Centre de règlement des différends sportifs du Canada (CRDSC)

Sport Dispute Resolution Centre of Canada (SDRCC)

Annotated Version of the

Canadian Sport Dispute Resolution Code

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Article 1 Definitions

1.1 For purpose of this Canadian Sport Dispute Resolution Code ("this Code"), capitalized terms have the following meanings:

(a) "Affected Party" « Partie affectée » means a Person who may be tangibly and adversely affected by an award of a Panel of the Ordinary Tribunal, such as being removed from a team or losing funding, and who is either accepted by the Parties or named by the Panel as an Affected Party;

(b) "Answer" « Réponse » means a response to a Request;

(c) "Appeal Panel" « Formation d'appel » means the Panel that hears or has heard an Appeal filed pursuant to Article 9;

(d) "Appeal Tribunal" « Tribunal d'appel » means the division of the SDRCC that constitutes Panels whose responsibility is to decide appeals of decisions of a Doping Panel, a Safeguarding Panel, or an SO insofar as the applicable policies or rules of such SO or a specific agreement so provide;

(e) "Appellant" « Appelant » means a Party initiating a proceeding before the Appeal Tribunal pursuant to Article 9;

(f) "Applicable Conduct Rules" « Règles de conduite applicables » means the rules adopted by an SO to govern the behavior of its members and from which arises the disciplinary procedure before a Safeguarding Panel, such as the Universal Code of Conduct to Prevent and Address Maltreatment in Sport;

(g) "Arbitration" « Arbitrage » has the meaning described in Section 5.2;

(h) "Arbitrator" « Arbitre » means an individual accepted and recognized as an Arbitrator by the SDRCC, who meets the qualifications established by the SDRCC and is willing to arbitrate cases for the SDRCC pursuant to this Code;

(i) "Canadian Anti-Doping Program" or "CADP" « Programme canadien antidopage » or « PCA » means the Canadian Anti-Doping Program administered by the Canadian Centre for Ethics in Sport ("CCES");

(j) "CAS" « TAS » means the Court of Arbitration for Sport;

(k) "Case Resolution Agreement" « Accord de règlement de l'affaire » has the meaning defined in the CADP;

(l) "CCES" « CCES » means the Canadian Centre for Ethics in Sport;

(m) "Claimant" « Demandeur » means the Person initiating a Mediation, Arbitration or Med/Arb;

(n) "Code" « Code » means this Canadian Sport Dispute Resolution Code, as amended by the SDRCC;

(o) "Conservatory Measure" « Mesure conservatoire » means any measure ordered by a Panel of the Ordinary Tribunal upon an application filed by a Party to prevent irreversible consequences or to stay a decision under appeal pending the final award of an Arbitration or Med/Arb;

(p) "Dispute Resolution Processes" « Processus de règlement de différends » means Resolution Facilitation, Mediation, Med/Arb and Arbitration as defined in these rules;

(q) "Dispute Resolution Professional" « Professionnel du règlement des différends » means an individual designated in accordance with Section 3.3;

(r) "Dispute Resolution Services" « Services de règlement des différends » includes Dispute Resolution Processes, case management services and logistical support by the SDRCC;

(s) "Doping Panel" « Formation antidopage » means the Panel that hears or has heard a Sports-Related Dispute arising out of the application of the CADP;

(t) "Doping Tribunal" « Tribunal antidopage » means the division of the SDRCC that constitutes Doping Panels;

(u) "Entity Pursuing the Violation" « Entité poursuivant la violation » means the Person pursuing a violation of the Applicable Conduct Rules before the Safeguarding Tribunal or Appeal Tribunal, which may include, where relevant, the Director of Sanctions and Outcomes or the SO;

(v) "Fee-for-Service" « Services payants » means the program offered by the SDRCC whereby Parties jointly request that their Sports-Related Dispute be resolved by the SDRCC when the resolution of such dispute cannot be funded by Sport Canada's financial contribution to the SDRCC;

(w) "International-Level Athlete" « Athlète de niveau international » has the meaning defined in the CADP;

(x) "International Standard" « Standard international » has the meaning defined in the CADP;

(y) "Intervenor" « Intervenant » means a Person, who is not a Party to a proceeding but claims an interest in the Arbitration, and whose presence is useful for the proper adjudication of the dispute, who files an Intervention pursuant to Section 6.6 and is accepted by the Parties or by the Panel as an Intervenor:

(z) "Intervention" « Intervention » means an application made by a Person in the Ordinary Tribunal in accordance with Sections 6.5 and 6.6;

(aa) "Jurisdictional Arbitrator" « Arbitre juridictionnel » means an Arbitrator, designated by the SDRCC to perform the functions of a Panel prior to the formal appointment of a Panel to a Sports-Related Dispute as described in Section 5.4;

(bb) "Med/Arb" « Méd-Arb » means a process conducted by a Med/Arb Neutral that starts as a Mediation and, if the dispute is not resolved, concludes by Arbitration;

(cc) "Med/Arb Neutral" « Médiateur-Arbitre neutre » means an individual accepted and recognized as a Mediator and an Arbitrator by the SDRCC who meets the qualifications determined by the SDRCC and is willing to conduct a Med/Arb for the SDRCC pursuant to this Code;

(dd) "Mediation" « Médiation » has the meaning described in Section 4.1;

(ee) "Mediator" « Médiateur » means an individual accepted and recognized as a Mediator by the SDRCC who meets the qualifications determined by the SDRCC and is willing to mediate cases for the SDRCC pursuant to this Code;

(ff) "Member" « Membre » includes an athlete, coach, official, volunteer, director, employee, any other person affiliated with a Sport Organization ("SO") and any participant in an event or activity sanctioned by a SO;

(gg) "Minor" « Mineur » means an individual who has not reached the age of majority or is not considered of legal age under the laws and regulations applicable in that individual's province or territory of residence;

(hh) "Ordinary Tribunal" « Tribunal ordinaire » means the division of the SDRCC that constitutes Panels whose responsibility is to resolve Sports-Related Disputes that do not fall under the purview of Articles 7, 8 or 9;

(ii) "Panel" « Formation » means, where the context requires:

- (i) a single Arbitrator;
- (ii) three Arbitrators, one of whom shall be designated as the Chairperson;
- (iii) a Jurisdictional Arbitrator; or
- (iv) a Med/Arb Neutral;

(jj) "Party" « Partie » means:

- (i) any Person or SO participating in a Resolution Facilitation, Mediation, Arbitration or Med/Arb;
- (ii) any Affected Party;
- (iii) any Person designated as a Party in the CADP;
- (iv) any Person designated as a Party in the Applicable Conduct Rules or Specific Procedural Rules; or
- (v) the Government of Canada, in a dispute related to a decision of Sport Canada in the application of its Athlete Assistance Program ("AAP");

(kk) "Person" « Personne » means a natural person or an organization or other entity;

(ll) "Provisional Hearing" « Audience préliminaire » has the meaning defined in the CADP;

(mm) "Provisional Measure" « Mesure provisoire » means a decision to terminate or impose restrictions or conditions on a person's ability to participate in activities under the jurisdiction of the SO, pending a final decision by the Safeguarding Panel or the Appeal Panel on the alleged breach of the Applicable Conduct Rules;

(nn) "Provisional Suspension" « Suspension provisoire » has the meaning defined in the CADP;

(oo) "Request" « Demande » means an application to the SDRCC for the resolution of a Sports-Related Dispute pursuant to this Code;

(pp) "Resolution Facilitation" « Facilitation de règlement » means the process described in Article 4;

(qq) "Resolution Facilitator" or "RF" « Facilitateur de règlement » or « FR » means an individual accepted and recognized as a Mediator by the SDRCC, who meets the qualifications determined by the SDRCC and who is willing to conduct a Resolution Facilitation pursuant to this Code;

(rr) "Respondent" « Intimé » means a Party:

- (i) whose decision is being appealed to the Ordinary Tribunal;
- (ii) before the Doping Tribunal against whom an anti-doping rule violation is asserted;
- (iii) before the Safeguarding Tribunal against whom a Provisional Measure has been imposed pursuant to the Applicable Conduct Rules and/or Specific Procedural Rules; or
- (iv) before the Safeguarding Tribunal alleged or confirmed to have breached the Applicable Conduct Rules;

(v) before the Appeal Tribunal against whom a decision is being appealed;

(ss) "Rotating List" « Liste rotative » means a list of Dispute Resolution Professionals established and maintained by the SDRCC, from which the SDRCC will make an appointment when required pursuant to this Code;

(tt) "Safeguarding Panel" « Formation de protection » means the Panel that hears or has heard a Sports-Related Dispute arising out of the application of a SO's Applicable Conduct Rules and/or Specific Procedural Rules;

(uu) "Safeguarding Tribunal" « Tribunal de protection » means the division of the SDRCC that constitutes Safeguarding Panels pursuant to Article 8;

(vv) "SDRCC" « CRDSC » means the Sport Dispute Resolution Centre of Canada;

(ww) "Specific Procedural Rules" « Règles procédurales spécifiques » means the SO's procedures related to the administration and enforcement of the Applicable Conduct Rules, including the policies and procedures of the Office of the Sport Integrity Commissioner where so designated;

(xx) "Sport Organization" or "SO" « Organisme de sport » or « OS » includes any sport organization in Canada that is:

(i) the governing body for a specific sport or discipline at the national level or in any provincial, territorial or regional jurisdiction in Canada, as recognized from time to time by the SDRCC;

(ii) a multisport service organization at the national level or in any provincial, territorial or regional jurisdiction in Canada, as recognized from time to time by the SDRCC; or

(iii) a Canadian Sport Institute or Centre receiving funding from Sport Canada;

(yy) "Sports-Related Dispute" « Différend sportif » means a dispute affecting participation of a Person in a sport program or a Sport Organization arising from, but not limited to:

(i) the selection of members to a team;

(ii) the Athlete Assistance Program of the Government of Canada;

(iii) a decision of an SO board of directors, a committee or an individual delegated to make a decision on behalf of an SO or its board of directors, which affects any Member of the SO;

(iv) the application of the CADP; or

(v) the application of an SO's Applicable Conduct Rules;

(zz) "TUE" « AUT » means "Therapeutic Use Exemption" as defined in the CADP;

(aaa) "Vulnerable Person" « Personne vulnérable » means an individual who is not a Minor whose ability to present evidence before the Safeguarding Panel is materially impaired by reason of, but would not be limited to, mental or physical illness, or sexual or physical abuse. An adult witness can also be declared by a Panel to be vulnerable where a Party has authority or power over the witness;

(bbb) "WADA" « AMA » means the "World Anti-Doping Agency".

Article 2 General Provisions

2.1 Administration

(a) The SDRCC administers this Code, which may be amended from time to time by its Board of Directors, to resolve Sports-Related Disputes.

(b) This Code applies to a Sports-Related Dispute where the SDRCC has jurisdiction to resolve the dispute. This Code will therefore apply to any Sports-Related Dispute:

(i) in relation to which an agreement exists between the Parties to bring the dispute to the SDRCC, whether by virtue of a policy, contract clause or other form of agreement binding the Parties;

(ii) that the Parties are required to resolve through the SDRCC; or

(iii) that the Parties and the SDRCC agree to have resolved using this Code.

(c) This Code shall not apply to any dispute where a Panel or a Jurisdictional Arbitrator has determined that the SDRCC does not have jurisdiction to deal with the dispute.

Annotations - Section 2.1:

SDRCC 05-00XX McGill University v. Quebec Student Sport Federation; L. Yves Fortier, Arbitrator: The SDRCC does not, absent a contract, apply to a sports-related dispute arising from provincial organizations. The fact that a provincial organization is affiliated with a NSO does not change its status and take it outside the purview of the section.

SDRCC 06-0044 Béchard v. Canadian Amateur Boxing Association; Patrice M. Brunet, Arbitrator: Where an association's internal rules and policies preclude SDRCC jurisdiction, this is only enforceable where the association acts in accordance with and within their prescribed authority. Where the association oversteps, the appeal is admissible before the SDRCC.

SDRCC 09-0106 Smerek v. National Karate Association; Graeme Mew, Arbitrator: Standing may be granted even where the Claimant was not a member according to the NSO. An official, no longer a member of the NSO, applied to the NSO for "associate membership" in order to officiate at various future events. The official had prior record of such membership. The NSO refused to grant membership request on timely basis and then took the position that the official did not have recourse to the SDRCC for review of the decision. The Arbitrator ruled that, in light of circumstances and the fact that membership decisions go to core of the NSO's mandate, the SDRCC had jurisdiction.

Annotation- Subsection 2.1 b)

SDRCC 20-0461 Gillis v Field Hockey Canada; Gordon E. Peterson, Arbitrator: Arbitration is a consensual process and there must be an arbitration agreement between the parties or other basis to compel arbitration, and that fundamental principle is recognized by Subsection 2.1(b) of the Code.

Annotation - Subsection 2.1(c):

SDRCC 13-0208 Taekwondo Manitoba v. Taekwondo Canada; Carol L. Roberts, Arbitrator: The NSO established a National Membership Policy. This policy established that members must use the national database for tracking and reporting membership and that failure to do so may result in sanctions. In spite of assurances that there would be a 6-8 month implementation period, the national body sought compliance sooner. The provincial association experienced difficulties and was unable to comply. It appealed to the SDRCC in hopes of having the deadlines extended. The Arbitrator held that the jurisdictional threshold was not met as it is not appropriate to seek "redrafting" of a policy.

