

“Mieux vaut
un mauvais
accord qu’un
bon procès.”

(«Better a poor agreement
than a good trial.»)

French expression

Fredy Iuni and Marie-Claude Asselin

Alternative Dispute Resolution Choices for Canadian Coaches



There is a common misconception within the Canadian sport community that the services offered by the Sport Dispute Resolution Centre of Canada (SDRCC) are limited to athlete-related issues. This is simply NOT the case. The services offered by the SDRCC are as accessible to coaches, officials, and administrators as they are to athletes. Of course, due to the nature of the disputes that form the vast majority of appeals filed before the SDRCC, as in doping assertions, team selection, carding or disciplinary matters, one rarely encounters cases involving coaches. Issues surrounding coaches are often dealt with more privately, between the coaches and the concerned national sport organizations (NSO) or multisport services organizations (MSO), but once in a while a story will get some media attention or worse, end up in civil court proceedings at the coach's own expense. Are these occurrences exposing only the tip of the iceberg? Little do coaches know that the SDRCC offers a wide range of alternative dispute resolution (ADR) processes, including final and binding arbitration at a very affordable price, and that their NSO rules allow them such recourse.

Range of SDRCC Services Offered to Coaches

The Physical Activity and Sport Act (S.C. 2003, c. 2)¹, assented in March 2003, establishes the existence of the SDRCC as a not-for-profit corporation with a mission "...to provide to the sport community: a) a national alternative dispute resolution service for sport disputes; and b) expertise and assistance regarding alternative dispute resolution." The Act further sets out what can be understood by sport disputes, in that "...a sport dispute includes disputes among sport organizations and disputes between a sport organization and persons affiliated with it, including its members." Coaches, as NSO members or persons affiliated with NSOs are therefore entitled to access the services of the SDRCC should they be faced with a sport dispute. Canadian coaches can benefit from the services and expertise of the SDRCC in dispute prevention and ADR, which include resolution facilitation, mediation, med/arb, and arbitration. In comparison with the traditional civil proceedings, the SDRCC has adapted its process to meet the needs of the sport community:

Grounded in sport: The SDRCC roster is comprised of seasoned mediators and arbitrators, with an excellent understanding and knowledge of sport. This places them in the best position to assist members of the sport community in settling and resolving their disputes in a way that is respectful of their particular needs.

¹ The Act can be found on the Government of Canada website at the following link:
<http://laws.justice.gc.ca/PDF/Statute/P/P-13.4.pdf>

Affordable: For disputes involving an NSO or MSO funded by Sport Canada, only a filing fee of \$250 is required; mediator or arbitrators fees as well as case management costs are all covered by the SDRCC. Parties before the SDRCC do not have to hire counsel to file an appeal; moreover coaches, as any party to SDRCC proceedings, have access to a list of pro bono lawyers willing to provide legal advice and representation at no cost to those who can't afford legal fees.

Timely: Proceedings at the SDRCC move as quickly as parties can follow. When circumstances call for it, a complete arbitration process can take place within a few hours from the filing of a request to the issuance of a final and binding decision.

Practical: Communications and filing of submissions all taken place electronically with 24/7 online access to your case file, and proceedings are conducted through a worldwide toll-free conference calling system; no travel expenses, no long-distance charges, no printing, photocopying and shipping expenses, and easy to stay involved in one's case despite frequent international travel.

Thoughtful: Recognizing that most coaches, athletes and NSO leaders are involved in a long-term journey together, the SDRCC promotes the use of processes such as mediation and resolution facilitation to help members of the sport community work through their disputes in a way that will preserve or restore their damaged relationships.

NSO Obligations Towards Coaches in National Team Programs

As an MSO, the SDRCC is funded by Sport Canada under its Sport Support Program, as are most NSOs in Canada. The Contribution Guidelines: Funding Policies and Terms² (Guidelines) paragraph 1.1.5, as published by Sport Canada, state: "To ensure access to the services of the SDRCC, Sport Canada has made it a condition of funding that the appeal policies of all funded NSOs, MSOs and CSCs provide for an appeal to the SDRCC." The Guidelines expand on this requirement by stipulating that it "...applies, once the organization's own internal appeal process has been exhausted (or when both parties agree to bypass such internal appeal process), to dispute involving athletes *and coaches* emanating from activities related to *national team programs* and/or national teams representing Canada at international single sports events and multisport games." [our emphasis]. This means that coaches involved in disputes with their NSOs have a recourse at the SDRCC should they wish to appeal decisions that affect them. Regardless of the fact that an NSO internal appeal policy may state that its appeal body decision is "final and binding", coaches must know that such decision may indeed be appealable before the SDRCC under the conditions set out in the above-mentioned Sport Canada's contribution guidelines.

