doctor deems necessary to be tested.

MS. HOOEY: Q. Now, uh, talking about the, uh, the medical, uh, personnel, what medical personnel, uh, are
30 expected to be present?

A. We have two, uh, medical doctors on site.
Reason we have two is if there's an injury to a fighter and

one of the doctors has to go into the back to the change rooms to attend the fighter, we have another doctor at ringside so the fights can continue on. And usually we also have, uhm, EMS there with, uhm - uhm, the gurney, with a gurney medical packs to assist the doctor, should somebody need to be transported. In the Province of Ontario, the EMS - they're not allowed to actually transport but what we would do is we would secure the, uh, the fighter in the back room, call for an ambulance, and then the ambulance would do the actual transportation of a fighter.

Q. And, uh, so, one doctor's available to attend to an injured, uh, boxer and the other doctor should be where?

A. He's at ringside. Both doctors are at ringside by the mutual corner so they can get into the ring easily, they have easy access.

Q. So, uh, does your - do your responsibilities include amateur events?

A. No, they do not.

Q. Why are professional events required to be, uh, licensed?

A. It's, sort of, actually falls under the *Criminal Code*. If it's not sanctioned by an athletic board or commission, then it would fall under s. 83 in the *Criminal Code*. It would be an illegal event. There is an exemption under s. 83 for amateur sportsman, where they wear boxing gloves of a - can't remember the exact math of the size of the glove. It's about - I think it's a five ounce glove, approximately.

Q. Okay. Now, in addition to licensing events, uh, is there anyone else that needs to be licensed?

5 A. The fighters have to be licensed. Uhm, all provincial fighters are required to have complete medical tests. Uh, they're required to have a CAT scan or an MRI, an EEG, HIV, hepatitis B and C, uh, chest x-ray, uhm, for...

THE COURT: And this is - I - if I can, just for clarification, you're talking about professional fighters?

A. Yes, we are.

10 **THE COURT:** Not amateur fighters?

A. No, we're talking professional fighters.

THE COURT: Okay. Thank you.

15 A. To - to - to get a licence for a professional fighter. Uhm, that's for the initial, uh, examination. Then every year after that, uhm, second year, if they haven't been knocked out, the requirement would be they would just have to have a - an EEG, HIV, hepatitis, uhm, eye ophthalmologist test, then - then the following year then they'd be required again to have another CT scan, 'cause a lot of injuries can
20 occur in the gyms, which we wouldn't be aware of so this is just to ensure that, uh, the fighter is - is healthy.

MS. HOOEY: Q. All right. Who - who else has to be licensed?

25 A. Seconds have to be licensed.

Q. The who?

A. The seconds.

Q. Who are seconds?

30 A. Seconds are - are the corner people that help the fighters, that assist the fighters in the ring during one minute rest periods. They're allowed three seconds in the Province of Ontario. Uh, they have a chief second, and then

usually a cut man and then the third person usually handles the stool...

Q. Okay.

A. ...and the bucket for the - for the fighter.

Q. Anybody else?

A. Uhm, that's it.

Q. The officials don't have to be registered or licensed?

A. The - well the officials - the officials are licensed, yes, through my office. Referees have to have, uhm, a yearly medical.

Q. Okay. How did you become involved in the matter before the court?

A. I was requested by, uh, the Ministry of Health Promotions, through health promotions to look into a boxing event.

CLERK OF THE COURT: Can you just keep your voice up? Sorry.

A. Oh, I'm sorry.

CLERK OF THE COURT: No, that's okay.

A. I - I should turn, too. Uhm, the Ministry of Health Promotions filed a complaint with my office. They're the - they recognize amateur or, uh, combative sports as P.S.O.'s, provincial sports organizations.

MS. HOOEY: Q. Who did they file a complaint about?

A. The, uh, Twin Dragon.

CLERK OF THE COURT: Sorry, about who?

A. Twin Dragon.

CLERK OF THE COURT: Thank you.