2.2 Language

The working languages of the SDRCC are French and English.

2.3 Interpretation of this Code

(a) The French and English versions of this Code are equally authoritative and shall be interpreted as such.

(b) Unless the context otherwise requires, the singular form shall include the plural form and vice versa, and in particular the definitions of words and expressions set forth in Article 1 shall be applied to such words and expressions when used in either the singular or the plural form.

(c) Unless the context otherwise requires, words importing a particular gender shall include all genders.

(d) “In writing” or “written” includes printed, typewritten or any electronic means of communication capable of being permanently reproduced in alphanumeric characters at the point of reception.

2.4 Observers

Observers will only be allowed with the consent of all Parties to the Sports-Related Dispute.

2.5 No Liability

None of the SDRCC directors, the SDRCC staff members, or the Panel or any expert appointed to assist a Panel, shall be liable to any Party for any act or omission in connection with any proceedings conducted in accordance with this Code, except in instances of malice or bad faith.

Article 3 Resolution of Disputes

3.1 Availability of Dispute Resolution Processes

(a) The Dispute Resolution Processes are available to any Person for the resolution of a Sports-Related Dispute, subject to Subsections 3.1(b) and 3.1(c).

(b) Unless otherwise agreed or set out in this Code, before a Person applies for the resolution of a Sports-Related Dispute, the Person must first have exhausted all internal dispute resolution procedures provided by the rules of the applicable SO. An SO internal dispute resolution procedure is deemed exhausted when:

(i) the SO or its internal appeal panel has rendered a final decision;

(ii) the SO has failed to apply its internal appeal policy within reasonable time limits or on reasonable grounds; or

(iii) the SO has waived the requirement to exhaust its internal appeal process.

(c) Where Parties to a Sports-Related Dispute do not agree on the Dispute Resolution Process to be utilized, the Dispute Resolution Process will be Arbitration.

Annotations - Subsection 3.1(b):

ADR 03-0025 Sodhi v. Canadian Amateur Wrestling Association; Richard W. Pound, Arbitrator: Parties should only bypass recourse to internal appeals where genuinely necessary: "in principle, the parties should, whenever possible, use the applicable internal processes and bypass them only in cases of genuine urgency. Litigation, even in the informal sense of arbitration pursuant to the Program, should be regarded as a recourse of last, not first, resort. In addition, arbitrators acting within the Program should, whenever possible, have the advantage of reviewing all determinations made during such process, with a view, in principle, of not substituting their decisions for those properly made by persons with the most and best knowledge of the particularities of each sport"

SDRCC 06-0047 Hyacinthe v. Athletics Canada et al.; Richard W. Pound, Arbitrator: An appeal to Sport Canada to review the carding decision of a NSO is an external process. It is not part of the NSO's internal processes.

SDRCC 12-0164 Michaud v. Taekwondo Canada; Andrew D. McDougall, Arbitrator: If the internal dispute resolution procedures of the sport organization are not applicable, then there are no internal dispute resolution procedures for the athlete to exhaust under subsection 3.1(b). Thus the SDRCC has jurisdiction to review the case.

SDRCC 12-0190 Clattenburg v. Canoe Kayak Canada; Michel G. Picher, Arbitrator: A Claimant's failure to file an internal appeal in a timely fashion, which could not be justified by exceptional circumstances, constitutes failure to exhaust internal dispute resolution procedures and a sufficient ground for the SDRCC to decline jurisdiction.

SDRCC 15-0267 Vachon v. Canada Snowboard; Robert Décary, Arbitrator: A sport federation cannot, through the adoption of an appeal policy, deprive an athlete from their right to appeal to the SDRCC a final decision that excluded them from a national team. An athlete has a right of appeal to the SDRCC as soon as the NSO denies them a right to an internal appeal.

SDRCC 16-0317 Numainville v. Cycling Canada; Richard W. Pound, Arbitrator: When an NSO has refused a Participant's right to proceed pursuant to the NSO's appeal policy, that Participant has then exhausted the party's recourses under that policy. An NSO's appeal policy requires specific language in order to conclude that a Participant must use the internal appeal process as a form of pre-condition to the exercise of any further rights of appeal. This is particularly important in the event where the wording of the appeal policy is uncertain in making its own internal appeal process compulsory or conditional to an eventual appeal before the SDRCC.

SDRCC 17-0335 Frazer v. Boxing Canada; Peter R. Lawless, Arbitrator: The Athlete's internal appeal before the NSO did not respect the stated time limits. The NSO subsequently rejected the Athlete's right to an appeal. The Jurisdictional Arbitrator determined that the Athlete could nevertheless appeal this rejection before the SDRCC as the Request to the SDRCC was filed within the 30 day time limit as per subsection 6.2(a) of the Code [formerly subsection 3.5(b) of the 2015 Code]. The Jurisdictional Arbitrator affirmed that while the Arbitrator on the merits may well find that the Request by the Claimant should fail given that his appeal with the Respondent was filed out of time, as a Jurisdictional Arbitrator, he was not in a position to deny the claim.

SDRCC 21-0498 Scott v. Canoe Kayak Canada; Carol Roberts, Arbitrator: An NSO cannot prevent an athlete from appealing a sport-related dispute (team selection, in this particular case) by enacting a privative clause from an internal appeal manager.

3.2 Costs of Dispute Resolution Services

(a) Where a Sports-Related Dispute arises from the application of policies and rules of a SO funded under the Sport Support Program of the Government of Canada, the SDRCC Dispute Resolution Services under Article 4 through Article 7 and doping-related appeals under Article 9, will be free of charge for the Parties subject only to Subsection 6.1(d).

(b) Where a Sports-Related Dispute does not qualify under Subsection 3.2(a):

(i) parties involved can access the SDRCC Dispute Resolution Services on a fee-for-service basis. The Parties' written agreement to submit their Sports-Related Dispute for resolution by the SDRCC shall set out which Party(ies) will be responsible for the costs of the SDRCC services and, if applicable, in what proportion;

(ii) the SDRCC may require the payment of retainers prior to providing the Dispute Resolution Services, in amounts to be set by the SDRCC based on the nature of services requested;

(iii) if a Party maintains that the SDRCC does not have jurisdiction in a Sports-Related Dispute, another Party may request a Jurisdictional Arbitrator to determine the issue. The Jurisdictional Arbitrator shall have the discretion to award costs.

3.3 Dispute Resolution Professionals

(a) To assist in the resolution of Sports-Related Disputes, the SDRCC will establish and maintain rosters of Dispute Resolution Professionals qualified as Mediators, Arbitrators and Med/Arb neutrals for each the Ordinary Tribunal, the Doping Tribunal and the Safeguarding Tribunal. The rosters and all modifications shall be published by the SDRCC. The name of an individual may appear on more than one roster.

(b) In establishing the rosters of Dispute Resolution Professionals, the SDRCC shall:

(i) designate individuals who possess recognized experience in sport as well as training and competence in alternative dispute resolution procedures and conduct, as determined by the SDRCC Board of Directors from time to time; and

(ii) strive for fair representation to reflect the diversity of Canadian society.

(c) Upon selection to a relevant roster, each Dispute Resolution Professional shall sign a declaration undertaking to exercise their functions personally with impartiality and in conformity with the provisions of this Code and disclose any reasons that could affect their ability to appear on the Rotating List of the SDRCC as defined in Subsection 1.1(ss).

(d) When a Dispute Resolution Professional is appointed through the Rotating List, the SDRCC will ensure that the Dispute Resolution Professional is qualified, available, able to work in the language requested by the Parties, has no conflict of interest or potential or perceived bias, and is geographically located conveniently if an in-person proceeding has been requested. Subject only to Subsections 5.5 (a) and (b), Parties may not impose additional restrictions or limitations on the designation of the Dispute Resolution Professional.

(e) Upon appointment in a Sports-Related Dispute and at any later material time, the Dispute Resolution Professional shall immediately disclose to the Parties and to the SDRCC any conflict or potential conflict of interest and any circumstances that could create a reasonable apprehension of bias.

3.4 Other Proceedings

No SDRCC director, staff member, or Dispute Resolution Professional is a compellable witness in any court or administrative proceeding, including other SDRCC proceedings, and none of the Parties shall subpoena or demand the production of any notes, records or documents prepared by the SDRCC in the course of SDRCC proceedings.

3.5 Time Limits

(a) All days are included in the calculation of time limits, including weekends and holidays.

(b) Unless otherwise specified by agreement of the Parties or by order of the Panel, a time limit will have expired if information required from a Party is not received by four (4) p.m. Eastern Time on the date of a deadline.

(c) Subject to the statutes, regulations, CADP or other applicable rules relevant to the Sports-Related Dispute, if all Parties agree or upon application on justified grounds, the SDRCC may extend or reduce the time limits. The SDRCC may, in its discretion, refer this issue to be decided by a Panel.

3.6 Administrative Meeting

As soon as a proceeding is accepted by the SDRCC, the SDRCC shall convene an administrative meeting by conference call with the Parties to discuss administrative matters, including but not limited to the communication protocol for the case, the language of the proceedings, the dispute resolution process to be used, the appointment of the RF/Mediator or of the Panel, the participation of other Parties and the scheduling of next steps.

3.7 Language of the Proceedings

(a) Parties are free to agree on the language of the proceedings to be either English or French, or both. Failing such agreement, the Panel shall determine the language of the proceedings, taking into consideration all relevant circumstances of the case. Prior to the appointment of the Panel, if Parties cannot agree, the language of the proceedings shall be deemed to be the official language in which the Request was filed.

(b) Unless otherwise agreed by the Parties, the language specified in accordance with Subsection 3.7(a) shall apply to all administrative forms submitted by the Parties, notifications and communications, written statements and briefs, affidavits, administrative meetings, minutes, hearings, orders and awards, and other arbitral proceedings. Subject to Subsection 3.7(e), a Party may file a document in a language other than French or English if accompanied by a certified translation into one or the other official languages.

(c) On its own initiative or at the request of a Party, the Panel may order that all or part of the documentary evidence or exhibits shall be accompanied by a certified translation into the language of the proceedings. The Panel shall have the authority to rule on any issues regarding the language of the proceedings and translation.

(d) When a Party is required by these rules or ordered by the Panel to supply a translation of a document, failure to submit the translation by the time limit prescribed by the Panel may result in the submissions in their original language to be disregarded by the Panel.

(e) The costs of translation into the language of the proceedings of any document to be submitted by a Party shall be borne by that Party. The SDRCC may, at its own discretion, cover all or a portion of translation costs between French and English.

(f) Notwithstanding Subsection 3.7(e), a Party shall be responsible, at all times, for the cost of any translation which may be required for the benefit of its legal representative.

3.8 Interpretation Services

(a) Regardless of the language of the proceedings specified pursuant to Subsection 3.7(a), if requested by a Party at least five (5) days prior to an oral proceeding or if otherwise agreed to by the SDRCC, the SDRCC shall provide the services of a French/English interpreter during the session or hearing.

(b) In cases where Subsection 3.2(a) applies, such interpreter shall be selected and paid by the SDRCC. In all other cases, the costs of interpretation shall be borne by the requesting Party.

3.9 Representation and Assistance

(a) The Parties have a right to counsel in all SDRCC proceedings and may be represented or assisted by Persons of their choice at their own expense. The names, telephone numbers, and email addresses of the representatives of the Parties shall be communicated to all other Parties and to the SDRCC.

(b) Minors in an SDRCC proceeding shall be represented by one of their parents or by their legal guardian. However, subject to Subsection 3.9(a), the parent or legal guardian may authorize another adult to represent or speak on behalf of the Minor.

(c) Where the SDRCC must notify a Minor of the existence of a proceeding, the SO shall provide current contact information for the parent, legal guardian or another authorized third party of the Minor.

3.10 Format of Proceedings

SDRCC proceedings are normally conducted by conference call. Upon agreement by all Parties, the SDRCC proceedings may also be conducted by documentary review, by videoconference, in person, or through any combination of those formats. In case of disagreement by the Parties on the format of the proceedings, the Panel shall make a final determination at its own discretion, taking into account the urgency, the potential costs to the Parties, and the particulars of the dispute with regards to the production of evidence.

Article 4 Resolution Facilitation and Mediation

4.1 Resolution Facilitation and Mediation

(a) Resolution Facilitation and Mediation are non-binding and informal processes, in which each Party undertakes in good faith to negotiate with all other Parties, with the assistance of a Resolution Facilitator (RF)/Mediator, with a view to settling a Sports-Related Dispute.

(b) The Parties work with the RF/Mediator to attempt to resolve the dispute until one of the Parties terminates the process or if the RF/Mediator determines that further discussions are unlikely to lead to a resolution.

4.2 Availability of Resolution Facilitation

Resolution Facilitation is available to Parties to a Sports-Related Dispute in the following situations:

(a) prior to an internal disciplinary or appeal process of an SO, or prior to submitting an Arbitration request to the SDRCC, through a Request for Resolution Facilitation signed by all Parties;

(b) upon submitting a Request for Arbitration to the SDRCC;

(c) in doping-related matters, whether under the Doping Tribunal or the Appeal Tribunal, subject to parameters modified from time to time by the CCES and the SDRCC;

(d) in doping-related matters, for Parties to engage in discussions of a possible Case Resolution Agreement pursuant to the Rule 10.8.2 of the CADP;

(e) at any time prior to a decision or an award being rendered by the Panel; and

(f) following the issuance of an award or decision, to assist Parties in restoring positive relationships.

