

SPORT DISPUTE RESOLUTION CENTRE OF CANADA

SDRCC

Professional Conduct Policy

Final Version

Formerly Complaint Process Policy

First adopted by resolution of the Board of Directors, April 7, 2005

Revised by resolution of the Board of Directors: February 15, 2006; July 21, 2008; July 19, 2010; January 28, 2011;
May 17, 2012; November 28, 2013; November 3-4, 2018

Last revised by resolution of the Board of Directors, December 7, 2022

SDRCC

Professional Conduct Policy

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1. Preamble

For the sake of clarity, the use of the words complaint, complaint process, complainant or related terms, under the present Policy, is limited to the application of this Policy and does not extend to such concepts as defined under any Policies and Procedures of the Office of the Sport Integrity Commissioner.

2. Governing Principles

The Sport Dispute Resolution Centre of Canada (“SDRCC” or “Centre”), including the Office of the Sport Integrity Commissioner (“OSIC”), must maintain high quality dispute resolution and investigation services so that parties, the sport community, and the general public can have confidence in its processes. While the overall quality control plan of the Centre provides for several evaluation tools and methods to monitor and improve its services, the complaints process offers a fair, open, efficient, objective and predictable process to deal with complaints involving the Centre’s arbitrators, mediators, resolution facilitators and members of the OSIC’s Investigation Unit and Sport Environment Assessment Unit (individually “Service Provider” and together the “Service Providers”).

3. Objectives

The Centre complaints process is intended as an administrative procedure to improve, as required, the dispute resolution services and to investigate any alleged breach by the Service Providers of their respective codes of conduct: the *Code of Conduct for SDRCC Mediators and Arbitrators* and the *Code of Conduct for the Members of the OSIC Investigation Unit and OSIC Sport Environment Assessment Unit* (the “applicable Code of Conduct”). It is not intended to review, change or overturn the decisions rendered by arbitrators nor to alter the conclusions or recommendations of an investigator.

4. Role of the Centre

The Centre is responsible for administering the complaints process and for outsourcing the services of a Third-Party Reviewer on a case-by-case basis, as may be required by the present Policy. To ensure that the goals of its quality control plan are met, the Centre must also approve the outcome of every complaint, even negotiated or mediated outcomes.

All final decisions will be made by the Centre’s Professional Conduct Committee, a subcommittee established by the Board of Directors in accordance with By-law 3.02, with delegated powers to resolve complaints. Where the services of a Third-Party Reviewer are required, the role of the Professional Conduct Committee is not to conduct a full review of the complaint itself, but to receive the Third-Party Reviewer’s report and consider its recommendations.

The complaints process is recognized as a source of learning and opportunity for improvement for both the Centre and its Service Providers. The Centre reserves the right to publish non-identifying information, from any complaint filed, for educational and quality control purposes.

5. Admissibility

Admissible Complaints: The Centre will only accept complaints against its Service Providers that explicitly refer to a breach of one or more section(s) of the applicable Code of Conduct.

The Centre may receive complaints filed by any of the parties, representatives, witnesses or observers in a dispute resolution or investigation process, concerning Service Providers conducting such process under the jurisdiction of the Centre, provided that the dispute resolution or investigation process:

- has concluded. For example, this means that the arbitrator's jurisdiction has come to an end or that the investigator has filed their final investigation report before the complaint will be processed; and
- is not subject to appeal or judicial review by any party.

Complaints may also be filed by others who have first-hand knowledge of a possible breach of the applicable Code of Conduct by a Service Provider conducting a procedure under the jurisdiction of the Centre or the OSIC.

Inadmissible Complaints: The Centre will not accept:

- complaints limited to the outcome of the decision (trying to overturn or re-do an arbitration or mediation or substitute for an appeal) or the outcome of an investigation (trying to alter its conclusions or recommendations);
- complaints that request remedies that only the court could provide such as setting aside a decision or requests for new hearings;
- complaints alleging violations of the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS), which should be brought forward pursuant to the SDRCC Discipline and Complaint Management Policy.
- complaints alleging criminal behaviour by a Service Provider;
- complaints seeking the award of monetary compensation, damages or interest;
or
- frivolous, patently trivial, vexatious, repetitive or abusive complaints.

Undertaking: Before submitting a complaint to the Centre, the complainant must sign the Complaint Form to agree and undertake in writing not to use any information obtained during the course of the complaints process for any purpose other than the Centre's complaints process, including without limitation, any other proceeding before the OSIC and/or the Centre, any civil action against the Service Provider or against the Centre, or any application for judicial review.