MS. HOOEY: Q. Had, uh, Twin Dragon ever been, uh, licensed, uh, by you...

A. Yes.

Q. ...for - just a minute, for...

A. Sorry.

Q. ...any prior events?

A. In the past they have. They've done a number of professional events.

Q. Have they ever been turned down...

A. No, they've always...

Q. ...uh, for a licence?

A. They've always been in good standing.

Q. Their prior events, uh, what, uh, what were they?

A. They were kickboxing...

Q. What were they asking for a licence for?

A. Kickboxing event.

Q. And all appropriate fees were paid?

A. Yes.

Q. And all appropriate medicals were done?

A. Yes.

Q. Did you have any difficulty with, uh, Twin Dragon at all?

A. No.

Q. So you received this complaint, what do you do next?

A. I, uhm, opened up a file with the investigation unit. And once I turn the file over to them, I no longer have any say over that file. Uhm, it's strictly out of my hands then.

Q. Is it of any interest of, uh - to you that Twin Dragon, uh - when the complaint came in, that they were sanctioned by another body?

A. Uhm, yes and apparently they weren't sanctioned
by the recognized P.S.O.

5 **MR. MORTON:** I - I rise, uhm, Your Worship, to make
a hearsay objection. Unless this is strictly part
of the narrative, this witness would not have any
direct knowledge of the sanctioning by any other
body except by what he was advised.

THE COURT: Court agrees.

10 **MS. HOOEY:** It was, however, part of the narrative.

MR. MORTON: If it's merely part of...

THE COURT: It didn't sound like it, Madam
Prosecutor. You asked a question and this gentleman
answered it and his answer is considered by the
15 court to be strictly hearsay at this point.

MS. HOOEY: Thank you.

MS. HOOEY: Q. So when, uh, the - so as a result of
information you received, you turned the matter over to
investigations?

20 **A.** That's correct.

Q. Did you have anything further to do with the
file?

A. No, I did not.

Q. Since that time, have Twin Dragon asked for a
25 licence to conduct an event?

A. No, they haven't.

Q. Have you received any other complaints?

A. No, I haven't.

Q. All right. I want to point out Exhibit 2, 7 and
30 8, please. Okay. Thank you. I show you Exhibit, uh, Number
7. Does it look familiar to you?

A. Yes, it does. I...

Q. Look at the front and the back, please. Okay,
why do you recognize that...

A. I...

Q. ...that?

A. I was driving up to the office one day and I
noticed a sign on a post so I stopped and took it down and
brought it in to the...

Q. Thank you.

CLERK OF THE COURT: Sorry, you're going to have to
keep your voice up again.

A. Oh, I'm sorry. I was driving up Yonge Street
and I notice a sign on a light post and I stopped and removed
it.

CLERK OF THE COURT: Thank you.

MS. HOOEY: Court's indulgence.

MS. HOOEY: Q. On this - on the, uh, sign, do - do
you recall if it said anything about professional or amateur?

A. No, it did not.

Q. Uh, do you have a copy of the act, uh, with you?

A. Yes, I do.

Q. The act governs, uh, professional, uh, boxing
and kickboxing.

A. Correct.

THE COURT: And...

MS. HOOEY: And...

THE COURT: ...Madam Prosecutor, what are - what act
are you referring to?

MS. HOOEY: Sorry. Uh, The Athletics Control Act.

THE COURT: Thank you.

MS. HOOEY: Your welcome.

MS. HOOEY: Q. And you are governed by whatever the act says, is that correct?

A. That's correct.

Q. In your job as the athletics commissioner?

A. Yes.

Q. All right. I draw your attention to the regulations, uh, which, for Your Worship's assistance, is approximately seven pages back, R.R.O., 1990 Regulation 52, general.

THE COURT: What is the page number that you're referring to on the bottom?

MS. HOOEY: It's number one of the regulations. The act is first and then the regulation follows.

THE COURT: You're talking about Regulation 52, is that correct?

MS. HOOEY: That's correct.

THE COURT: Okay.

