

November 10, 2014

**VIA FACSIMILE TRANSMISSION**

Mr. Richard Hennessy, Registrar  
Social Justice Tribunals Ontario  
Human Rights Tribunal of Ontario  
655 Bay St, 14<sup>th</sup> Fl.  
Toronto ON M7A 2A3

Dear Mr. Hennessy,

**Re: Wambach et al v. Canadian Soccer Association  
Tribunal File 2014-18923-I**

Please find enclosed our Request for Reconsideration along with the accompanying forms 20 and 23.

Yours very truly,

**RYDER WRIGHT BLAIR & HOLMES LLP**



David Wright

cc: Jérôme Valcke, FIFA, via email  
Joseph Arvay, via email  
Catherine Gleason-Mercier, via email  
Hampton Dellinger via email



# Human Rights Tribunal of Ontario

## Request for Reconsideration - Rule 26 (Form 20)

### Application Information

Tribunal File Number:	2014-18923-I
Name of Applicant:	Abby Wambach and Players on National Teams Participating in the FIFA Women's World Cup Canada 2015
Name of each Respondent:	Canadian Soccer Association ("CSA"), Fédération Internationale de Football Association ("FIFA")

### 1. Your Information (person or organization making this Request)

First (or Given) Name	Last (or Family) Name	Organization (if applicable)
David	Wright	Ryder Wright Blair & Holmes

Street #	Street Name	Apt/Suite
333	Adelaide St. W.	3 <sup>rd</sup> Floor

City/Town	Province	Postal Code	Email
Toronto	Ontario	M5V 1R5	dwright@rwbh.ca

Daytime Phone	Cell Phone	Fax	TTY
416 340-9070	416 402-8614	416 340-9070	

If you are filing this as the Representative (e.g. lawyer) of one of the parties please indicate:  
 Name of party you act for and are filing this on behalf of: Abby Wambach and Players on National Teams Participating in the FIFA Women's World Cup Canada 2015  
 LSUC No. (if applicable): 28715G

What is the best way to send information to you?  
 (if you check email, you are consenting to the delivery of documents by email)  Mail  Email  Fax

I am (or I am filing on behalf of) the:  
 Applicant  Ontario Human Rights Commission  
 Respondent  Other – describe: \_\_\_\_\_

### 2. Please check the reasons why you are making this Request for Reconsideration. Check all that apply.

- There are new facts or evidence that could potentially be determinative of the case and that could not reasonably have been obtained earlier
- You were entitled to notice but, through no fault of your own, did not receive notice of the proceeding or a hearing
- The decision is in conflict with established case law or Tribunal procedure and the proposed reconsideration involves a matter of general or public importance
- Other factors exist that outweigh the public interest in the finality of Tribunal decisions

### 3. Please provided detailed reasons and representations in support your Request.



# Human Rights Tribunal of Ontario

## Request for Reconsideration - Rule 26 (Form 20)

See attached Schedule A.

### 4. If your Request for Reconsideration is granted, what remedy or relief are you seeking?

See attached Schedule A.


### 5. If your Request for Reconsideration is being filed more than 30 days after the date of the Decision, explain in detail the reason for the delay and why the Request should be accepted late.

### 6. Signature

By signing my name, I declare that, to the best of my knowledge, the information that is found in this form is complete and accurate.

David Wright

Name

  
Signature

10/11/2014  
Date (dd/mm/yyyy)

Please check this box if you are filing your Request electronically. This represents your signature. You must fill in the date, above.

#### Freedom of Information and Privacy

The Tribunal may release information about an Application in response to a request made under the *Freedom of Information and Protection of Privacy Act*. Information may also become public at a hearing, in a written decision, or in accordance with Tribunal policies. At the request of the Commission, the Tribunal must provide the Commission with copies of applications and responses filed with the Tribunal and may disclose other documents in its custody or control.

**HUMAN RIGHTS TRIBUNAL OF ONTARIO**

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**B E T W E E N:**

**ABBY WAMBACH AND PLAYERS ON NATIONAL TEAMS PARTICIPATING IN THE FIFA  
WOMEN'S WORLD CUP CANADA 2015,**

**Applicants**

**v.**

**CANADIAN SOCCER ASSOCIATION ("CSA") and  
FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION ("FIFA")**

**Respondents**

HRTO File Number: 2014-18923-I

SCHEDULE A TO FORM 20  
Request For Reconsideration

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## Introduction

1. As set forth below and pursuant to Rule 26.5, Applicants respectfully request the Tribunal to reconsider its November 7, 2014 order denying Applicants' request to expedite. There are several grounds upon which the Tribunal's decision should be reconsidered. *First*, in rendering its decision, the Tribunal understood CSA to have affirmatively stated in its Response "that they agree to take part in a mediation," and this appears to have factored into the Tribunal's balancing of the equities. Given that CSA has now stated that it will not take part in the mediation, the balance of the equities tilts even more in favor of the Applicants. *Second*, the Respondents did not address (and the Tribunal appears to have overlooked) that the players did not bring their Application earlier because Respondents took active steps leading the players to reasonably believe their concerns over the discriminatory use of turf were being addressed (and thus that filing an action would be premature). *Third*, the Tribunal appears to have misunderstood its ability to provide meaningful relief before the World Cup commences. In their response, players only provided "examples" of ways in which Respondents' discrimination could be alleviated. There are other remedies that could provide meaningful relief – indeed, one example of such relief players proposed was that "games could be played at BMO field in Toronto, where there is an existing premium grass surface."
2. This is a case of vital importance to the Applicants and of significant public interest. It deserves a decision on the merits in time for a meaningful remedy. In order to facilitate that, applicants submit that a decision by April or even May, even if not ideal, would allow for relief that would substantially improve the current situation.