4.3 Availability of Mediation

A Mediation shall be commenced when the Parties have agreed in writing to proceed by way of Mediation before the SDRCC.

4.4 Appointment of the Resolution Facilitator or Mediator

(a) The SDRCC shall appoint a Resolution Facilitator from its Rotating List, unless the Parties have agreed to a Resolution Facilitator prior to filing their joint Request for Resolution Facilitation.

(b) Upon receipt of a Request for Mediation, the Parties will be provided with a time limit, set by the SDRCC, to agree on a Mediator. If the Parties do not agree on a Mediator when the time limit expires, the SDRCC shall appoint the Mediator from its Rotating List.

4.5 Conduct of Resolution Facilitation and Mediation

(a) Except in doping-related matters, the Persons present at a Resolution Facilitation or Mediation session must have authority to settle the Sports-Related Dispute without consulting anyone who is not present. Limited authority to settle shall be disclosed at the beginning of the session.

(b) The Resolution Facilitation or Mediation shall be conducted in the manner agreed to by the Parties. Failing such agreement between the Parties, the RF/Mediator shall determine the manner in which the process will be conducted.

(c) Each Party shall cooperate in good faith with the RF/Mediator.

4.6 Confidentiality of Resolution Facilitation and Mediation

(a) The meetings between the Parties and the RF/Mediator shall be confidential and without prejudice.

(b) The RF/Mediator, the Parties, their representatives and advisors, the experts, and any other Person present during the Resolution Facilitation or Mediation session shall not disclose to any third party any information or document given to them during the Resolution Facilitation or Mediation, unless required by law to do so or with the consent of all Parties.

(c) The RF/Mediator shall not be called as a witness, and the Parties undertake to not compel the RF/Mediator to divulge records, reports or other documents, or to testify in regard to the Resolution Facilitation, in any arbitral or judicial proceedings, including proceedings before the SDRCC, unless required by law to do so.

(d) The RF/Mediator shall not produce a report of the discussions between the Parties. All written and oral statements and settlement discussions made in the course of Resolution Facilitation or Mediation shall be confidential and will be treated as having been made without prejudice. Such statements can only be disclosed with the consent of all Parties.

4.7 Time Limit of Resolution Facilitation and Mediation

The Parties and the RF/Mediator will agree upon a time when the process will terminate. In the event that the Parties cannot agree on a time limit, the RF/Mediator will set a time limit, considering the date by which the Sports-Related Dispute must be resolved and the possibility that Arbitration may be required.

4.8 Termination of Resolution Facilitation or Mediation

The Resolution Facilitation or Mediation process shall be terminated by the first of the following events to occur:

(a) the signing of a settlement agreement by the Parties;

(b) a written declaration by the RF/Mediator to the effect that further efforts at reaching a settlement are no longer worthwhile;

(c) a written notice by any of the Parties terminating the Resolution Facilitation or Mediation; or

(d) the expiry of the time limit established pursuant to Section 4.7.

4.9 Settlement

If the Parties reach a settlement or agreement during the Resolution Facilitation process or Mediation, a document evidencing the terms of the settlement should be prepared and signed by the Parties. A copy of the settlement agreement shall be submitted to the SDRCC.

4.10 No Settlement

(a) In the event of a failure to resolve a Sports-Related Dispute by Resolution Facilitation or Mediation, the RF/Mediator shall not accept an appointment as an Arbitrator in any arbitral proceeding concerning the Parties involved in the same dispute unless a Med/Arb agreement has been signed by the Parties, or unless all Parties (including any Affected Parties) otherwise consent in writing.

(b) When Resolution Facilitation does not resolve the Sports-Related Dispute, Parties may work with an RF in preparation for the Arbitration, such as developing an agreed statement of facts or narrowing the questions upon which the Panel will decide.

4.11 Application of Mediation Rules

(a) Where an agreement provides for Mediation under this Code, the Mediation rules set forth in this Article shall be deemed to form an integral part of such Mediation agreement. The Parties may, however, agree in writing to apply other rules of procedure.

(b) Where Parties agree to attempt to resolve their Sports-Related Dispute by way of Med/Arb, the applicable Mediation rules set forth in this Article shall apply to the Mediation portion of the Med/Arb process.

Article 5 Arbitration General Rules

5.1 Applicable Law for Arbitrations

The applicable law for Arbitrations shall be the law of the Province of Ontario.

5.2 Application of Arbitration General Rules

(a) The rules set out in this Article shall apply to all Arbitrations and to all Med/Arb proceedings that do not settle at Mediation. Article 5 may apply to hearings of the Doping Tribunal, the Safeguarding Tribunal and the Appeal Tribunal, unless otherwise specified in Articles 7 to 9 respectively.

(b) The term “Arbitration” includes the Arbitration portion of a Med/Arb, and the term “Arbitrator” includes a Med/Arb Neutral acting as an Arbitrator.

5.3 Composition and Appointment of Panel

(a) Subject to specific rules applicable pursuant to Articles 6 to 9, the Panel shall be composed of one (1) Arbitrator unless:

(i) a fee-for-service Arbitration agreement specifically calls for three (3) Arbitrators;

(ii) the matter otherwise requires three (3) Arbitrators as specified in this Code.

(b) Where a sole Arbitrator is to be appointed, the Parties may agree on the Arbitrator. If the Parties do not agree on the Arbitrator within the time set by the SDRCC, if the Parties waive the option to choose an Arbitrator, or in the event of severe time constraints, the SDRCC will appoint the Arbitrator through its Rotating List.

(c) Where three (3) Arbitrators are to be appointed:

(i) the Party having initiated the proceeding and the opposing Party shall each appoint one (1) Arbitrator within the time set by the SDRCC;

(ii) if either Party fails to appoint an Arbitrator as required, the SDRCC shall appoint such Arbitrator from its Rotating List; and

(iii) the two (2) Arbitrators appointed shall select the third Arbitrator, who shall chair the Panel.

5.4 Jurisdictional Arbitrator

(a) Where a Panel has not yet been appointed and a jurisdictional or procedural issue arises between the Parties which they cannot resolve, the SDRCC may appoint a Jurisdictional Arbitrator from the Rotating List.

(b) The Jurisdictional Arbitrator shall have all the necessary powers to decide:

(i) any challenge raised to the jurisdiction of the SDRCC;

(ii) whether to merge two or more cases filed before the SDRCC that involve most of the same Parties and share similar facts and issues, where Parties do not agree to merge the disputes;

(iii) a time-sensitive request to apply a Conservatory Measure pursuant to Section 6.7, where a Panel has not yet been appointed;

(iv) other issues that prevent the constitution of a Panel;

(v) whether an Arbitrator shall be removed following a challenge of independence pursuant to Subsection 5.5(c); and

(vi) any other matter allowed in this Code to be decided by a Jurisdictional Arbitrator.

(c) The Jurisdictional Arbitrator's written decision with reasons shall be communicated to the Parties within ten (10) days of the last submissions made before the Jurisdictional Arbitrator.

(d) A Jurisdictional Arbitrator shall not render a decision on the main substantive issue or be appointed to a Panel to hear the main substantive issue in dispute between the Parties, unless expressly agreed by all Parties.

Annotation – Section 5.4

SDRCC 07-0051 Hooper, Nonen and Latham v. Canadian Soccer Association and Pellerud; Richard W. Pound, Arbitrator: Where an Arbitrator was previously appointed and conducted a preliminary meeting, but in the interim and before the appointment of the Jurisdictional Arbitrator has stepped down, there is no Panel as contemplated in section 5.4 [formerly section 6.11 of the 2006 Code] and a Jurisdictional Arbitrator may be appointed.

5.5 Challenge, Removal and Replacement of an Arbitrator

(a) An Arbitrator may be challenged solely on the grounds of conflict of interest or a reasonable apprehension of bias. The challenge shall be brought without undue delay after the grounds for the challenge become known.

(b) A challenge shall be made by a Party by written petition to the SDRCC, which states the facts giving rise to the challenge. The Arbitrator shall be informed of the challenge and given the opportunity to resign.

(c) If the Arbitrator does not resign, the other Parties will be given an opportunity to respond in writing to the challenge and a Jurisdictional Arbitrator will be appointed through the Rotating List to make a ruling on the basis of the written challenge and responses. The decision of the Jurisdictional Arbitrator is final and binding.

(d) The SDRCC shall remove an Arbitrator:

(i) who refuses to or is prevented from carrying out their duties;

(ii) who prevents a Panel from carrying out its duties; or

(iii) if a challenge made pursuant to Subsection 5.5(c) is upheld.

(e) Decisions on challenges are in the exclusive domain of the SDRCC and shall be determined in accordance with this Code and applicable laws.

(f) Upon the resignation, death, or removal of an Arbitrator, such Arbitrator shall be replaced in accordance with Section 5.3. Unless otherwise agreed by the Parties, the substitute Arbitrator may give direction about the future conduct of the Arbitration.

5.6 Communications Between the Panel and the Parties

(a) Communications between the Panel and the Parties shall only take place through the SDRCC. Any communication shall be in writing and sent in a manner that enables its timely receipt by the SDRCC at its email address or by any other method specified by the SDRCC in writing. Any communication will only be effective upon receipt.

(b) If an expedited proceeding is directed by the SDRCC, the Panel may waive the requirement in Section 5.6(a).

(c) All notices shall be delivered to the Parties at the email addresses given to the SDRCC at the commencement of the process or such other email address as later provided in writing to the SDRCC by a Party.

5.7 Procedures of the Panel

(a) As soon as possible after appointment, the Panel may convene a preliminary meeting of all Parties to discuss and decide procedural and other preliminary matters, including any challenge of its jurisdiction.

(b) The Panel shall provide a reasonable opportunity to each Party to present its case and respond to the case of opposing Parties.

(c) All witnesses shall testify under oath or affirmation.

(d) The Panel shall have the power to expedite or adjourn, postpone or suspend its proceedings, or to extend or reduce any time limit provided by this Code, upon such terms as it shall determine, where fairness so requires.

(e) Where a matter arises that is not otherwise set out in this Code, the Panel shall have the power to establish its own procedures provided each Party is treated equally and fairly.

(f) The Panel shall conduct the proceedings to avoid delay and to achieve a just, speedy and cost-effective resolution of the dispute, and may impose limitations on the duration of the hearing or the length of submissions.

(g) An irregularity resulting from failure to comply with any provision of this Code or any direction given in accordance with it before the Panel has reached its decision shall not of itself render the proceedings void.

(h) Where any irregularity comes to the Panel's attention, the Panel shall, before reaching a decision, give such directions as it thinks just to cure or waive the irregularity.

(i) Clerical mistakes in any procedural order, award or decision of the Panel, or errors arising in such documents, may be corrected by the Panel if brought to its attention within 30 days of the communication of such procedural order, award or decision.

Annotation – Subsection 5.7(f)

SDRCC 21-0489 Kamara; Thind v Boxing Canada; David Bennett, Arbitrator: Evidence unknown to but discoverable by the parties prior to the hearing was deemed not to be admissible after the hearing. Permitting the submission of such evidence would defeat the objective of the SDRCC as stated at subsection 5.7(f), cause undue delay and allow for continuation of litigation past the hearing. The Arbitrator therefore refused to consider the additional evidence for reasons of finality.

5.8 Arbitration in the Absence of a Party or Representative

An Arbitration may proceed in the absence of any Party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the basis of the absence of a Party. The Panel shall require the Party who is present to submit such evidence as may be required for the making of an award.

Annotation – Section 5.8

DT 10-0124 Canadian Centre for Ethics in Sport v. Brandon Krukowski; Graeme Mew, Arbitrator: In this case, "due notice" in section 5.8 [formerly section 6.18 of the 2009 Code] was satisfied with the following steps: the athlete was notified of the time, date and call-in details of the preliminary meeting but was still absent. The Arbitrator subsequently directed the SDRCC to write the athlete by e-mail and registered mail and offer him an opportunity to participate in a preliminary meeting. The athlete did not respond and the Arbitrator subsequently proceeded to schedule the hearing, and provided the athlete with notice of the hearing by email, regular mail and courier service. The Arbitrator then elected to proceed with the hearing in the absence of the athlete pursuant to section 5.8 [formerly section 6.18 of the 2009 Code].

DT 20-0321 Canadian Centre for Ethics in Sport v. Mickael Badra; Ross C. Dumoulin, Arbitrator: In this case, after initially participating in the process, the Athlete disengaged completely from the proceedings over a period of several months, and did not respond to calls or emails from the CCES nor to calls, notices, reminders, confirmations or emails from the SDRCC. The Tribunal therefore ordered that the Arbitration process continue without the Athlete's participation.

5.9 Confidentiality of Arbitration

(a) Arbitration proceedings under this Code are confidential and the hearings are not open to the public, except as provided in this Code.

(b) The Panel, the Parties, their representatives and advisors, the SDRCC and any other Person present during the Arbitration shall not disclose to any third party any confidential information or confidential document related to the proceedings or any information or document acquired during the Arbitration, except as permitted under this Code, under the applicable rules of the Arbitration, under the rules and the by-laws of the SDRCC, or unless required by law to do so.

5.10 Record of Hearing

(a) Any Party requiring a transcript of the hearing, in full or in part, shall make arrangements directly with the service provider and shall notify the other Parties of such arrangements at least three (3) days before the start of the hearing or as required by the Panel.