MS. HOOEY: Q. I draw your attention to number, uh, s. 1 in the regulations of this act:

"Professional when used in respect of a participant or a contestant in a professional contest or exhibition of boxing means a natural person who is, at any time,"

And I draw your attention [sic] - attention to (b):

"Teaches, pursues or assists in the pursuit of boxing as a means of livelihood and;

(d) Promotes or manages the contest or
[exhibit] exhibition for personal gain."

5 Would you agree that that goes towards a person, that's what
the law says?

A. Yes.

Q. All right.

MR. MORTON: I'm going to...

10 THE COURT: Yes.

MR. MORTON: ...object, again. And I apologize, Your
Worship, for popping up and down. The determination
of what the law means is peculiarly within your
province. Uh, this witness has not been qualified
15 as an expert in legal matters nor, in fact, would he
be admissible as an expert, as that's something
within your province only. The regulations are, of
course, you can take judicial notice of them. If my
friend is simply going to read passages of the
20 regulations, in my respectful submission, that
evidence would be irrelevant, immaterial, and, in
any event, doesn't go to anything that a witness can
do. Obviously my friend can draw your attention to
the regulations there before you.

25 THE COURT: Thank you. Madam Prosecutor, response?

MS. HOOEY: Yes. I - I'm not calling the athletics
commissioner, who's governed by the statute, uh, as
an expert in anything, except that he interprets the
act. I'm not suggesting that the court should
30 interpret it the same way. That's something that
the court will have to decide.

5

THE COURT: Well you - you asked him for a legal opinion. I don't have a C.V. in front of me from this witness indicating that he is in any position to give a legal opinion. Is there something you have that I don't have that would assist the court in determining whether this gentleman could give a legal opinion?

10

MS. HOOEY: I'm - I'm not asking him for a legal opinion.

THE COURT: I believe you were, Madam.

MS. HOOEY: Well, the - the Crown's telling you that...

15

THE COURT: And so the objection is sustained.

MS. HOOEY: That's fine.

THE COURT: Thank you.

20

MS. HOOEY: Q. There's a distinction between a professional who is a person and a distinction between an event which is professional, has that been your experience?

A. Yes.

25

Q. All right. So, you could have concerns about an event or a person who's not necessarily a boxer or a kickboxer?

A. That's correct.

MS. HOOEY: Thank you. I have no further questions.

THE COURT: Thank you.

MR. MORTON: Might I have a brief indulgence, Your Worship?

30

THE COURT: Do you wish a few minutes, Mr. Morton?

MR. MORTON: In fact I don't need that. I have no questions for this witness.

THE COURT: All right. Thank you.

MR. MORTON: Thank you, sir.

THE COURT: And thank you, sir.

MR. MORTON: And, oddly enough, Your Worship, that actually concludes my participation in this trial. So...

THE COURT: Thank you, Mr. Morton. Nice to see you, sir.

MR. MORTON: ...I'm grateful for - for your time. Thank you, sir.

THE COURT: Okay.

MR. MORTON: And may I be excused from the court?

THE COURT: Yes, sir. Thank you.

MR. MORTON: Thank you.

MS. HOOEY: Just for the, uh, record, the Crown, uh, will not be recalling - does not plan to recall Mr. Hayashi. Uhm, nothing further and that is the case for the Crown.

THE COURT: Thank you.

SUBMISSIONS BY MR. STANWICK:

I'm making a motion for non-suit, uh, Your Worship. The major ingredient has not been established. There's the sections that the, uh, McNamara's and Twin Dragons were charged under, uhm - that they committed the offence of holding a professional contest or exhibition without the authority of a licence. There is no evidence before you whatsoever that there was a professional event. Those are my submissions.

THE COURT: Response?

SUBMISSIONS BY MS. HOOEY:

Uh, court's indulgence, please. Uh, Your Worship,
the criteria for non-suit is as follows:

"After the prosecutor,"

Who is me,

"Has presented all the evidence against
the defendants, the defendant will be
called upon,"

Obviously, uh - uh, they have not done this. They've
instead decided to bring a motion for non-suit.

