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Reflection on the Advantages and Disadvantages of the Dispute Resolution Methods Offered by the SDRCC

by Cynthia Colas Livernois, Education and Communication Coordinator

When faced with a sports-related dispute, it may be difficult to choose the appropriate method to resolve it. This article illustrates the advantages and disadvantages of different dispute resolution processes available and offered by the SDRCC. Perhaps it will help the parties deciding on a dispute resolution method.

Before filing a request to the SDRCC, the parties can attempt to informally resolve their dispute. Many conflicts are rooted in miscommunication or misunderstanding, and sometimes a simple discussion might resolve the issues without recourse to a third party or an elaborate process.

Did you know?

Since 2010, more than a third of SDRCC cases are resolved amicably before going to arbitration.

For example, parties may try on their own to find a satisfactory compromise to resolve the situation, or even negotiate among themselves to find a solution. If negotiation is not appropriate in the circumstances or if it is unsuccessful, the parties can then resort to the use of a third party to help them better communicate and share views on the issue that divides them. The methods presented below are offered by the SDRCC as well as by several public entities or private practices in a wide range of sectors.

Mediation / Resolution Facilitation (RF)

Mediation (or RF) is a resolution method whereby a me-

diator (or resolution facilitator), who has no decision-making power, facilitates communication between the parties to assist them in finding solutions. This is one of the most flexible and informal means of dispute resolution since the process can be adapted to the peculiarities of each conflict.

This method features many advantages, one of which certainly cannot be overlooked: it allows the parties to discuss more informally about the dispute they face. Indeed, this informality allows an open dialogue to address factors such interests, needs, constraints, concerns or circumstances that are important for the parties, but that would not otherwise be relevant as evidence in an arbitration process. Therefore, this method encourages the search for a solution that is mutually satisfactory to the parties rather than a resolution reinforcing the divide in their positions. In the mediation process (or RF), since the discussions and the outcomes are confidential, this method promotes a more candid sharing of information. Moreover, although in some areas of practice arbitration is completely confidential, SDRCC arbitral decisions are, with rare exceptions, made public. The parties to a dispute concerning private or sensitive issues may find it more appropriate to resolve in the context of a confidential mediation (or RF). This method also allows the preservation of friendly ties between the parties, a benefit not to be overlooked when the parties facing a dispute will have to work and collaborate in different functions and situations in the course of future events, as is often the case in the world of sport.

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Reflection on the advantages and disadvantages (continued)

(continued from page 1) On the other hand, mediation (or RF) may not be appropriate when a speedy resolution is necessary, as could be the case in team selection disputes with tight deadlines. It should be noted that, in order to attempt to resolve informally in those cases, it is possible to set a maximum period of time for the mediation (or RF). This method may also not be suitable, for example, if the intent is to set a precedent to guide future interventions and decisions in similar cases. It is also important to mention that the mediation process (or RF) does not guarantee any result, because if the parties fail to reach a mutually agreed upon solution, the dispute remains unresolved at the end of the process.

Arbitration

Arbitration is a method of resolution in which an arbitrator decides the outcome of the dispute on behalf of the parties. It is the process that follows civil courts the closest. The parties have no say in the arbitral award, to which they must comply.

An undeniable advantage of arbitration is the speed at which a decision can be reached, especially when compared to civil courts. In addition, decisions are final and binding upon the parties. This dispute resolution process is more "structured" because the parties must follow a protocol at the hearing and submit their evidence as prescribed by the arbitrator. Despite the more orderly nature of this method, it remains less formal than courts and it allows the parties to represent themselves if they so wish.

The unavoidable disadvantage of arbitration is that it clearly defines a winner and a loser, leaving little room to improve or maintain positive relationships between the parties. This aspect alone, without a doubt, deserves serious consideration given the relatively small size of the sport system, since the parties are likely to have to work together in the future. Also, arbitration rarely allows the parties to discuss the dispute in a way that could bring improvements for the prevention of future conflicts or that could reinforce of the parties' relationships.

Med/Arb

Med/Arb is lesser known as a dispute resolution method, however it deserves some attention since it can be very relevant. During the resolution process, the med/arb neu-

tral first wears the hat of a mediator. In this role, he assists the parties in reaching possible settlements to their dispute, without any authority whatsoever to impose a solution. Then, if the parties cannot settle, the med/arb neutral becomes arbitrator to hear the evidence and arguments relating to the dispute and eventually make a decision that will bind the parties. Thus, this method offers the opportunity to the parties to resolve their dispute themselves in the first place and, if unsuccessful, grants the med/arb neutral the authority to decide.

This method combines the advantages and disadvantages of mediation and arbitration. Like mediation, med/arb lets parties discuss elements related to the dispute that would otherwise be inadmissible in an arbitration process, such as their respective needs or perceptions. Therefore this method may promote the preservation of the parties' relationships, even when the dispute is ultimately decided by the med/arb neutral. Also, the med/arb process sometimes allow partial agreements on certain aspects of the dispute,

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after which the med/arb neutral would only have to rule on the outstanding issues, simplifying at the same time the arbitration procedure. With the mediator eventually becoming the arbitrator if the mediation is unsuccessful, this resolution method also saves the parties from having to initiate a new arbitration proceeding and allows for a more fluid transition between mediation and arbitration. Indeed, because the med/arb neutral is already familiar with the facts and issues in dispute at the time of becoming arbitrator, it reduces the need for parties to repeat a lot of the background information about the dispute.