(b) Audio recording during conference call or videoconference hearings may be arranged by the SDRCC upon request made by a Panel or a Party at least three (3) days before the start of the hearing or as required by the Panel.

(c) The requesting Party shall pay the cost of the services requested. If more than one Party wants a copy of a transcript or recording, the costs shall be shared equally.

5.11 Settlement Discussions during Arbitration

(a) At any time during the Arbitration process and prior to the Panel's award, the Parties may jointly make a written request to the Panel to adjourn to allow the Parties to conduct settlement discussions.

(b) If the Mediation, the Resolution Facilitation or settlement discussions fail to resolve the dispute, the Arbitration process shall resume.

(c) The Panel may not order the Parties to mediate their dispute without the consent of all Parties.

5.12 Effect of Failure to Comply with this Code

If a Party, upon discovery of another Party's failure to comply with any provision of this Code or any requirement under an Arbitration clause or agreement, does not promptly object, that Party shall be deemed to have waived any right to object to such failure.

5.13 Awards and Decisions

(a) All awards, order and decisions shall be in writing, dated and signed by the Panel or, in case of a three-person Panel, at least by the Panel Chairperson.

(b) For a Panel of three (3) Arbitrators, the decision shall be made by majority.

(c) Unless otherwise agreed by the Parties, the Panel shall also provide written reasons for the award or decision.

(d) When an award or a decision is due on a Saturday, Sunday or statutory holiday in the Panel's place of residence, it shall be communicated on the next business day, unless agreed otherwise by the Panel and the Parties.

(e) Each case must be determined on its facts and the Panel shall not be bound by previous awards or decisions, including those of the SDRCC.

5.14 Costs

(a) Except for the costs outlined in Section 3.8 and Subsection 3.7(e), and unless expressly stated otherwise in this Code, each Party shall be responsible for its own expenses and those of its witnesses.

(b) Where applicable, Parties seeking costs in an Arbitration shall inform the Panel and the other Parties no more than seven (7) days after the final award or decision on merits being rendered.

(c) A reasoned decision on costs shall be communicated to the Parties within ten (10) days of the closing of cost submissions.

(d) The Panel does not have jurisdiction to award damages, compensatory, punitive or otherwise, to any Party.

Annotations – Section 5.14

SDRCC 05-0030 Canadian Amateur Diving Association v. Miranda; Ed Ratushny, Arbitrator: Cost awards should be reserved for exceptional circumstances, such as an exceptional breach of the principles of fairness or natural justice.

SDRC 06-0040 Adams v. Athletics Canada; Stephen L. Drymer, Arbitrator: A party may be entitled to costs that arise as a direct result of matters considered during arbitration. A party will not be awarded costs incurred to prove claims that do not have a material bearing on the specific matter under consideration, or that likely could not have been determined by the arbitrator, such as matters beyond the authority or jurisdiction of the arbitrator to decide. "Costs of the proceedings" does not include damages. A party cannot be awarded damages under this section.

SDRCC 07-0056 Strasser v. Equine Canada; Stewart McInnes, Arbitrator: The language of section 5.14 [formerly at section 6.23 of the 2006 Code] clearly indicates that the only costs to be considered are those involved in the arbitration process. Costs incurred in the internal procedures of the association are not to be taken into account. Moreover, costs are only awarded in unusual circumstances, which are determined by reference to the criteria in section 6.13 [formerly at section 6.23 of the 2006 Code].

DT 06-0039 Athletics Canada; Government of Canada and Canadian Centre for Ethics in Sport v. Adams; Richard H. McLaren, Arbitrator: Access to the adjudication system provided by the SDRCC should not be impeded by fear of costs awards when the case is a novel one, pursued with vigour and involves important issues of concern to all of the parties. Request for costs by the Attorney General of Canada and Athletics Canada denied.

5.15 Clarification of an Award or Decision

(a) If a Party believes the award or the decision is unclear, incomplete or ambiguous; contradictory or contrary to the reasons; or contains clerical or numerical mistakes, a Party may apply to the Panel for clarification.

(b) If the Panel determines that clarification is warranted, it shall issue such clarification within seven (7) days following the filing of the application.

Annotations – Section 5.15

ADR 02-0011 Rolland v. Swimming Canada - Natation Canada; Jean-Guy Clément, Arbitrator: The issue raised by the Respondent sport federation, after learning of the decision on the merits, is not a situation of clarification or interpretation. It is a request to reopen the inquiry in order to consider new facts and a new arbitration decision in a similar matter. The tribunal is *functus officio*. It cannot change its decision and remove its orders and return the case for reconsideration by the sport federation committee.

SDRCC 04-0003 The Canadian Amateur Boxing Association v. The Canadian Olympic Committee; Michel G. Picher, Arbitrator: The central jurisdictional question is whether, on its face, the award discloses an error in realizing the "manifest intention" of the arbitrator, or whether the components of the award "are contradictory among themselves or contrary to the reasons" provided by the arbitrator. The award should not be contrary to the intentions of the arbitrator who granted it.

SDRCC 16-0310 Goplen v. Speed Skating Canada; Patrice M. Brunet, Arbitrator: When the Arbitrator has decided to give precedence to the NSO's ranking calculations, section 5.15 of the Code [formerly section 6.23 of the 2015 Code] does not provide for the interpretation of an award on the grounds that the NSO's rankings were mischaracterized in the decision on the merits. In such circumstances, there are no clerical mistakes or miscalculations to correct. The purpose of section 5.15 [formerly section 6.23 of the 2015 Code] is to correct obvious mistakes, not to request that the arbitrator take a second look at his decision. This article is not designed to invite parties to raise new facts or arguments, nor to request a review of the decision based on interpretative or factual errors presumably made by the arbitrator.

SDRCC 21-0489 Kamara; Thind v Boxing Canada; David Bennett, Arbitrator: The dispute was time-sensitive, and after the issuance of the short decision but prior to the delivery of the decision with reasons, the parties disagreed on whether the Award was being adhered to. The Arbitrator convened a conference call at which an oral clarification was issued so that the decision could be appropriately implemented in a timely manner.

5.16 Waiver of Alternative Relief

Subject to the relevant provisions of the Arbitration Act, 1991, S.O. 1991, c. 17 (as amended), the Parties to Arbitration under this Code expressly and irrevocably waive their rights to request further or alternative relief, including the restraint of proceedings before a Panel by injunction or other interim or permanent relief, or to seek other remedies from:

(a) any provincial, territorial or federal court in Canada;

(b) the domestic courts of any other country; and

(c) any international court or any other judicial body to which an appeal may be otherwise made, except as provided for in the CADP.

Article 6 Specific Arbitration Rules for the Ordinary Tribunal

6.1 Initiation of a Proceeding of the Ordinary Tribunal

(a) A Claimant shall complete all mandatory fields of the Request form, as amended from time to time by the SDRCC, and file such Request with the SDRCC.

(b) The Request form shall be accompanied by:

(i) a copy of the policy(ies) from which the Sports-Related Dispute arises;

(ii) a copy of the decision that is being appealed.

(c) The SDRCC has the discretion to accept an incomplete Request if satisfied of the Claimant's reasons for the absence of the information.

(d) Notwithstanding Section 3.2(a), a non-reimbursable filing fee is payable by the Claimant upon filing a Request for Med/Arb or Arbitration services of the Ordinary Tribunal. Any Claimant may apply to the SDRCC to waive the filing fee if the Claimant believes that the fee will result in significant hardship. The Chief Executive Officer of the SDRCC shall have full discretion to grant or deny such application on the basis of sufficient justification as provided by the Claimant.

Annotation – Section 6.1

SDRCC 06-0047 Hyacinthe v. Athletics Canada et al.; Richard W. Pound, Arbitrator: If grounds for jurisdiction are not clear from the Request for arbitration, the Arbitrator can infer grounds based upon context. Where appropriate, the Arbitrator may grant the right to amend the Request. Every effort should be made to avoid having the athletes tied up in procedural formalities.

Annotation - Subsection 6.1(d):

SDRCC 08-0080 Palmer v. Athletics Canada; Richard W. Pound, Arbitrator: The discretion to relieve the athlete from filing fee costs pursuant to the Code is to be applied in cases of an exceptional nature, out of the normal range. "Substantial hardship" in order to waive the filing fee, acknowledges that mere hardship is not enough to obtain the exemption. [Note that "substantial hardship" was required pursuant to subsection 3.4(d) in versions of the Code prior to 2015. That section has been removed from the Code and instead waiver of the filing fee is now addressed in this section]. The Arbitrator notes that there is no general policy consideration which suggests that merely because one is an athlete there should be no costs incurred to gain access to the dispute resolution mechanism. Also, the Arbitrator comments that actions of a party's representative or counsel may result in costs consequences to the party and/or to the representative/counsel.

6.2 Time Limits to File a Request

(a) Unless set by agreement, statute, regulations or other applicable rules of the relevant SO, the time limit to file a Request shall be thirty (30) days following the later of the date on which:

(i) the Claimant becomes aware of the existence of the dispute;

(ii) the Claimant becomes aware of the contested decision; and

(iii) the last step in attempting to resolve the dispute occurred, as determined by the SDRCC. The SDRCC may, in its discretion, refer this issue to a Panel.

(b) Notwithstanding Section 3.5(c), the time limit may be waived with respect to a Request upon agreement of the Parties or under exceptional circumstances. Any issue pertaining to the waiver of the time limit will be referred to a Panel.

Annotations – Subsection 6.2

SDRCC 08-0071 Tuckey v. Softball Canada; Jane H. Devlin, Arbitrator: The Arbitrator found that the factors which can overrule the problematic filing of a request outside of the time limit laid out in subsection 6.2(a) [formerly at section 3.5 of the 2007 Code] must be unusual or extraordinary according to subsection 6.2(b) [formerly at subsection 3.4(e) of the 2007 Code]. This does not include scheduling difficulties, which were unintentional but known to the filing counsel. The Arbitrator thus found that the SDRCC did not have jurisdiction to proceed in the matter. The operative date for commencing the 30-day time period (formerly 21 days) for bringing an appeal commences when both parties have agreed to send the matter directly to the SDRCC.

SDRCC 13-0213 Wachowich v. Shooting Federation of Canada; Richard W. Pound, Arbitrator: The Claimant, when asserting that there are exceptional circumstances that justify extending a limitation period, also bears the onus of demonstrating the existence of such circumstances. This subsection provides "minimum flexibility" against the 30-day limitation period set forth in section 6.2 [formerly at section 3.5 of the 2011 Code]. Flexibility is an exception to the rule and must be interpreted as such. Subsection 6.2(b) [formerly subsection 3.4(e) of the 2011 Code] guards against unusual and/or unforeseen circumstances. The triggering events must be close to *forces majeures* and not scheduling conflicts or the normal demands of everyday life. The Claimant's three arguments for the late filing (scheduling conflicts, no material changes and that other athletes would not be affected) either fall short of the threshold of exceptional or are not on point.

SDRCC 18-0352 O'Neil v. Karate Canada; David Bennett, Arbitrator: There is a difference between challenging a team selection policy standard and challenging the application of that standard. The appropriate time to challenge a standard begins once the policy has been adopted. The appropriate time to challenge the application of a standard for selection is after the team selection has been completed.

6.3 Communication of the Request

Upon receiving the Request, the SDRCC shall communicate the Request to the Respondent and set a time limit for the Respondent to file its Answer.

6.4 Answer

(a) The Respondent shall complete all mandatory fields of the Answer form, as amended from time to time by the SDRCC, and file such Answer with the SDRCC within the time limit specified by the SDRCC.

(b) If the Respondent fails to submit its Answer within the time limits set pursuant to Subsection 6.3 or if mandatory fields of the Answer are not all completed, the SDRCC shall proceed directly with the requested process (Mediation, Arbitration or Med/Arb).

6.5 Participation of an Affected Party

(a) If a Claimant and a Respondent identify an Affected Party in the Request and Answer, as applicable, the SDRCC shall serve notice on the Affected Party at that Person's last known electronic contact information as per the relevant SO records.

(b) Upon receipt of a confidentiality agreement signed by an Affected Party, the SDRCC will communicate to that Affected Party:

(i) the relevant case information as is available to other Parties involved in the case; and

(ii) a time limit for the Affected Party to submit an Intervention. The SDRCC shall make a copy of the Intervention available to the Parties.

(c) The SDRCC may, on order of a Panel, serve notice on any Person who may be adversely affected by any award of the Panel. A Person who has not asserted the same claim as that of the Claimant is not *de facto* an Affected Party.

(d) Failure of an Affected Party to participate in the Arbitration will be a factor considered and may be given significant weight by any future Panel should that Affected Party file a subsequent Request relating to that matter.

Annotations – Section 6.5

SDRCC 04-0016 Gagnon v. Racquetball Canada; Patrice M. Brunet, Arbitrator: Where parties present at an arbitration are not qualified as Intervenors, they do not have the same status as the Claimant or Respondent. However, if allowing the potentially affected athletes would provide for a greater scope of information to be addressed by the panel, such information should be received. An arbitrator must be mindful of the restricted nature of the arbitration regarding the participation of parties and observers. This is not a public hearing and one must justify why they should be allowed into the hearing. However, on the balance of inconvenience, a hearing could potentially greatly suffer harm if the potentially affected athletes were denied the right to speak, and that, as a result, the award would have been unjust for not having taken into consideration all relevant information. Potentially affected athletes should be given the opportunity to provide brief statements as to how they could potentially be affected by the arbitration. A low threshold of tolerance is to be applied.