Authority: The Chief Executive Officer will be responsible for determining the admissibility of the complaint before commencing the complaints process. The Chief Executive Officer may refer this question to the Professional Conduct Committee. If a complaint is deemed inadmissible, either by the Chief Executive Officer or by the Professional Conduct Committee, the complainant will be advised, with reasons for such conclusion.

6. Complaint Initiated by the Chief Executive Officer or the Sport Integrity Commissioner

Complaints Against Arbitrators, Mediators or Resolution Facilitators: The Chief Executive Officer also has discretion to initiate a complaint against an SDRCC arbitrator, a mediator or a resolution facilitator if a situation comes to their attention that raises a quality control concern or if a complaint under this Policy is discontinued by the complainant for any reason.

Complaints Against a Member of the OSIC's Investigation Unit or Sport Environment Assessment Unit: The Sport Integrity Commissioner also has discretion to initiate a complaint against a Member of the OSIC's Investigation Unit or Sport Environment Assessment Unit if a situation comes to their attention that raises a quality control concern or if a complaint under this Policy is discontinued by the complainant for any reason.

Consultation with the Professional Conduct Committee: The Chief Executive Officer or the Sport Integrity Commissioner, as applicable, may discuss with the Professional Conduct Committee the grounds for initiating such complaint. Should the Professional Conduct Committee and the Chief Executive Officer or the Sport Integrity Commissioner, as applicable, find that:

- a serious or flagrant breach may have occurred; or
- the complainant may suffer retaliatory consequences for filing a complaint through the Centre's standard, written process; or
- the credibility of the Centre may be at risk;

then the Chief Executive Officer or the Sport Integrity Commissioner, as applicable, may formulate a complaint under the complaints process.

7. Initiation of a Complaint by a Complainant

How: The complainant must complete the Complaint Form and send it to the Chief Executive Officer. This form will guide the formulation of the complaint and serve to declare consent to follow the Centre's protocols and conditions as outlined in the present policy. Incomplete forms will be returned to the complainant with a mention of missing information and a deadline for completion and resubmission. No further action shall be taken if the duly completed form is not resubmitted prior to that deadline.

Timing: The Complaint Form shall be submitted within 45 days following the completion of the dispute resolution or investigation process giving rise to the complaint. The Professional Conduct Committee may accept a complaint that is not filed within the time limit if it is satisfied that there are exceptional circumstances to justify a reasonable extension of time, taking into account the likelihood of prejudice to the Service Provider.

8. Overview of the Complaints Process

General: The notion is to have a records-oriented process where adversarial oral hearings are a last resort and the exception rather than the rule. An oral session will only be convened at the discretion of the Professional Conduct Committee if there is a serious factual allegation and the resolution of that allegation is required for the appropriate evaluation of the complaint.

Types of Complaints: The applicable Code of Conduct sets out the standards of conduct governing the professional and ethical responsibilities of the Service Provider of the Centre respectively. It is intended to complement existing legal and professional requirements. Breaches of certain provisions of the applicable Code of Conduct do not bear the same seriousness and consequences.

Interim Provision: Once a complaint is accepted and considered admissible, the Chief Executive Officer, or the Sport Integrity Commissioner, as applicable, has discretion in the best interests of the program not to give out new assignments to the Service Provider in question until the final disposition by the Professional Conduct Committee. When the complaint is brought forward by the Chief Executive Officer or the Sport Integrity Commissioner, as applicable, the Professional Conduct Committee shall approve any such temporary measures against the Service Provider. In such case, the process of investigation and decision by the Professional Conduct Committee will be completed as soon as practical and possible from the time of the initial filing of the complaint.

Communication of the Decision: The Professional Conduct Committee will notify the complainant and the Service Provider who is the subject of the complaint of its final decision with reasons.

9. Process

Initial Review: Upon receipt of a complaint concerning an alleged breach of the applicable Code of Conduct by a Service Provider, the Chief Executive Officer shall promptly advise the Professional Conduct Committee of the complaint. If the complaint is against a member of the OSIC's Investigation Unit or Sport Environment Assessment Unit, the Chief Executive Officer shall also promptly advise the Sport Integrity Commissioner of the complaint. The Professional Conduct Committee will conduct an initial review of the complaint to determine the course of action to be taken, if any, which may include the gathering of further information by the Chief Executive Officer or the Sport Integrity Commissioner, as applicable. The Service Provider will then be notified by the Chief Executive Officer or the Sport Integrity

Commissioner, as applicable, of the complaint and of the course of action determined by the Professional Conduct Committee.