Scope of SDRCC's Jurisdiction

As per the Canadian Sport Dispute Resolution Code³ (Code), the procedural rules under which all SDRCC proceedings are conducted, the SDRCC is limited in its jurisdiction in a few instances. For parties to access the services of the SDRCC, they must: 1) have either exhausted or waived the internal appeal process of the NSO or MSO; 2) have an explicit agreement to submit their dispute to the SDRCC through a contractual clause or an agreement; or 3) be otherwise obligated to use the SDRCC services to resolve their dispute. First and foremost, the SDRCC exists to resolve sports-related disputes. The fact that the dispute involves members of the sport community does not by default turn it into a sports-related dispute. Nevertheless, the Code defines very

2 The 2009-2011 Sport Canada – Contribution Guidelines Funding Policies and Terms can be found on the Government of Canada website at the following link:
<http://www.pch.gc.ca/pgm/sc/cntrbtn/2009-2011/mso/103-eng.cfm>

3 The 2011 Code can be found on the SDRCC website at the following link:
<http://www.crdsc-sdrcc.ca/eng/documents/CODE2011FINALEN.pdf>

broadly the type of sports-related disputes that the SDRCC is prepared to handle. Coaches, as much as athletes, are subject to decisions by the NSOs and MSOs that may affect their selection as national team coaches, limit their access to funding, impose disciplinary sanctions, or restrict their eligibility and accreditation/certification, all of which can have serious consequences on the career of those coaches; when such decisions are rendered against published policies or in a manner that is disrespectful of the coach's rights, the SDRCC offers an avenue to seek affordable and accessible justice.

The scope of SDRCC jurisdiction can also be expanded by members of the sport community who prefer to submit their sport dispute to SDRCC rather than to civil courts. The SDRCC offers dispute prevention and resolution services on a fee-for-service basis to parties who are willing, by way of a contractual clause or a mediation or arbitration agreement, to give jurisdiction to the SDRCC to resolve their sport dispute at a reasonable cost. With this fee-for-service program, the SDRCC has opened its doors to provincial sport organizations or even local sport clubs looking for a tailored approach to resolving their sports-related disputes. Through this offering, the SDRCC is now living up better than ever to its broader mandate of offering "a national alternative dispute resolution service for sport disputes" as defined in its constitutive Act. For coaches this means that, when negotiating sports-related agreements and contracts with sport organizations other than their own NSO, they may want to consider the benefits of inserting a mediation or arbitration clause to give SDRCC jurisdiction to provide ADR services should a dispute arise out of such agreements or contracts.

Simple Steps for Coaches to Initiate an Appeal

After the completion or the denial of the internal appeal process by an NSO, when a coach has made the decision to file an appeal of that NSO's decision before the SDRCC, the next step is simply one of administrative nature: fill and submit to the SDRCC the Request form *as soon as possible*. This must be done *within the deadline stated in the NSO appeal policy or, if none is specified, within 30 days of being notified of the decision*. One must know that the filing of the Request form is solely to engage the administrative process, and therefore parties are not required at that stage to put forward their entire case, with evidence and arguments. The SDRCC process allows parties, once the mediator or arbitrator is appointed, to file more complete submissions in advance of the mediation session or arbitration hearing. For more guidance on how to complete the Request form and to better understand the quasi-judicial terminology used by the SDRCC, coaches can contact the SDRCC staff members. Relevant forms, applicable rules and contact information are all available on the SDRCC website at <http://www.crdsc-sdrcc.ca/>.

Over the past few years the SDRCC has had the opportunity to write several articles in the Coaches Plan, most of them dealing with different ways in which coaches can act to help defuse, prevent, and aid in resolving disputes that arise between the sport organization and its athletes. Emphasis in those articles has been placed on dispute prevention. However, recent situations brought to the SDRCC's attention have highlighted the fact that indeed, very few coaches know of their rights to access the ADR services of the SDRCC. Canadian coaches should be able to look to the SDRCC for assistance in resolving their sports-related disputes out-of-court and in an environment that is tailored to the specific needs and day-to-day reality of the members of the sport community, including their limited financial resources. ✓

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