SDRCC 14-0219 Barlow v. Canadian Snowboard Federation; Carol L. Roberts, Arbitrator: Reasonable efforts must be taken to contact a party under urgent appeal. Circumstances dictated that an Arbitrator was appointed to render a decision that day. The Affected Party did not respond at his last known telephone or email and the Arbitrator adjourned for one hour to contact the Affected Party's coach, but again received no response. Leaving the hearing open for the day, prior to a decision being rendered, was considered reasonable.

SDRCC 14-0221 Lau v. Taekwondo Canada; John H. Welbourn, Arbitrator: The Arbitrator confines the definition of Affected Party to athletes who risk losing a position on the team should the appeal of the Claimant be successful. The Arbitrator does not accept the NSO's wider definition that Affected Parties include all members currently on the team whose achievements could be "denigrated" upon the inclusion of the Claimant.

SDRCC 19-0421 Humphries v Bobsleigh Canada Skeleton; Robert P. Armstrong, Arbitrator: In this matter, the Claimant had submitted a harassment complaint with the SO against the national team coach and the investigator retained by the SO had concluded that the allegations should be dismissed on the grounds of insufficient evidence. The Claimant appealed the SO's decision to accept the findings of the investigation report. The SO took the position that the coach should be added to the proceedings as an Affected Party, and this was opposed by the Claimant. Arbitrator Armstrong ordered that the coach be added as an Affected Party to the proceeding. He concluded that the coach had "a legitimate interest" since the arbitration was going to "consider whether the investigation that cleared him of the allegations of harassment should be set aside". The Arbitrator also noted that the Claimant would likely present "adverse comments" about the Affected Party, who would "have a direct interest in such evidence".

SDRCC 21-0487 Rivest v Karate Canada; Robert Néron, Arbitrator: Only the athletes who may be tangibly and adversely affected by the decision are Affected Parties. The Arbitrator found that the athletes who were in a different category than the Claimant were not Affected Parties to the decision, since the appeal specifically concerned the application of new selection criteria pertaining to the Claimant's category only.

SDRCC 20-0462 Boulanger v. Canada Snowboard; Ross Dumoulin, Arbitrator, and SDRCC 20-0464 Marcotte v. Speed Skating Canada; L. Yves Fortier, Arbitrator: The section which was applied by the Arbitrators in these two cases was modified in version 2021 of the Code. Therefore, these interpretations are no longer applicable.

6.6 Participation of an Intervenor

(a) If a Person not already designated by the Parties pursuant to Section 6.5 wishes to participate in the Arbitration as an Intervenor, such Person shall complete and file an Intervention with the SDRCC. The SDRCC shall provide a copy of the Intervention to the Parties and set a time limit for each to express their respective position on the participation of the proposed Intervenor.

(b) An Intervenor may only participate in an Arbitration if Parties agree in writing or if the Panel determines that the Person should participate.

(c) In deciding on the participation of an Intervenor, the Panel shall consider whether the Intervention will unduly delay or prejudice the determination of the rights of the Parties.

Annotations – Section 6.6

DT 12-0177 Russell v. Canadian Centre for Ethics in Sport and Swimming Natation Canada; Richard H. McLaren, Arbitrator: A sport organization, Coaches of Canada, sought intervenor status in an arbitration. The issue to be decided in the arbitration is whether a lifetime ban imposed on the Claimant should be reduced. The Code does not set forth any criteria that are to be considered by the panel when considering whether an intervenor may participate in the hearing. Therefore the Arbitrator applied Ontario law (pursuant to section 6.24 of the 2011 Code). In Ontario, intervenor status will be allowed where: 1) the party has an interest in the case, 2) the person may be adversely affected by the outcome of the proceeding and 3) the party can assist the arbitrator in coming to a decision. In this case, the applicant failed to satisfy any of the relevant tests. [Note: Article 6 of the present Code does not apply to doping disputes.]

> *SDRCC 16-0309 Carruthers v. Speed Skating Canada and SDRCC 16-0310 Goplen v. Speed Skating Canada; Patrice M. Brunet, Arbitrator:* Subsection 6.6(a) [formerly subsection 6.14(a) of the 2015 Code] is restrictive in its interpretation and requires a Person to file an Intervention as a condition to receive Intervenor status. A participant cannot file an Intervention on behalf of another.
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> *SDRCC 21-0489 Kamara; Thind v Boxing Canada; David Bennett, Arbitrator:* Intervenor status was denied to Boxing Ontario in this case on the basis that awarding such status would have caused undue delay to the proceedings, thus hindering the SDRCC's objective of providing cost-effective, speedy and just dispute resolution services, as stated in subsection 5.7(f) of the Code.

6.7 Conservatory Measures

(a) If an application for Conservatory Measure is filed, the Panel will invite all Parties to make submissions within the time limit established by the Panel. After considering all submissions, the Panel shall issue an order. In cases of urgency, the Panel may order Conservatory Measures upon mere presentation of the application, provided that any Parties so wishing shall be heard subsequently.

(b) Conservatory Measures may be made conditional upon the provision of security.

> **Annotations – Section 6.7**
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> *SDRCC 04-0016 Gagnon v. Racquetball Canada; Patrice M. Brunet, Arbitrator:* Conservatory measures may only be granted in exceptional circumstances, where the rights of a party may expire should these measures not be immediately ordered.
>
> *SDRCC 06-0039 University of Regina v. Canadian Interuniversity Sport; Richard H. McLaren, Arbitrator:* In exercising power to rule on an application for conservatory measures, an arbitrator is to consider three factors: 1) Is a stay useful to protect the athlete from irreparable harm? 2) What is the likelihood of success on the merits? While not to rule on the merits, the arbitrator must assess whether or not it is a highly arguable case. 3) Do the interests of the applicant outweigh that of the Respondent?
>
> *SDRCC 06-0041 Longpré v. Canadian Amateur Boxing Association; Richard W. Pound, Arbitrator:* It is appropriate for the chief-arbitrator to make an order for conservatory measures only where there are reasonable grounds.

6.8 Mandatory Resolution Facilitation in Arbitration

(a) Resolution Facilitation, as described in Article 4, is mandatory where Parties to a Sports-Related Dispute request an Arbitration under the Ordinary Tribunal.

(b) The Parties must be prepared to spend at least three (3) hours with the Resolution Facilitator (RF). The Parties must, in an attempt to resolve the Sports-Related Dispute, spend the aforementioned time with the RF prior to the date scheduled for an Arbitration. The Parties will continue to work with the RF to attempt to resolve the dispute until one of the Parties terminates the process (if that Party has spent no less than three (3) hours with the RF) or if the RF determines that further discussions are unlikely to lead to a resolution.

(c) If a Party refuses to spend the aforementioned time with the RF or is so inadequately prepared as to frustrate the purpose of the Resolution Facilitation, the Panel may allow the Parties to make submissions to that effect in seeking costs against such Party pursuant to Section 6.13.

(d) The Resolution Facilitation should not delay the Arbitration. The Parties may continue with the process of appointing a Panel while the RF is assisting them to resolve the Sports-Related Dispute.

6.9 Waiver of Mandatory Resolution Facilitation in Arbitration

(a) Parties may jointly apply to the SDRCC to waive the requirement to participate with the RF in settlement discussions where:

(i) the Parties do not have adequate time to schedule meetings with the RF prior to an Arbitration (due to severe time constraints); or

(ii) the Parties have already engaged in Resolution Facilitation or other settlement discussions with a qualified neutral third-party prior to submitting a Request for Arbitration on the same matter.

(b) Upon receipt of such an application, the SDRCC may waive the requirement to participate in Resolution Facilitation.

6.10 Onus of Proof in Team Selection and Carding Disputes

If an athlete is a Claimant in a team selection or carding dispute, the onus will be on the Respondent to demonstrate that the criteria were appropriately established and that the disputed decision was made in accordance with such criteria. Once that has been established, the onus shall be on the Claimant to demonstrate that the Claimant should have been selected or nominated to carding in accordance with the approved criteria. Each onus shall be determined on a balance of probabilities.

Annotations – Section 6.10

SDRCC 15-0255 Larue v. Bowls Canada Boulingrin; Richard W. Pound, Arbitrator: In cases which involve a great deal of discretion, the applicable standard of review is that of reasonableness and not correctness. In determining what constitutes the standard of reasonableness as well as the level of deference which should be applied by a reviewing court in respect of a decision made by an administrative tribunal, particular attention must be given to the Supreme Court's decision *Dunsmuir v. New Brunswick* [2008] 1 SCR 190. In this team selection decision, three considerations taken from *Dunsmuir* guided the Arbitrator. First and absent cogent evidence of error, the Arbitrator should adopt a deferential assumption that the Team Selection Committee, which is composed of experienced experts, knows its business. Second, the role of the Arbitrator is not to re-write the NSO's high performance policy or its team selection criteria with any view of improving either or substituting its content. Third, the role of the arbitrator is to determine whether the outcome of the team selection process was made in accordance with the selection criteria and whether that outcome falls within a range of possible reasonable outcomes which are defensible in light of the facts and the team selection criteria.

SDRCC 16-0298 Christ v. Speed Skating Canada; Jeffrey J. Palamar, Arbitrator: The Respondent had used age as a criterion in determining the long-term potential for podium performance of various athletes. This age criteria was however not explicitly stated in the Team Selection policy and had worked against the Claimant. The Arbitrator determined that age as a criterion can only be used on a limited and proper basis as contemplated by human rights law, Sport Canada Athlete Assistance Program requirements, and beyond that, simple common sense. It cannot in this case reasonably be interpreted in a vacuum as an "absolute."

SDRCC 17-0327 Plante v. Canadian Fencing Federation; Janie Soublière, Arbitrator: When establishing the validity of a team selection decision, the relevant criteria is one of reasonableness and not correctness. In this particular instance, even though the NSO's Selection Policy had an explicit provision against late entries for competitions, the NSO had adopted a long-term practice of allowing late entries. This practice had become widely known by athletes and was more the norm than the exception. The Arbitrator found that the NSO's decision fell within a range of possible and acceptable outcomes and was both reasonable and defensible.

SDRCC 18-0350 Tsuyuki v. Canada Snowboard; Patrice M. Brunet, Arbitrator: In some sports, it is acceptable for a NSO to tweak its selection criteria before important events. It is acceptable for a NSO to do this so long as : i) it is fair; ii) is announced reasonably ahead of the event; iii) does not create a retroactive effect that would unfairly result in limiting opportunities for athletes to the meet the criteria; iv) is vastly consensual within the sport excellence leaders (elite athletes and coaches); v) is transparent; vi) is in the interest of sport excellence; vi) is not tainted with bias or impropriety for the purpose of favouring a pre-determined athlete or group of athletes.

SDRCC 18-0364 Richards v. Speed Skating Canada; Richard W. Pound: The SDRCC has jurisdiction to determine whether the NSO's criteria were appropriately established and whether its selection or carding decision was made in accordance with such criteria. According to the Arbitrator, the term "appropriately established" is a procedural consideration in the sense of whether the criteria were adopted in accordance with the applicable governance structure, such as by the membership of the NSO, its board of directors, a designated committee or by a person delegated to determine the criteria. It is not the Arbitrators place to usurp the NSO's role in establishing the criteria which govern its sport.

SDRCC 20-0457 Bui v Tennis Canada; Carol Roberts, Arbitrator: The Respondent has the initial burden of establishing that the carding criteria were appropriately established and that the carding decision was made in accordance with the criteria. If the burden is satisfied, the onus then shifts to the Claimant to demonstrate on a balance of probabilities, that she should have been nominated in accordance with the criteria. The parties agreed that the standard of review is reasonableness, and that the standard outlined in Tribunal decisions is unchanged following the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. In *Vavilov*, the Court held that reasonableness review is a "robust form of review" in which the reasons of the decision maker must demonstrate that he or she has considered the facts and governing scheme relevant to the decision as well as any past practices. An appellant is required to satisfy the Tribunal that there are "serious shortcomings" in the decision. Provided that a NSO's decision is intelligible, transparent, and accompanied by reasons, that decision will not be easily overturned.

SDRCC 20-0472 Lepage-Farrell v Speed Skating Canada; Richard W. Pound, Arbitrator: The Claimant had to demonstrate, on a balance of probabilities, that SSC has acted unreasonably and to her detriment, in developing and implementing its new selection policy due to the impacts of the COVID-19 pandemic. The Claimant must also show that she, at the expense of an Affected Party, was entitled to have been selected. The Arbitrator found that the NSO had made all efforts to minimize collateral damage under the circumstances.

SDRCC 21-0487 Rivest v Karate Canada; Robert Néron, Arbitrator: The NSO had to change their selection criteria due to the impacts of the COVID-19 pandemic. In such circumstances, an Arbitrator must consider whether the new criteria are reasonable and free from irregularities. If so, it is reasonable to adopt exceptional alternative selection policies. The Arbitrator held that the role of an arbitrator is not to rewrite a selection process developed by experts in the sport in question, unless the outcome is patently unreasonable.

6.11 Scope of Panel's Review

(a) The Panel, once appointed, shall have full power to review the facts and apply the law. In particular, the Panel may substitute its decision for the decision that gave rise to the dispute or may substitute such measures and grant such remedies or relief that the Panel deems just and equitable in the circumstances.