## Statement of Law

3. Under Rule 26.1, "Any party may request reconsideration of a final decision of the Tribunal within 30 days from the date of the decision." The denial of the expedition request constitutes a final decision on the timetable issue, one which could prevent the Tribunal from considering the case on the merits in time for a meaningful resolution.
4. Rule 26.5 provides in relevant part that reconsideration may be granted if "the Tribunal is satisfied that: a) there are new facts or evidence that could potentially be determinative of the case and that could not reasonably have been obtained earlier; or ... c) the decision or order which is the subject of the reconsideration request is in conflict with established jurisprudence or Tribunal procedure and the proposed reconsideration involves a matter of general or public importance; or d) other factors exist that, in the opinion of the Tribunal, outweigh the public interest in the finality of Tribunal decisions."
5. In *Minoo v. Ontario Family Medicine Residency Program*, 2013 HRTO 99, the Tribunal granted applicant's request to reconsider dismissal of applicant's discrimination claim where it "recognized that it failed to address an issue" raised in applicant's application" (citing *Marshall v. Lakeridge Health Corporation*, 2010 HRTO 2107 (CanLII)). The Tribunal found that applicant was not "attempting to repair or reargue the case" and held

that “the fact that the Decision did not consider the applicant’s case in the context of these issues outweighs the public interest in the finality of Tribunal decisions.”

6. The Tribunal’s decision here should be reconsidered along similar lines as *Minoo*, particularly in light of its “lack of attention to the nuances of the applicant’s proposed . . . allegations and anticipated evidence.” *Id.*

#### The Tribunal and the Respondents Did Not Address Players’ Chief Timeliness Argument

7. The Tribunal’s core reasoning behind denying expedited relief was that the players had delayed their Application. (*See Form 14* at 3). Yet, neither respondents nor the Tribunal considered the players’ central argument on timeliness, a point highlighted in their original request. In that request, the players stated that they were led to believe – by FIFA, in conjunction with the CSA – that their concerns over playing on turf *were* being addressed in good faith by respondents and that a negotiated solution was possible. To compound things, FIFA chose not to publicly release the results of the 2013 study FIFA had commissioned to assess players’ attitudes on playing the World Cup on turf – the study on which players centrally relied in believing that no legal action would be required because FIFA and CSA were taking steps to address their concerns. Many, if not all of the applicants, were not aware of the survey results until September 3, 2014. (NBC Sports, Sep. 3, 2014). By the survey’s own terms, it was to be used in the planning of “future tournaments,” such as the 2015 World Cup.
8. The fact that some of the stadia in CSA’s original World Cup proposal featured artificial turf fields does not establish any “awareness” of respondents’ decision to use turf. For both the 1994 and 1999 World Cups, FIFA brought in temporary grass fields to place over artificial turf. As stated in their Application, the players were led to believe that respondents would similarly accommodate them – as FIFA had always accommodated the male World Cup players – if the players expressed a preference for natural grass, which they did overwhelmingly. This explains why the players brought their application when they did – indeed, had they commenced this action earlier, respondents would no doubt have pointed to the ongoing study to argue that the action was *premature*.
9. It would be entirely inequitable and contrary to the Human Rights Code for the Tribunal to deny the players any meaningful relief on account of a delay the respondents created.

#### The Tribunal’s Decision Relied on Two Central, Mistaken Assumptions

10. In its order, the Tribunal relied on two mistaken assumptions regarding CSA’s willingness to mediate and concerning the time and resources required for a remedy.
11. First, there appears to be some fundamental miscommunication concerning CSA’s willingness to mediate. CSA’s near-immediate refusal to mediate, especially in light of the players’ willingness, shows that the Tribunal’s order relied on a mistaken assumption when balancing the equities over whether an expedited hearing should be provided. Because CSA has stated unequivocally that it will not engage in expedited mediation, an

expedited hearing provides the only possible means of addressing respondents' pending discriminatory action.

12. Second, the Tribunal considered the players' request for a remedy in early 2015 to mean that without such a remedy, there could be no meaningful relief. Applicants originally proposed early 2015 because that would provide enough time to custom-order trays for a grass overlay. There are many possible remedies beyond the "examples" Applicants provided in their Application, some of which do not involve these trays, and which could provide the basis for a meaningful remedy even if ordered as late as April or May 2015. There are indeed several approaches – all of which CSA and/or FIFA have experience with – for providing the players with meaningful relief. Indeed, one possible solution should this proceeding be significantly delayed (primarily by CSA's and FIFA's strategic gamesmanship) is that "games could be played at BMO field in Toronto, where there is an existing premium grass surface." The players' willingness to mediate and negotiate in good faith, which respondents have rebuffed, demonstrates players would be interested in any such relief.

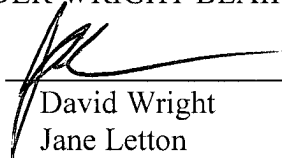
### Conclusion

13. For the foregoing reasons, Applicants respectfully request that the Tribunal reconsider its decision to deny Applicants' request to expedite.

BOIES, SCHILLER & FLEXNER LLP

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Rocky Collis  
Amos Friedland  
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Joshua Stein

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By:   
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