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from the **BENCH**

Victory in Quebec

Coach Greg Glassman and CrossFit help a Canadian affiliate owner through legal issues related to an illegitimate "affiliate."

By E.M. Burton

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A recent victory in the Superior Court of Quebec represents a significant win for CrossFit trainers and affiliates everywhere and shows how CrossFit Inc. protects the rights and privileges of those who have exclusive use of the CrossFit name.

Details of the suit have been provided by public documents, as well as law-enforcement sources, some of whom remain undisclosed as the matter is currently subject to an investigation by the Royal Canadian Mounted Police (RCMP), the Canadian federal law-enforcement agency.

Karl Gélinas, a professional baseball player for the Quebec Capitales, is a Level 1 CrossFit trainer and, as of July of this year, the affiliate owner of Tonic CrossFit.

Gélinas had worked for over a year as a CrossFit trainer at a box called CrossFit Quebec City. Although Gélinas did not hold a CrossFit Level 1 certificate at the time, in January 2011 he entered into a contractual agreement to train people in the CrossFit method with box owners Alexandre Bureau and Jean-Claude Dubois.

The contract Bureau had Gélinas sign with CrossFit Quebec City contained a non-compete clause, which, as many readers will know, is invalid from the outset. The contract forbade Gélinas to work in another CrossFit box within a 13-mile radius for a two-year period following any termination of employment.

In November 2011, Gélinas discovered that the non-compete clause was invalid according to Section 4(e) of the CrossFit Affiliate Agreement: “In no event shall an affiliate require its trainers or employees to execute noncompetition agreements, provided that an affiliate may protect confidential client information.”

As he already owned another box—CrossFit St. Jean sur Richelieu—Bureau had obtained his affiliation agreement at CrossFit Quebec City by using the name of his then-girlfriend, Véronique Boisclair, who had completed a Level 1 Seminar. This would later come to light in the Superior Court of Quebec.

Unfortunately, as CrossFit later discovered, Boisclair never once worked there and CrossFit Quebec City operated without a Level 1 trainer for close to 10 months. In fact, Bureau himself lived in a suburb of Montreal, over three hours away by car from Quebec City. What no one else connected with CrossFit Quebec City knew was that Bureau’s affiliation at CrossFit St. Jean had been terminated by CrossFit in August 2011. Despite receiving a cease-and-desist letter from CrossFit, Bureau continued to be involved in the management of CrossFit Quebec City until spring of this year.

Gélinas earned his Level 1 certificate in September 2011, and in February 2012 he decided to leave CrossFit Quebec City and become a legitimate affiliate owner in his own right. CrossFit accepted his application for Tonic CrossFit.

The fact that Gélinas had worked for Alexandre Bureau without a certificate was only the tip of the iceberg. In more ways than one, CrossFit Quebec City was completely illegitimate, even after Gélinas earned his Level 1 certificate.

In January 2012 Bureau informed his staff of his intention to “de-affiliate.” His official line was that CrossFit Quebec City (Bureau and Dubois) had decided not to renew the affiliation with CrossFit due to “a divergence in philosophy of their way of running things,” referring to CrossFit Inc. He intended to change the name of the gym to Black Box. Even as Black Box, however, Bureau continued to run CrossFit classes and use CrossFit on the website and advertisements, and he continued to engage in intellectual-property theft, as CrossFit would later discover.

In March 2012, after Gélinas had tendered his resignation, Bureau sought via email to CrossFit to transfer the affiliation agreement for CrossFit Quebec City to Gélinas’ name. The reason offered was that, as Boisclair had not passed the Level 1 test required of all trainers, they were in danger of losing their affiliation.

Then Bureau revealed to his staff that he had received a letter from CrossFit permanently terminating the relationship and forbidding him to be part of CrossFit in the future—although this was for his other box, CrossFit St. Jean sur Richelieu. He also neglected to share that the letter included mention of his “numerous acts of fraud by submitting an affiliate application under someone else’s name (without their knowledge or permission),” nor did he include that “CrossFit, Inc., does not wish to continue to do business with someone who would commit criminal acts in order to circumvent our rules.”

As a result of the ongoing investigation, it came to light that Bureau owned even more “CrossFit” gyms and that Bureau had been profiting from illegitimate use of the CrossFit name for a long time. The timeline of his association with CrossFit reveals a great deal of wrongdoing.

Bureau then sued Gélinas. In April 2012, Gélinas received a court order that required him to immediately cease his plans to affiliate Tonic CrossFit because of the non-compete clause in his contract with Bureau. Bureau sought a permanent injunction against Gélinas.



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CrossFit Inc. is serious about protecting the CrossFit name against misuse and fraud.