(b) The Panel shall have the full power to conduct a hearing *de novo*. The hearing must be *de novo* where:

(i) the SO did not conduct its internal appeal process or denied the Claimant a right of appeal without having heard the case on its merits; or

(ii) if the case is deemed urgent, the Panel determines that errors occurred such that the internal appeal policy was not followed or there was a breach of natural justice.

(c) No deference need be given by the Panel to any discretion exercised by the Person whose decision is being appealed, unless the Party seeking such deference can demonstrate that Person's relevant expertise.

Annotations – Section 6.11

ADR 02-0011 Rolland v. Swimming Canada - Natation Canada; Jean-Guy Clément, Arbitrator: The arbitration tribunal cannot substitute its own opinion on what constitutes reasonable or desirable selection criteria to be applied. The tribunal's role is to determine whether the decision being reviewed is unreasonable, or otherwise made in bad faith or in an arbitrary or discriminating manner.

ADR 03-0016 Blais v. WTF Taekwondo Association of Canada; Richard W. Pound, Arbitrator: Despite having full power to review facts and law, it is beyond the scope of an arbitrator to rewrite a selection policy or re-design a selection process developed by experts in the sport.

SDRCC 04-0033 Vrbicek and Vrbicek v. Equine Canada; Tricia C. Smith, Arbitrator: The Arbitrator has authority to conduct a *de novo* hearing, to review the facts and the law and to grant such remedies or relief as may be just and equitable. Note that in this case, the *de novo* hearing was conducted by agreement of the parties.

SDRCC 06-0039 University of Regina v. Canadian Interuniversity Sport; Stephen L. Drymer, Arbitrator: The scope of review is not limited to allegations and evidence that were considered by a sport organization when making the original ruling – provided that the parties have been afforded the full opportunity to address all the facts and submissions raised in the arbitration. The Arbitrator found that his powers, pursuant to the section, allow for the review of new evidence and that the panel may treat the hearing as a *de novo* hearing.

SDRCC 08-0074 Mayer v. Canadian Fencing Federation; Stephen L. Drymer, Arbitrator: An Arbitrator will only cancel a team selection if the selection process was applied in an unjust manner, for example when a federation does not follow its own regulations or changes its regulations along the way. Despite acting in good faith, modifying the selection process once that process had been fixed/established amounts to a lack of procedural fairness and the Panel may substitute its decision for that of the NSO. Altering the selection process in the midst of qualifying for the Olympics was decided to be unfair regardless of whether the modifications to the selection process were intended in good faith, as it put other parties at an arbitrary advantage. The appeal was granted.

SDRCC 08-0076 Canadian Amateur Softball Association v. Canada Games Council; Michel G. Picher, Arbitrator: It is within the jurisdiction of an Arbitrator to consider whether the processes and/or decision of the NSO relating to issues in dispute, including sport selection, team selection or carding violate human rights legislation. In this case, the Arbitrator found that it is within SDRCC jurisdiction to consider whether the Ontario Human Rights Code has been violated by the Canada Games Council's decision to exclude men's softball from the Canada Games.

SDRCC 10-0112 Sych v. Shooting Federation of Canada et al.; Graeme Mew, Arbitrator: SDRCC does have jurisdiction to review the facts and the law, may consider the matter *de novo* and substitute its decision for the decision that gave rise to the dispute, pursuant to section 6.11 of the Code [formerly section 6.17 of the 2009 Code]. However, in this case the Claimant's appeal is dismissed because the Respondent's selection criteria were not based on improper considerations.

SDRCC 10-0117 Forrester v. Athletics Canada; James W. Hedley, Arbitrator: Even if an irregularity appears in the team selection process which may have had some bearing on the ultimate fairness of the application of the criteria, the process should not be interfered with in the absence of an extremely compelling case.

SDRCC 12-0178 Marchant and DuChene v. Athletics Canada; Graeme Mew, Arbitrator: The role of the Arbitrator is not to substitute his or her personal decision for those taken by the responsible authorities, who are accorded a certain degree of deference based on their expert or specialized knowledge and experience. In addition, it is not the function of an Arbitrator to legislate different selection criteria. The standard of review is reasonableness. As long as the decision falls within a range of possible, acceptable and defensible outcomes, an Arbitrator should be reluctant to interfere.

SDRCC 12-0182 Veloce v. Canadian Cycling Association; Stephen L. Drymer, Arbitrator: It is not open to an Arbitrator to second-guess a decision or the exercise of discretion in which the decision was made, absent evidence that such decision was made or such discretion exercised arbitrarily, in a discriminatory fashion or in bad faith. Given that the SDRCC Arbitrator has the power to substitute his or her decision for that of the original decision, the focus of the Arbitrator's inquiry should be on the original decision and not that of the internal appeal.

SDRCC 12-0191/92 Mehmedovic and Tritton v. Judo Canada; Robert Décary, Arbitrator: It is now common ground that arbitration proceedings under the SDRCC Code are akin to judicial review, as opposed to appeal or trial *de novo*. Arbitrators, as a matter of course, owe deference to the expertise and experience of the sporting authorities. The appropriate standard of review is reasonableness. However, with respect to policy decisions (for example where the challenge is to the wisdom or merits of the policy, rather than a challenge of the application or the interpretation of the policy), the Arbitrator owes an even higher deference to the policy-maker, as making and assessment of policy are not within the realm of an Arbitrator. When it comes to assessing policy decisions, Arbitrators can only intervene in exceptional circumstances, such as a policy adopted in bad faith, without jurisdiction, one that is contrary to the law (a discriminatory policy, for example), adopted through a biased process, or where it is so vague or so discretionary or arbitrary to the point where it cannot be applied with certainty. In summary there are 2 types of deference owed: (1) when a decision is attacked on the ground that the decision-making body misinterpreted or misapplied a policy, the standard of review is that of unreasonableness; and (2) when a decision is attacked on the ground that the policy applied or interpreted is obsolete, unwise, imperfect or otherwise invalid or in other words an attack against, although perhaps not phrased that way, the policy itself and therefore against the policy maker, the standard of review is far more stringent. Arbitrators are expected to stay away from any second-guessing except in exceptional circumstances.

SDRCC 13-0199 Beaulieu v. Speed Skating Canada; Graeme Mew, Arbitrator: The basis of an appeal to the SDRCC should not be about the merits of a policy, but whether the policy has been applied fairly and correctly. A tribunal should only interfere with a decision where there was a failure to correctly and fairly apply a policy. In this case, the root of the athlete's complaint is that the policy itself is flawed, in that it awards too much discretion to the selection committee members. This complaint relates to matters of policy-making rather than the application of policy, therefore the Arbitrator declined to interfere with the decision on this basis. However in this case, the Arbitrator did allow the Claimant's appeal on other grounds.

SDRCC 13-0209 Bastille v. Speed Skating Canada; Graeme Mew, Arbitrator: The effect of section 6.11 [formerly section 6.17 of the 2011 Code] is that no deference to the appeal panel below is required beyond the customary caution appropriate where the tribunal below had a particular advantage, such as technical expertise or the opportunity to assess the credibility of witnesses. The likelihood of a decision being overturned by an arbitrator corresponds to the quality of reasoning displayed in the original decision. A decision that is well reasoned is less likely to be overturned. Conversely, where a decision reveals little or gives limited insight into how the appeal panel came to its decision, the likelihood of a more extensive evaluation of the merits of the case increases, as does the chance of the decision being overturned. It is not the length of the reasons provided that is determinative, but whether they adequately explain why the decision was reached.

SDRCC 13-0214 Beaulieu v. Gardner; Robert Décary. Arbitrator: Arbitrators are free to arrive at their decisions using a manner they deem appropriate, but they are not altogether unconstrained. In addition to upholding procedural equity and fairness, the arbitrator is subject to a duty to be deferential to the sporting authority and must apply the proper standard of review. Deference to the sporting authority is due in recognition of its experience and expertise. The proper standard of review is reasonableness: "the test is whether the outcome falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and of the policies at issue."

SDRCC 18-0352 O'Neil v. Karate Canada; David Bennett, Arbitrator: A standard of "gross unreasonableness" in a NSO appeal policy is ambiguous and is not a recognized standard in Canadian law. While a sporting organization is free to establish the grounds which are available for appeal, the standard to be applied are those of reasonableness and correctness as elaborated by the Supreme Court of Canada.

SDRCC 17-0319 Canadian Blind Sport Association v. Richard; Patrice M. Brunet, Arbitrator: The Code is worded in such a way to provide the Tribunal with full authority to review the facts and the law. It would be illogical for the Tribunal to rely strictly on the NSO's internal appeal tribunal's decision, and restrict the scope of review to that of a judicial review, without the benefit of a full knowledge of the facts and law. If the Tribunal were to rely solely on the NSO's internal decision, it would be equivalent to applying a level of deference applicable in administrative law as per the Supreme Court of Canada decision in *Dunsmuir v. New Brunswick [2008] 1 S.C.R. 190*. This higher level of deference is not applicable to NSOs as their decisions do not possess a quasi-judicial character which would in turn justify limiting the Tribunal's scope to one of judicial review. This said, a degree of deference may be given to a NSO's decisions when they are based on technical grounds or those of a particular expertise. Nevertheless, the limit of the NSO's expertise stops at the threshold of legal review.

SDRCC 17-0332 Volfson v. Tennis Canada; Richard W. Pound, Arbitrator: The Claimant's appeal before the SDRCC sought new reliefs which were not discussed during the NSO's internal appeal process. The Arbitrator reaffirmed that the Panel was not bound by the internal appeal decision, both as a matter of general principle and because it can hear new facts and submissions.

SDRCC 18-0353 Paquet v. Triathlon Canada; Richard W. Pound, Arbitrator: In carding cases, deference will be usually be given to NSOs as they have the proper technical expertise in developing the carding criteria. However, complete deference is inappropriate. It is commonly understood that SDRCC Arbitrators owe deference to the expertise and experience of the sporting authorities and the appropriate standard of review is one of reasonableness. While this standard of reasonableness is similar to the standard described in the Supreme Court decision of *Dunsmuir v. New Brunswick*, they are not one of the same kind. The classic principles of judicial review are thus altered in cases before the SDRCC. Unlike cases before a judicial review court where the court will only refer to the evidence presented before the original decision maker, new evidence may be presented before the SDRCC Arbitrator.

SDRCC 20-0455 Fergusson v Equestrian Canada Équestre; Carol Roberts, Arbitrator: An NSO cannot restrict or confine the power of SDRCC to subject an NSO's decision to a robust and probing examination by creating an internal appeal process or a review process to which any degree of deference is owed.

SDRCC 21-0489 Kamara; Thind v Boxing Canada; David Bennett, Arbitrator: Subsection 6.11(c) of the Code places an onus on the party seeking deference to demonstrate, on a balance of probabilities, that the organization had relevant expertise in the decision-making process for the matter that is under review. Although the Arbitrator found that the Respondent NSO was owed deference in the decision-making process, the communicated process had not been strictly adhered to. The Arbitrator ordered Boxing Canada to reconduct the Provincial Sport Organizations (PSO) vote regarding the revised selection process, as the initial vote was found to be procedurally unfair. It was further ordered that in implementing the process selected through the reconducted PSO vote, the NSO must adhere to the revised selection criteria that were proposed at the outset of the initial vote.

SDRCC 21-0523/24 Boisvert-Lacroix; Graham v Speed Skating Canada; Karine Poulin, Arbitrator: As held by the Supreme Court of Canada in *Vavilov*, it is important that administrative decisions have justification. In principle, if a decision is justified in relation to the facts and law that constrain the decision maker, then an Arbitrator should rarely interfere with that decision.

6.12 Awards

(a) Awards shall be communicated to the Parties within seven (7) days of the completion of the hearing process. Written reasons shall be provided to the Parties within fifteen (15) days of the completion of the hearing process. Upon request by the Parties, the time limits may be abridged by the Panel.

(b) Notwithstanding Subsection 6.12(a), when the award must be communicated to the Parties simultaneously in both official languages, the written reasons shall be provided to the Parties within twenty-one (21) days of the completion of the hearing process.

(c) The award shall be final and binding upon the Parties. There is no right of appeal on questions of law, fact or mixed questions of fact and law.

(d) All awards of the Ordinary Tribunal shall be made public unless otherwise determined by the Panel.

6.13 Costs

(a) The Panel shall determine whether there is to be any award of costs, including but not limited to legal fees, expert fees and reasonable disbursements, and the amount of any such award. In making its determination, the Panel shall consider the outcome of the proceeding, the conduct of the Parties and abuse of process, their respective financial resources, settlement offers and each Party's good faith efforts in attempting to resolve the dispute prior to or during Arbitration. Success in an Arbitration does not mean that the Party is entitled to costs.

(b) A Party may raise with the Panel any alleged breach of this Code by any other Party. The Panel may take such allegation into account in respect of any cost award.

(c) Any filing fee charged by the SDRCC can be taken into account by a Panel if any costs are awarded.

Annotations – Subsection 6.13:

ADR 03-0021 Zilberman v. Canadian Amateur Wrestling Association; Bernard A. Roy, Arbitrator: After ordering the Respondent to hold a wrestle-off between two of the athletes involved in the dispute, the Arbitrator found that the Respondent had to reimburse the athletes for travel expenses, reasonable lodging and subsistence expenses, costs and disbursements for them to attend such event, but not the costs and expenses of their respective coaches.