"To get a directed verdict of an
acquittal, the defendant must satisfy the
court that the prosecution has not met
what is commonly referred to as the
'Sheppard Test'. And so the question
then becomes: Has the prosecutor adduced
any admissible evidence upon which a
reasonable jury, properly instructed,
could convict? In other words, the court
is being asked to find that the
prosecutor has not made out a *prima facie*
case. A *prima facie* case is established
where there's admissible evidence and all
essential elements of the offence
charged, which, if believed, would permit
a reasonable trier of fact to convict."

Now, the Crown only has to present some evidence. The evidence doesn't even have to be believable. That is the test. Any evidence. There's - there's no weighing of any of the evidence at this point. That comes later. So let's look at the act then. The act says in the regulations, which is s. 52, starting on page one...

THE COURT: Well, no - with the greatest of respect, you have provided the court with the act. You've had a witness, previous witness, who you asked the court to look at the regulation, one section. That is all that you've done with the act. So now you're asking to the court to look at the act? I'm gonna suggest that if there wasn't already something put into evidence by way of your witnesses, that you can now not fill any holes that were failed to fill with the witnesses. So, unless you're referring to the - the regulation you've already read out to the court, the previous witness, the court's not going to allow you to look at anything else because the act was not - never discussed with any prior witness.

MS. HOOEY: You know, with all due respect, Your Worship, you have the law - law wrong. They're charged under - under the *Athletics Control Act*. You are to take judicial notice of that. I don't have to read it to you. I don't have to go through it.

THE COURT: Well I - I...

MS. HOOEY: You are to take judicial notice.

THE COURT: I...

MS. HOOEY: And I am merely trying to help you with the sections that are gonna help you make an informed decision.

THE COURT: Well, what we're dealing with, since the motion is before the court and the trial has not been completed, is that there is a motion for non-suit due to an essential element, according to defence counsel, that was not raised. And the court is being asked, of course, to dismiss the charge. And I'm going to ask counsel for the province to speak to that matter. Again, the trial's not finished. And the court acknowledges in final submissions, certainly, that a reference would be made by Madam Prosecutor to the act, but that's not what we're dealing with right here. We're dealing with the motion for non-suit.

MS. HOOEY: But the motion for non-suit includes all the evidence that was given and includes the act. And if Your Worship will not permit me to go through the act to assist you in coming to a determination, because it's - it's law that says you know this act. You know what it says. And if you tell me that you do, I will sit down.

THE COURT: Well I - I am familiar with the act and I have had ample time to read through the act. If there's something in the act that you want to bring to the court's attention, by all means, go ahead.

MS. HOOEY: Thank you. Under regulations - Regulation 52, s. 1:

5 "[The regulation] in this regulation and
in the act, professional when used in
respect of a participant or a contestant
in a professional contest or exhibition
of boxing means a natural person who, at
any time,"

10 Go down to (b):

"Teaches, pursues, or assists in the
pursuit of boxing as a means of
livelihood. Promotes or manages...

15 (d) The contest or exhibition for
personal gain."

20 The Crown would suggest that you cannot take
any other notice except to say that in both the
events, where 6700 people attended, somebody
was making money. And our allegation is the
Twin - Twin Dragons. They were the promoters.
So - and for guidance in that you look under s.
1 of the regulation, sub. (a), under
professional, where it talks about:

25 "Enters and competes...",

Now, this is talking about a - a boxer:

30 "...in a contest or exhibition for [for] a
stake bet, private or public money or
gate receipts or receives any

consideration for his or her services as an athlete, except merchandise or an order for merchandise, not exceeding \$35 in value."

So what this is saying is if a boxer makes \$35 or more, they're considered professional. So, if you take from that that the promoters clearly, clearly made more than \$35. They sold DVD's at \$25 a pop. Even if they didn't make the DVD's and they had somebody else make them for them. You heard Steve Nash tell the court that there were a significant number of people, at least 20 in front of him and at least 20 behind him, putting down \$25 for a DVD.