A disadvantage sometimes highlighted by parties is their concern that the mediator, when becoming arbitrator, may take into consideration factors brought to his attention during the confidential mediation, when in fact they should be ignored. For that reason, some parties prefer to mediate with a person other than the arbitrator in order to increase their confidence in the neutrality of the dispute resolution process.

It is quite obvious that a different dispute resolution method exists that is best suited for each dispute, depending on its nature, facts and circumstances. However, the SDRCC is predominantly seized of requests for arbitration, which suggests that the parties are not aware of the benefits of using other dispute resolution methods. It is advised to carefully consider the advantages and

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SDRCC Roster Member Profile: Learning More About our Arbitrators and Mediators

They come from every region of Canada and have extensive experience in alternate dispute resolution and sports-related issues, but how much do we really know about them? The SDRCC has an impressive list of 44 mediators and arbitrators and we will slowly be introducing you to some of them through our regular installments of “SDRCC Roster Member Profiles”. In this edition we would like to present, **Cayley Jane Thomas, mediator from Yellowknife, Northwest Territories.**



What led you to a career in ADR?

My background in employment law is what initially led me into the field of arbitration and mediation. I soon came to realize these are far more accessible, faster and less expensive mechanisms for resolving differences than traditional court litigation.

As I began to do more ADR work, I realized it was much more rewarding to deal with people who were happy with the process being

used to resolve their disputes. I found when people have an opportunity to share information, and know they have been heard, they are more satisfied with the outcome.

I also love to help parties resolve a dispute themselves, especially if they come up with a resolution that is totally unique to their circumstances.

Specialization/Area of Expertise:

In addition to providing various dispute resolution services (mediation, arbitration, process design) in amateur sport, I

mediate employment disputes and conduct workplace investigations.

As a mediator with the SDRCC I...

...I always make SDRCC files a priority, and do my best to ensure everyone is comfortable with the process before we start.

I’ve seen how stressful it can be on athletes, their parents, coaches or officials and sport administrators to have to continue to function, train, or compete surrounded by unresolved conflict. I do as much as I can to help all the parties identify the options for resolving the conflict themselves, so they can move forward to a resolution as quickly as possible.

Favorite Sport(s):

My favourite sports to “do” are cross country skiing and swimming. My favourite sport to watch is curling. I am in awe of anyone who can make such a difficult sport look so easy.

Dispute Prevention Tip for Athletes and Federations:

I have two tips for athletes, or anyone, dealing with a dispute:

- 1) Look at the big picture before deciding what to do. Then consider the options, and the pros and cons of each, before acting; and
- 2) Most people can’t read minds. It’s not possible to resolve a dispute if you can’t or won’t talk about it. ■

In out next edition, look for the profile of an SDRCC mediator-arbitrator

ANNOTATED VERSION OF SDRCC PROCEDURAL CODE NOW AVAILABLE !

On April 2nd, the new annotated version of the Canadian Sport Dispute Resolution Code was made available online. This publication will be a valuable tool for SDRCC mediators and arbitrators but also for non-represented parties because it links the procedural rules with arbitral awards rendered by SDRCC arbitrators. ■



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(continued from page 1) disadvantages of each of these resolution methods in order to increase the chances of obtaining results that will satisfy the needs of the parties. More particularly when dealing with a sports-related dispute, which often involves parties working in the same sport, belonging to the same organization or the same team, or which involves individuals who wear several hats and occupy more than one positions in the sport system, maintaining positive relationships is an aspect not to be overlooked in the choice of a dispute resolution method. This summary is provided to stimulate thought process in this regard and is intended to emphasize the need to choose a process that will be favorable both in terms of the final resolution of the dispute and on the preservation or improvement of the relationships between the parties. This choice can also be made in consultation with a lawyer, like those on the lists of legal representatives or pro bono lawyers on the SDRCC website. ■

Summary

Depending on the nature of the dispute and the issues it raises, the important elements to take into consideration in selecting the dispute resolution method are:

- The importance of maintaining good relationship between the parties;
- The probability of working with the other parties in the future (or the impact of ending the relationship);
- The impact of an arbitration decision which resolves the dispute but does not address the root cause of the latter;
- The confidentiality requirements;
- The urgency of the matter.

EXITING BOARD MEMBERS



In May 2015, four SDRCC board members completed their second term as Directors. Over the past 6 years, Allan J. Sattin, Luc Arseneau, Micheal A. Smith and Miray Cheskes Granovsky have dedicated their time and expertise to contribute to the success of the organization. We thank them for their contribution and passion for sport in Canada. A special thanks to Allan J. Sattin who acted as Chair of the Board for two years.



THANK YOU SO MUCH FOR YOUR DEDICATION!

Notable Dates:

- **June 9 to 12, 2015:** SDRCC kiosk at The Conversation 2015: Women and Sport (Quebec, QC);
- **June 26, 2015:** SDRCC workshop hosted by SportPEI (Charlottetown, PE);
- **June 26 to June 30, 2015:** SDRCC kiosk at the Acadian Games (Charlottetown, PE);
- **July 6 and 15, 2015:** SDRCC kiosk at the 2015 PanAmerican Games (Toronto, ON);
- **August 4 to 11, 2015:** SDRCC kiosk at the 2015 ParaPanAmerican Games (Toronto, ON);
- **September 12, 2015:** SDRCC workshop hosted by Skate Canada New Brunswick (Dieppe, NB);
- **September 22, 2015:** SDRCC 2015 Annual Public Meeting (Ottawa, ON);
- **September 25 to 27 2015:** SDRCC kiosk at the AthletésCAN Forum (Mississauga, ON).

The SDRCC team congratulates Christina for the birth of her son Mathieu !!!



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