SDRCC 04-0017 Boylen v. Equine Canada; Richard W. Pound, Arbitrator: In principle, the parties shall bear their own costs for matters arising under the Code. The routine awards of costs against unsuccessful parties may inhibit athletes from exercising their possible recourses under the Code. If a party pursued a meritless claim that was not frivolous or vexatious, an arbitrator should be reluctant to award costs against that party. In reviewing the "conduct of the parties" for determining a costs award, an arbitrator may consider the raising of matters that are irrelevant or with no factual basis by counsel representing a party at the arbitration. There should be some contribution to the expenses incurred by other parties when the Claimant's case is determined to be completely without merit and the foundations upon which it is framed are found to be without substance. The Claimant was ordered to pay $1,000 to each of the Affected Parties.

SDRCC 06-0047 Hyacinthe v. Athletics Canada, Sport Canada; Richard W. Pound, Arbitrator: This case provides a thorough analysis of factors considered under section 6.13 of the Code [formerly section 6.23 of the 2006 Code]. The fact that a final ruling on the merits of the case was not required does not mean that no expense was incurred in preparation of the anticipated hearing. The purpose of the Code is to provide athletes with a means to obtain a simple and timely resolution of such disputes without incurring significant costs. All parties to the dispute, especially parties in positions of authority, are expected to act in a manner best designed to achieve this objective. The outcome of the proceeding is a primary consideration when determining an award for costs. Solicitor-client costs are awarded only in exceptional cases, such as where the conduct of the other party has been unprofessional, or where the losing party has refused offers of settlement or has otherwise acted objectionably or in bad faith. The filing fee retained by the SDRCC is clearly an expense incurred in the course of the arbitration process.

SDRCC 08-0077 Mayer v. Canadian Fencing Federation; Richard W. Pound, Arbitrator: The Arbitrator found the Respondent sport federation liable to pay the Claimant's solicitor-client costs for appearances required at court proceedings in relation to this matter. The Respondent was also ordered to indemnify the Claimant for any court costs claimed by any party against the Claimant in the related court proceedings. The sport federation should have made certain that it vigorously supported the system of dispute resolution of which it is a part. It did not protect the outcome of that process. The Claimant should not be required to pay for the multiplicity of proceedings and the award of court costs against him due to the failures of his sport federation. The sport federation was also ordered to pay the SDRCC filing fee to the Claimant.

SDRCC 08-0085 Strasser v. Equine Canada; Kathleen J. Kelly, Arbitrator: Where there are serious, intemperate, and inflammatory accusations of a party and/or its representatives that are not true and unsupported by the evidence, sanctions must be imposed to acknowledge and redress the cost and expense of answering unfounded claims. Respondent sport federation awarded its legal costs and telephone charges.

SDRCC 12-0175 Nova Scotia Taekwondo Association v. WTF Taekwondo Association of Canada; Richard W. Pound, Arbitrator: "Costs do not necessarily follow the event." In the case where costs are to be awarded, the Arbitrator will consider a range of factors when determining the quantum: the outcome of the dispute, the conduct of the parties throughout the arbitration, the financial resources of the parties, intent, settlement offers and the parties' willingness to settle the dispute. When claiming the expense of legal fees, it is not sufficient to simply submit a bill. The party must give evidence as to how the final cost was derived in relation to the expense. The burden is higher in the context of solicitor-client costs. The Claimant was ordered to pay $2,000 in costs to the Respondent.

SDRCC 13-0211 Laberge v. Bobsleigh Canada Skeleton; Mew Graeme, Arbitrator: This is a rare occasion where the losing party is awarded costs. The Claimant receives partial indemnity. Respondent is ordered to pay $2,000 towards the $4,487.50 spent in legal fees plus the $250 filing fee paid by the Claimant. The NSO did not clearly set forth its intention in its selection policy. This poorly worded policy led to the erroneous selection of the Claimant. When that decision was appealed, the Claimant was not given notice to participate in the hearing as an Affected Party and was thus deprived of procedural fairness, creating a subsequent need for her to incur legal expenses The NSO should bear responsibility for this as an administrator and a party to the internal appeal.

SDRCC 14-0222 Montreal Wanderers Rugby Club v. Fédération de Rugby du Québec; Richard W. Pound, Arbitrator: In a fee-for-service arbitration, the parties gain access to the SDRCC's resources for which they have to pay. Therefore, at minimum the parties will be required to reimburse the SDRCC for its costs, including the fees of the arbitrator. When considering cost shifting under this scenario, the issue expands to whether the losing party should also bear the costs of the arbitration itself. Given the limited financial resources of both parties, the Arbitrator ordered that the parties share the costs of the fee-for-service arbitration equally.

DT 10-0117 Athletics Canada and Canadian Centre for Ethics in Sport v. Adams; Larry Banack, Arbitrator: The Arbitrator applied factors listed in subsection 6.13(a) [formerly subsection 6.22(c) of the 2009 Code] (i.e. outcome, conduct of the parties, financial resources of the parties, intent) and also applied cost expectations and proportionality to the facts of the case to determine whether costs should be awarded to the athlete. A successful party is prima facie entitled to receive a contribution toward his costs unless that entitlement is affected by the other factors analyzed in this case. In assessing costs, the paramount objective is to fix an amount that is fair and reasonable for the unsuccessful party to pay in all of the circumstances without slavish regard for the actual costs which may have been incurred by the successful party. The amount of costs that an unsuccessful party could reasonably be expected to pay for the arbitration hearing is a factor for consideration in assessing whether and in what amount costs should be awarded. The quantum of costs awarded must be proportionate to and reflect the nature and importance of the matter in issue and the complexity of the proceeding. There should also be proportionality between costs payable on a full indemnity scale from a partial indemnity scale. The Arbitrator awarded the athlete $40,000 payable by CCES on a partial indemnity basis. The Arbitrator considered the steps undertaken by athlete's counsel in defending his client, the length of the arbitration hearing (4 days), and post-hearing activities including submissions as to costs. [Note: The CADP Rules have since changed and Article 6 of this Code does not apply to doping disputes.]

SDRCC 16-0298 Christ v Speed Skating Canada; Jeffrey J. Palamar, Arbitrator: The Arbitrator partially awarded costs to the Claimant. The Respondent argued against an award for costs for three reasons. First, it argued that it had not chosen to retain legal counsel. Second, it had already incurred costs during its own internal appeal process. Third, it was necessary to take into consideration that the Claimant would be further receiving funding from the Respondent. The Arbitrator rejected this reasoning. As per the argument that the Respondent had not retained legal counsel, the Arbitrator determined that this did not lead to the conclusion that it should be immune from reimbursing the Claimant for some legal costs he incurred. Regarding costs incurred during the internal appeal procedure, the Arbitrator found that these costs were the normal costs associated with doing business as a NSO and could thus not be considered in an award on costs. Also, no discount on costs can be made pursuant to the argument that the Claimant would receive further funding from the Respondent. The Arbitrator held that the Claimant would have the right to this funding whether or not there was a cost award and that a distinction exists between costs and damages. This noted, the Arbitrator refused to award full costs to the Claimant as it was held that there was a cost in any litigation and full indemnification is the exception and not the norm.

SDRCC 16-0301 Phoenix et al. v. Equine Canada; Robert P. Armstrong, Arbitrator: In his decision on the merits, the Arbitrator determined that the Claimants had been subjected to a process which lacked an objective appearance of fairness and could not withstand scrutiny. As such, this was an exceptional case where the Claimants could justifiably and rightfully be awarded costs.

SDRCC 16-0311 Syed v. Cricket Canada; Ross C. Dumoulin, Arbitrator: Only exceptional circumstances can justify any deviation from the principle that each Party shall be responsible for its own expenses and that of its witnesses. Accordingly, the most important factor regarding costs is the conduct of each party as this conduct will have an effect on the reduction or the inflation of the amount of costs incurred by each party. The "conduct of the parties" can be defined as the conduct from the moment the Claimant's request was filed to the issuance of the award on the merits of the case.

SDRCC 17-0324 Jacks v. Swimming Canada; David Bennett, Arbitrator: The Arbitrator held that certain conduct, including those looking to harm the interests of the other party or delay a decision, may factor into the award for costs. Bad faith in particular is a factor to consider when awarding costs. However, the Code limits cost awards to exceptional cases as to ensure that money is being spent within the realm of sport. Costs should only be awarded where the actions of one party are without merit and have caused financial harm to the other party.

SDRCC 20-0453 Moore v. Wrestling Canada Lutte; Larry Banack, Arbitrator: Costs should be awarded in exceptional circumstances only so that funds can be spent for athletes and rather than disputes. The Arbitrator concluded that the NSO's decision making and conduct was not frivolous, egregious nor made in bad faith or with malice. Success alone does not entitle a party to costs automatically. The Arbitrator determined in this case that each party shall bear its own costs, therefore denying the Claimant's request for costs after he had succeeded in his team selection dispute.

Article 7 Specific Arbitration Rules for the Doping Tribunal

7.1 Application of Article 7

The specific procedures and rules set forth in this Article shall apply in addition to the rules specified in the CADP. To the extent that a procedure or rule is not specifically addressed in this Article or in the CADP, the other provisions of this Code shall apply, as applicable.

7.2 Time Limits

(a) The time limits fixed under this Article shall begin from the day after the day on which the notification of an anti-doping rule violation was issued by the CCES pursuant to Rule 7.2 of the CADP.

(b) When a deadline falls on a weekend or statutory holiday, the next business day shall be the deadline for the purpose of the CADP [CADP Rule 18.10].

7.3 Initiation of a Doping Hearing

(a) The Person whom the CCES asserts to have committed an anti-doping rule violation may request a hearing before a Doping Panel by filing a completed Request form to the Doping Tribunal before the deadline specified in the CCES notification letter [CADP Rule 8.4.2].

(b) Unless there is an agreement on a revised schedule between the CCES and the Person whom the CCES asserts to have committed an anti-doping violation, the SDRCC shall take all appropriate action to ensure that the hearing process commences no later than forty-five (45) days from the notification [CADP Rule 8.2.1].

(c) With respect to a hearing involving a Person subject to a Provisional Suspension imposed under Rules 7.4.1 or 7.4.2 of the CADP, unless there is an agreement between such Person and the CCES, the SDRCC shall take all appropriate action to ensure that the Person is given either:

(i) an opportunity for a Provisional Hearing either before or on a timely basis after the imposition of the Provisional Suspension [CADP Rule 7.4.3(a)]; or

(ii) an opportunity for an expedited hearing on the merits after imposition of the Provisional Suspension [CADP Rule 7.4.3(b)].

7.4 Resolution Without a Hearing

A hearing shall not be required pursuant to Rule 8.4.3 of the CADP when the Person against whom an anti-doping violation is asserted:

(a) admits that violation, waives a right to hearing and accepts the consequences proposed by the CCES [CADP Rule 8.4.1]; or

(b) fails to dispute that assertion within the time period specified in the notification sent by the CCES asserting the violation, in which case the Person shall be deemed to have admitted the violation, waived a hearing, and accepted the proposed consequences [CADP Rule 8.4.2].

7.5 Parties and Observers

The Parties are the Person whom the CCES asserts to have committed an anti-doping rule violation; the CCES; and the relevant SO. The Person’s International Federation, WADA and the Government of Canada may attend the hearing as observers if they elect to do so [CADP Rule 8.2.3].

7.6 Format of Doping Hearings

(a) The Doping Panel may conduct an oral hearing in person or by video or teleconference or a combination of these means [CADP Rule 8.2.4.5].

(b) When the Person whom the CCES asserts to have committed an anti-doping rule violation requests an in-person hearing, it shall be held in Canada in the municipality most convenient to that Person, unless impractical in the circumstances [CADP Rule 8.2.4.6].

(c) A Party may request a public hearing. A public hearing consists of a publicly accessible audio link to the Doping Panel's proceeding. If requested, a public hearing shall be provided at the expense of the Doping Tribunal. However, on the objection of a Party the Doping Panel may in its discretion deny a request for a public hearing:

(i) in the interests of public order and morality or national security;

(ii) to protect the interests of Minors or the privacy rights of the participants;

(iii) where publicity would prejudice the interests of justice; or

(iv) where the hearing is exclusively related to a question of law [CADP Rule 8.2.2.3].

7.7 Burdens and Standards of Proof

The CCES shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the CCES has established an anti-doping rule violation to the comfortable satisfaction of the Doping Panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probabilities but less than proof beyond a reasonable doubt. Where the rules of the CADP place the burden of proof upon the Party alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances except as provided in Rules 3.2.2 and 3.2.3 of the CADP, the standard of proof shall be by a balance of probabilities [CADP Rule 3.1].

7.8 Methods of Establishing Facts and Presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable for hearings before the Doping Panel [CADP Rule 3.2]:

(a) Analytical methods or decision limits approved by WADA after consultation within the relevant scientific community and which have been the subject of peer review are presumed to be scientifically valid. Any Person seeking to challenge whether the conditions for such presumption have been met or to rebut this presumption of scientific validity shall, as a condition precedent to any such challenge, first notify WADA of the challenge and the basis of the challenge. The initial hearing body, appellate body or CAS, on its own initiative, may also inform WADA of any such challenge. Within ten (10) days of WADA's receipt of such notice and the case file related to such challenge, WADA shall also have the right to intervene as a Party, appear as "amicus curiae", or otherwise provide evidence in such proceeding. [CADP Rule 3.2.1].