Second, you had Steve Nash tell you that the cost to enter the event was \$25, \$50, or \$100. A hundred dollars got you a table. And even if you took it as the average price of \$50 that people paid, at 6-700 people, that's a significant amount of money. They were not licensed. They were not sanctioned. They put the boxers in danger and there is a community interest in ensuring that these events are held following rules and regulations. They were not. You heard Steve Nash indicate that he had some concerns about the officiating and about some of the boxers. You heard he had some concerns about the spectators and how they wandered around. This is a dangerous sport. And just because they - they may have tried to

5 follow the rules, it doesn't count. If you
drive on our streets, it doesn't matter that
you follow all the rules of the road, if you do
not have a licence, you should not be on the
road. If you do not have insurance, you should
not be on the road. There is a reason for
licensing. There is a reason for sanctioning.
10 The Twin Dragon knew this. They had been
licensed twice by the athletics commissioner in
the past. Steve Nash indicated that he
officiated at one of those events and he said
it was very well run. Twin Dragon knew how to
do it, they just didn't. They are
15 professional. They made oodles of money and if
you take Regulation 1(a) as guidance that says
that if a boxer gets paid \$35, they're
considered professional. But the other folks
were getting oodles of money. Twin Dragon made
20 money. They don't do this out of the goodness
of their hearts. They're professional. They
run and operate kickboxing schools. Those are
the Crown's respectful submissions, subject to
any questions you may have.

25 **THE COURT:** Anything in response?

RESPONSE BY MR. STANWICK:

30 Uh, yes. I've listened patiently to my friend,
however the charge before the court is that commits
an offence of holding a professional contest or
exhibition of boxing without the authority of a

licence. And if Your Worship will take a look at -
under professional when used in respect of a
professional contest or exhibition means, this is
(a0. Does Your Worship have it in front of you?

THE COURT: I do.

MR. STANWICK:

"That the participants or contestants
represent or are members of an athletic
association, club, corporation, league,
team, or an [unincorporated] unincorporated
organization that is composed of
professionals or is ordinarily recognized
as being the post professional or that
the participants or contestants are
professionals."

Now, Mr. Morton and I have gone through this numerous
times. There's no evidence for you that has
been, uh - uh, given to you that these people
are identified as professionals. They're not
viewed as professionals in the community and
they were not professionals. Mr. Nash and Mr.
Amer both stated that these - all these
contestants were amateurs. So, my - even
though my friend refers to (a), that's not the
charge before the court. The charge is whether
or not they, uh - they conduct themselves in a
professional contest or exhibition. And I
submit, it's quite clear there's no evidence

for you whatsoever that this was a professional event. Those are my submissions.

5 **THE COURT:** Thank you. The court's going to consider the matter and I'll take a 20 minute break, come back and the court will give its decision.

10 **CLERK OF THE COURT:** All rise. The court is now in...

15 **R E C E S S**

U P O N R E S U M I N G

15 **THE COURT:** The court is prepared to give its decision in the motion for the court and the decision is based on evidence and comments made by counsel.

20 **J U D G M E N T**

20 **P. SOLOMON, Justice of the Peace** - (Orally)

25 The motion for non-suit on behalf of the defendants is a claim that there was no evidence to support that the event was professional and that is an essential element and that essential element is missing from the Crown's evidence. The Crown suggests that the court must, and the court agrees, look at the Sheppard test. And that there are -

30 there is enough evidence provided by the prosecution that would suggest - now, whether the court believes it or not, there's still evidence and the court must

consider and the trial must proceed and the motion for non-suit not.

5 The court has analyzed, very carefully, as to what the charge is before the court, what the act says, and what the witnesses for the prosecution have said. The charges against Mr. Michael McNamara and Mr. Martin McNamara are that on two different dates, 10 they committed the offence of holding a professional contest or exhibition of boxing without the authority of a licence, and this is all under the *Athletics Control Act*.