Curiously, Bureau thought to include for the court's benefit an affidavit stating that he had decided to terminate his own affiliation due to the "differences of opinion as to the way CrossFit, Inc., goes about its business and CrossFit's programming." It also mentioned that Bureau now functions under the name Black Box, adding that, even though the gym is no longer affiliated, it will continue to offer the same services in terms of workouts and activities as it did when affiliated. At this time, Bureau was still advertising his gym as a CrossFit gym, still calling his classes "CrossFit classes," still had a huge graffiti mural reading "CrossFit" in the gym, was still using the word "CrossFit" in his domain name, and continued to run the business as a CrossFit gym without any certified trainers.

Gélinas was struggling to pay the legal fees to defend himself and, as a result of the economics, entered into a settlement agreement that would have prohibited him from affiliating or being a CrossFit coach. Just a few weeks before the settlement became final, Gélinas had a fortuitous encounter with CrossFit Founder and CEO Greg Glassman, Affiliate Support head Kathy Glassman and CrossFit's general counsel at the Canada East Regional in May 2012 in Toronto. Gélinas had a whole crew of athletes in tow, as well as his future partners at Tonic CrossFit, which was now being held up by court order.

When informed of the situation, Coach Glassman simply said, "We will make this right."



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The situation came to a head at the 2012 Canada East Regional competition, where Coach Greg Glassman assured Karl Gélinas he would "make this right."

Although Gélinas had to wait over two months for the case to be heard, it didn't take long for the Superior Court judge to deny the injunction Bureau requested against Gélinas in toto.

The judgment of June 20, 2012, included the following findings:

Mr. Gélinas has an agreement with the title "Contract and Contre-lettre." Said agreement was reached between Québec Inc. (CrossFit Quebec City) and defendant Karl Gélinas, the duration of the agreement was for three (3) years with an option for two (2) years and started the First of January, 2011...

The contract contained a non-compete clause, which read in the following terms: "If dismissed or resigns Gélinas can not work in a CrossFit (gym) for a period of two (2) years within twenty (20) kilometers under penalty of \$1000 per day of violation."

At the end of 2011, Mr. Gélinas, dissatisfied with working conditions and alleging that he was not paid, started working on a project to start a CrossFit training centre... The plaintiff alleges that Mr. Gélinas was a key employee given his reputation and visibility since he is a baseball player for the Quebec Capitales.

However, the plaintiff has never obtained license from CrossFit, Inc. (...) An affidavit of the general counsel of CrossFit, Inc... specified that CrossFit Inc. does not grant a license for corporations, but to private parties. The affidavit also specifies in paragraph 6 that the plaintiff 7708815 Canada Inc. has never obtained a license from CrossFit, Inc...

In effect, the license of CrossFit Inc. that no longer exists had been to Madame Véronique Boisclair, 14 January 2011... The license could not be maintained because Ms. Boisclair failed a test that was necessary to maintain this license. Additionally, CrossFit has informed Mr. Bureau that it has terminated association with Mr. Bureau (...).

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Wikipedia: Poutine is a Quebec dish, made with french fries, topped with brown gravy and curd cheese.

The judgment goes on to highlight the misstatements of Alexandre Bureau:

In his affidavit and in his original application, the applicant (Bureau) alleged (that) in January 2012, the plaintiff undertook the decision not to renew his CrossFit affiliate in light of the company having a divergence in opinions in philosophy and even trainings ... This paragraph is initially inaccurate because it is CrossFit that decided to terminate the membership, not with the plaintiff, but Mr. Bureau and Ms. Boisclair.

Second, paragraph 54 of the original application contains a confession to the effect that the plaintiff does not have the same vision as CrossFit, Inc. and does not wish to apply the same philosophy as the U.S. company.

Based on these findings, among others, the Court denied even the preliminary injunction.

With the lawsuit behind him, Gélinas moved forward with his plans for Tonic CrossFit. This September, he got in touch with CrossFit to provide an update.

"We are now one month into our operations with Tonic CrossFit and things are going great. We are approaching 90 members already and the vibe is outstanding.

"I want to take the time to thank you, Mr. Glassman, and others, personally and on behalf of my partners, Gabriel (Tisluck) and Amélie (Gagnon). We are so grateful for your amazing support, not only financially, but also morally. Without it, we would not be where we are today. You guys are amazing, and it's without a doubt a direct correlation to the successful business you guys are running!"

Dale Saran of CrossFit Legal expressed his congratulations to those at Tonic CrossFit for getting this behind them and let them know how CrossFit is moving forward: "Once this is finally completed, CFHQ will be retaining (counsel) to represent our interests in legal action against Bureau et al. for infringing on the CrossFit name in Quebec."

Saran believes that "should be a fine ending to all of this."



About the Author

*E.M. Burton is a **CrossFit Journal** staff writer.*