Investigation: The Professional Conduct Committee may, after reviewing the facts, decide to submit the complaint to a Third-Party Reviewer for a more complete investigation and recommendations. The Service Provider will be given an opportunity to respond to the allegations during the investigation phase.

Final Determination: The Professional Conduct Committee will reconvene to review the conclusions of the Third-Party Reviewer's report. If the Professional Conduct Committee is considering the imposition of sanctions, the Service Provider will be invited to file a position statement before the Professional Conduct Committee makes a final determination on the complaint.

10. The Third-Party Review

An arms-length consultant hired on a contractual basis with the Centre will conduct the Third-Party Review and shall not be an SDRCC mediator or arbitrator nor a member of the OSIC's Investigation Unit or Sport Environment Assessment Unit. The Third-Party Reviewer will be appointed by the Chief Executive Officer in consultation with the Professional Conduct Committee. The Third-Party Reviewer will review the complaint on behalf of the Centre and not as agent of the complainant.

Declaration of Independence: The Third-Party Reviewer shall execute a Declaration of Independence stating their independence from the Service Provider, the complainant, and any other person involved in the procedure giving rise to the complaint.

Admissibility: The Third-Party Reviewer has the discretion not to proceed with any complaint if they decide the complaint is inappropriate or without merit.

Authority of the Third-Party Reviewer: After reviewing the complaint and documents submitted by the complainant, the Third-Party Reviewer will conduct its investigation independently from the Centre. The Third-Party Reviewer will have full authority to investigate the complaint, including the authority to contact and interview or request written or oral submissions or records from any relevant individual or organization in order to verify whether or not the complaint is substantiated, including SDRCC and OSIC employees.

Confidentiality of SDRCC or OSIC Proceedings: The Third-Party Reviewer shall execute a confidentiality agreement with the SDRCC. Any individual or organization can disclose the Third-Party Reviewer all information and documents requested by the Third-Party Reviewer, even if obtained under provisions of confidentiality as part of an SDRCC or OSIC proceeding. An individual or organization disclosing such confidential information to the Third-Party Reviewer will not be in breach of the confidentiality rules applicable to the SDRCC or OSIC proceedings. In the case of a Complaint against a mediator or resolution facilitator, an individual or organization disclosing such confidential information to the Third-Party Reviewer will not be in breach of any confidentiality or non-disclosure provision in a resulting settlement

agreement. The individual or organization disclosing such confidential information shall clearly indicate to the Third-Party Reviewer the extent of the confidentiality around such information (who knows, who cannot know) in order for the Third-Party Reviewer to take the necessary measures to respect such confidentiality in their interactions with other witnesses and in their final report.

Third-Party Review Report. After the investigation is completed, the Third-Party Reviewer will issue a report, indicating whether or not the complaint is substantiated. If the complaint is substantiated, the report will also include recommendations for an appropriate outcome in the interests of quality control. The report will be submitted to the Professional Conduct Committee with a copy to the complainant and to the Service Provider who is the subject of the complaint.

11. Authority of the Centre’s Professional Conduct Committee

If the Professional Conduct Committee finds that a complaint is substantiated, it may adopt the Third-Party Reviewer report’s recommendations in whole or in part, reject them or substitute an alternative outcome.

The Professional Conduct Committee may, at its sole discretion, request that a second investigation be conducted by another Third-Party Reviewer before rendering a final decision.

The Professional Conduct Committee shall make the final decision on the complaint.

12. Outcomes and Possible Sanctions

If the Professional Conduct Committee finds that a complaint is substantiated, the outcome may include:

- remediation;
- a warning or reprimand;
- training, review, or observation; or
- a temporary or permanent removal of the Service Provider from the Centre’s list of arbitrators, mediators and resolution facilitators or members of the OSIC Investigation Unit or Sport Environment Assessment Unit.

In determining what to do on any substantiated complaint, the Professional Conduct Committee may take into account any previous substantiated complaints about the Service Provider.

Sanctions against an SDRCC mediator or an arbitrator shall be communicated to the SDRCC Board of Directors. Sanctions against members of the OSIC Investigation Unit or Sport Environment Assessment Unit shall be communicated to the SDRCC Sport Integrity Committee.