15 The court heard from a prosecution witness, Mr. Amer Mustafa, who is the president of the Kickboxing Ontario Association. He also belongs to the Counsel for Amateur Sport Kickboxing. He stated that the June 19th event at the Paradise Club, operated by Twin Dragons, and there is a statement of agreed 20 facts that, indeed, Mr. Michael and Mr. Martin McNamara operate Twin Dragon Kung Fu and Kickboxing Club and were the promoters of these two events. The June event and the September event at the Paradise Club, as stated by Mr. Mustafa, were not 25 sanctioned by Kickboxing Ontario and it was stated only members can participate in sanctioned events. And during cross-examination of that witness, Mr. Mustafa stated that fighters in their organization are all amateurs. Fighters are not paid and he was 30 asked whether admissions were charged and he said, "Yes, in some instances."

5

The court heard from another prosecution witness, Mr. Steven Nash, who stated that the two events from June and September fall under C.A.S.K. as amateur events, and that C.A.S.K. being Counsel for Amateur Sport and Kickboxing, and he answered, "Yes". In cross-examination, Mr. Nash was asked if the persons competing were amateurs and he answered, "Yes".

10

Mr. Ken Hayashi was called by the prosecution. Mr. Hayashi is the athletics commissioner for the Province of Ontario and he has been so since 1995. Mr. Hayashi stated that there is a requirement to take out a licence if the event is professional and with that there's all sorts of requirements. One, of course, being that the percentage of gate receipts are given back to the government and et cetera.

15

20

During evidence in-chief, the prosecutor had asked whether Mr. Hayashi's responsibilities include amateur events. He said, "No". Professional fighters have to be licensed and there's an exemption under the *Criminal Code*, which the court does not find has any relevance here, if amateur event and court's not going to get into that - nothing that turns on that evidence.

25

* 30

The court refers to the *Athletics Control Act*. And in the *Athletics Control Act*, under the definitions, this is R.S.O., 1990, c. A, point 34:

"Professional contest or exhibition means a contest or exhibition of professional boxing or any other professional sport that is designated by the regulations."

And then it gives a definition for regulations:

"Regulations means regulations made under this act, R.S.O., 1990, c. A.34, s. 1998, see 18, schedule E, s. 1, 2006, c. 34, subs. 2(1) and (2)."

Court refers to the Regulation 52, s. 1, states:

"Professional, when used in respect of a participant or contestant in a professional contest or exhibition of boxing, means a natural person who at any time enters and competes in a contest or exhibition for stake bet, private or public money or gate receipts, who receives any consideration of his or her services as an athlete, except merchandise or an order for merchandise, not exceeding \$35 in value, or reasonable travelling and living expenses actually incurred by while going to, remaining at, and returning from the place of contest or exhibition."

Further, under professional contest or exhibition,
it states:

5 "When used in respect of a professional
contest or exhibition of boxing means a
professional contest or exhibition in
10 which the participants or contestants
represent, or are members of, an athletic
association, club, corporation, league,
team or unincorporated organization that
is composed of professionals, or is
15 ordinarily recognized as being composed
of professionals, and that the
participants or contestants are
professionals."

20 Well, it's clear from the act that professionals are
individuals who compete for a stake bet or public
money. The court heard nothing by way of evidence
from the prosecution that the kickboxers, who were
present for the two events from June 19, 2008 and
25 September 28, 2008 were professional, licensed
fighters. There's no evidence led for the court to
conclude that. And in order for the court to have
this matter continue, it would've had to have heard
that. And that is an essential element to the
charge. So the motion for non-suit is granted. The
30 court is going to dismiss the charges. And my
thanks to counsel and Madam Prosecutor, always a
pleasure to see you, Madam Clerk.

MS. HOOEY: That does complete our matters today.

CLERK OF THE COURT: All rise.

THIS IS TO CERTIFY THAT the
foregoing is a true and accurate
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.....
Helena Tsapoitis-Barbesin
Court Reporter

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