(b) WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for laboratories. The Person alleged to have committed a violation may rebut this presumption by establishing that a departure from the International Standard for laboratories occurred which could reasonably have caused the adverse analytical finding. If the Person rebuts the preceding presumption by showing that a departure from the International Standard for laboratories occurred which could reasonably have caused the adverse analytical finding, then the CCES shall have the burden to establish that such departure did not cause the adverse analytical finding [CADP Rule 3.2.2].

(c) Departures from any other International Standard or other anti-doping rule or policy set forth in the CADP or the World Anti-Doping Code shall not invalidate analytical results or other evidence of an anti-doping rule violation, and shall not constitute a defense to an anti-doping rule violation; provided, however, if the Person establishes that a departure from one of the specific International Standard provisions listed in Rule 3.2.3 (i) to (iv) of the CADP could reasonably have caused an anti-doping rule violation based on an adverse analytical finding or whereabouts failure, then the CCES shall have the burden to establish that such departure did not cause the adverse analytical finding or the whereabouts failure [CADP Rule 3.2.3].

(d) The facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction, which is not the subject of a pending appeal, shall be irrebuttable evidence of those facts against the Person to whom the decision pertained unless the Person establishes that the decision violated principles of natural justice [CADP Rule 3.2.4].

(e) In a hearing on an anti-doping rule violation, the Doping Panel may draw an inference adverse to the Person who is asserted to have committed an anti-doping rule violation based on the Person’s refusal, after a request made in a reasonable time in advance of the hearing, to appear at the hearing (either in person or by telephone as directed by the Doping Panel) and to answer questions from the Doping Panel or the CCES [CADP Rule 3.2.5].

(f) The Doping Panel has the power, at its absolute discretion, to appoint an expert at the expense of the Doping Tribunal to assist or advise the Doping Panel, as required [CADP Rule 8.2.2.2].

7.9 Doping Decisions

(a) The Doping Panel shall issue an initial decision no later than five (5) days from the completion of the hearing. The Doping Panel shall also issue a reasoned decision no later than twenty (20) days from the completion of the hearing [CADP Rules 8.3.1].

(b) The reasoned decision of the Doping Panel shall address and determine without limitation the following issues:

(i) the jurisdictional basis and applicable rules;

(ii) whether an anti-doping rule violation was committed or a Provisional Suspension should be imposed and the factual basis for such determination;

(iii) the specific CADP rules that have been violated;

(iv) all consequences flowing from the anti-doping rule violation(s), including applicable disqualifications, any forfeiture of medals or prizes, any period of ineligibility (and the date it begins to run), any financial consequences, and (if applicable) a justification for why the greatest potential consequences were not imposed; and

(v) whether the Athlete is an International-Level Athlete for the purposes of the appeal route pursuant to Rule 13.2.3 of the CADP, as well as the appropriate appeal route (including the address to which any appeal should be sent to) and the deadline to appeal.

(c) A decision by a Doping Panel shall be made public, subject only to the applicable rules of the CADP.

(d) A Party shall have the right to appeal a decision of a Doping Panel pursuant to Section 9.3. In addition, WADA and the applicable International Federation shall have the right to appeal any decision of the Doping Panel to the CAS.

7.10 Costs

Each Party shall be responsible for its own expenses (including legal fees) and those of its witnesses. Subject to Rule 8.2.4.8 of the CADP, the Doping Panel may grant a reimbursement of expenses to any Party, payable as it directs. The Party seeking a reimbursement of its expenses shall inform the Panel and the other Party(ies) no more than seven (7) days after being notified of the Doping Panel decision for which the reimbursement of expenses applies.

Article 8 Specific Arbitration Rules for the Safeguarding Tribunal

8.1 Application of Article 8

The specific procedures and rules set forth in this Article shall apply in addition to the rules set out in the Applicable Conduct Rules and Specific Procedural Rules. To the extent that a procedure or rule is not specifically addressed in this Article, in the Specific Procedural Rules or in the Applicable Conduct Rules of the SO, the other provisions of this Code shall apply except for Articles 7 and 9.

8.2 Jurisdiction of the Safeguarding Tribunal

The Safeguarding Tribunal has jurisdiction over matters as described in Section 8.1 when:

(a) the Applicable Conduct Rules of which a breach is alleged, or the Specific Procedural Rules, as applicable, specifically refer parties to arbitration before the Safeguarding Tribunal; and

(b) there is an agreement in place for payment of arbitration services between the SDRCC and the SO responsible for the application of the Applicable Conduct Rules, or between the SDRCC and another entity which provides for the payment of arbitration services for the relevant SO.

8.3 Initiation of Proceedings under the Safeguarding Tribunal

(a) The Person initiating the proceeding shall complete all mandatory fields of the Request form, as amended from time to time by the SDRCC, and file such Request with the SDRCC.

(b) The Request form shall be accompanied by:

- (i) a copy of the Applicable Conduct Rules;
- (ii) a copy of the investigation report, if applicable; and
- (iii) a copy of the document setting out the Provisional Measure(s) or consequence(s) being challenged, if applicable.

(c) Unless specified otherwise in the Applicable Conduct Rules or the Specific Procedural Rules, the time limit to file a Request shall be twenty-one (21) days following the later of, as applicable, the date on which:

- (i) the investigation report is communicated to the Person wishing to challenge the finding on a violation;
- (ii) the decision to impose a Provisional Measure was communicated to the Person wishing to challenge it; or
- (iii) the consequence was communicated to the Person wishing to challenge it.

(d) The SDRCC may, at its own discretion, accept an incomplete Request if satisfied of the reasons provided by the Person initiating the proceeding for the absence of the information.

8.4 Parties before the Safeguarding Tribunal

Unless specified otherwise in the Applicable Conduct Rules or Specific Procedural Rules, the Parties entitled to make submissions before the Safeguarding Tribunal are:

(a) On a challenge of a finding on a violation pursuant to Section 8.6 of this Code, the Person alleged to have committed a violation of the Applicable Conduct Rules; the alleged victim(s) of the alleged violation; and the Entity Pursuing the Violation;

(b) On a challenge of a Provisional Measure pursuant to Section 8.5 of this Code or of a consequence pursuant to Section 8.8 of this Code, the Person alleged to have committed a violation of the Applicable Conduct Rules and the Entity Pursuing the Violation. The alleged victim(s) of the alleged violation may observe the hearing if they elect to do so and may only provide, pursuant to Subsection 8.9(f), a written impact statement.

(c) In the event that a challenge of a finding on a violation pursuant to Subsection 8.6 and a challenge of a consequence pursuant to Subsection 8.8 are heard jointly, Parties shall have the right to make submissions on one or both questions in accordance with Subsections 8.4(a) and 8.4(b).

8.5 Challenge of a Provisional Measure

(a) Where a request is received from the Respondent to challenge a Provisional Measure no later than twenty-one (21) days after receiving notice of such Provisional Measure, the matter shall be determined by a Safeguarding Panel appointed in accordance with Section 5.3.

(b) Any evidence and submissions of the Parties regarding a Provisional Measure shall be made in writing and/or, if the Safeguarding Panel so orders, orally during a telephone or videoconference. There shall be no right to personal attendance unless the Safeguarding Panel so orders.

(c) The Safeguarding Panel hearing a challenge of a Provisional Measure has the power to lift or to vary the Provisional Measure or to impose other measures as deemed appropriate after considering the following non-exhaustive list of factors:

(i) If the provisional measure is protective in nature (such as a ‘no-contact’ order or area restriction), the extent to which the addition, removal or alteration of the provisional measure will bear on the risk of harm to the alleged victim(s) or other sport participants;

(ii) The strength/likelihood of success of the Respondent’s case;

(iii) The interests of the Parties; and

(iv) The extent to which the addition, removal or alteration of the provisional measure would bring into disrepute or endanger public confidence in the SDRCC and/or the concerned SOs.

(d) A Respondent against whom a suspension is imposed as a Provisional Measure has the right to an expedited hearing on the appropriateness of the Provisional Measure. For the sake of clarity, when the Provisional Measure imposes conditions that restrict but do not prevent the Respondent from participation, there shall be no right to an expedited hearing.

(e) A reasoned decision on a challenge of a Provisional Measure shall be communicated to the Parties within ten (10) days of the closing of submissions.

(f) A decision on a challenge of a Provisional Measure shall be final and binding and shall not be appealable to the Appeal Tribunal.

8.6 Challenge of a Finding on a Violation

(a) A challenge of a finding on a violation can be made by the Person alleged to have committed a violation of the Applicable Conduct Rules; the alleged victim(s) of the alleged violation; or the Entity Pursuing the Violation.

(b) When assessing a challenge of a finding on a violation, the Safeguarding Panel shall apply the standard of reasonableness.

(c) Notwithstanding Section 3.10, a challenge of a finding on a violation will be heard by way of documentary review only, except as agreed otherwise by the Safeguarding Panel.

(d) In the event the Party challenging the violation establishes bias on the part of the Person having made the finding, a hearing *de novo* must be held before the Safeguarding Panel on the finding on a violation.

(e) A decision of the Safeguarding Panel on the finding on a violation shall be final and binding and shall not be appealable to the Appeal Tribunal.

8.7 Grounds for Challenging a Finding on a Violation

A finding of whether a violation of the Applicable Conduct Rules occurred may only be challenged on the following grounds:

(a) Error of law, limited to:

- (i) a misinterpretation or misapplication of a section of the Applicable Conduct Rules;
- (ii) a misapplication of an applicable principle of general law;
- (iii) acting without any evidence;
- (iv) acting on a view of the facts which could not reasonably be entertained; or
- (v) failing to consider all the evidence that is material to the finding.

(b) Failure to observe the principles of natural justice. The extent of natural justice rights afforded to a Party will be less than that afforded in criminal proceedings, and may vary depending on the nature of the consequence. Where the consequence involves the loss of the opportunity to volunteer in sport, the extent of those rights shall be even lower, as determined by the Safeguarding Panel; and

(c) New evidence, limited to instances when such evidence:

- (i) could not, with the exercise of due diligence, have been discovered and presented during the investigation or adjudication of the complaint and prior to the decision being made;
- (ii) is relevant to a material issue arising from the complaint;
- (iii) is credible in the sense that it is reasonably capable of belief; and
- (iv) has high probative value, in the sense that, if believed, it could, on its own, or when considered with other evidence, have led to a different conclusion on the material issue.

8.8 Challenge of a Consequence

(a) Where a request is received from the Respondent to challenge a consequence no later than twenty-one (21) days after receiving notice of such consequence, the matter shall be determined by a Safeguarding Panel appointed in accordance with Section 5.3.

(b) Where the Safeguarding Panel determines that the Respondent has presented or presents a risk to the welfare of Minors or Vulnerable Persons, the Safeguarding Panel shall impose such consequences and/or risk management measures as seem fair and just, due consideration being given to the SO’s own rules and regulations.

8.9 Conduct of the Proceedings

(a) In addition to the powers afforded a Safeguarding Panel under Section 5.7, the Safeguarding Panel shall also have the powers to conduct such enquiries as appear necessary or expedient in order to ascertain the facts.

(b) The Safeguarding Panel shall make, upon application by or on behalf of a Minor or Vulnerable Person, an order as it deems appropriate in relation to the manner and form in which any witness evidence should be produced, provided that:

(i) a Party intending to rely upon the evidence of a witness shall serve a statement or report setting out the proposed evidence of such witness at a date in advance of the hearing, as specified by the Safeguarding Panel; and

(ii) the Safeguarding Panel shall have the power to allow, refuse or limit the evidence or appearance at the hearing of any witness, subject only to the provisions of Section 8.7(c).

(c) The Safeguarding Panel shall make such order as it deems appropriate in relation to the disclosure of relevant documents and/or other materials in the possession or control of any of the Parties.

(d) The Safeguarding Panel shall have the right to question a witness and control the questioning of witnesses by a Party. The Safeguarding Panel shall also ensure that all those who appear at the hearing, and in particular, Minors and Vulnerable Persons, are questioned with sensitivity and respect.

(e) As soon as possible after written submissions, and not later than the beginning of the hearing, the Safeguarding Panel may communicate to the Parties that a court-appointed expert will be called to testify. Court-appointed experts may be questioned by all the Parties.

(f) The Safeguarding Panel must, before deciding on the imposition of a consequence, allow the victim(s) to provide a written impact statement and may allow them to read it aloud at the hearing.

8.10 Evidence of Minors and of Vulnerable Persons

(a) Procedural accommodations shall be requested with a formal application at least 15 days prior to the hearing, unless otherwise allowed by the Panel. Such request shall set out the reasons why procedural accommodations are necessary and what forms of accommodations are appropriate.

(b) Before a ruling on the application can be made, the opposing Party shall be allowed to file submissions with respect to the application for procedural accommodations.

(c) As a general rule, procedural accommodations for Minors and Vulnerable Persons will be granted, unless the Safeguarding Panel is of the opinion that they would interfere with the proper administration of justice.

(d) Once an application is filed for procedural accommodations on behalf of a Minor or a Vulnerable Person called as a witness, there is a presumption that the accommodations are necessary. The opposing Party bears the burden of establishing that the use of a testimonial aid would prejudice their right to a fair hearing or otherwise interfere with the proper administration of justice. If the opposing Party challenges procedural accommodations for Minors or Vulnerable Persons, expert evidence shall be admissible to establish whether procedural accommodations are justified.

(e) An adult witness, who is not a Minor nor a Vulnerable Person, but over whom the Respondent has authority or power, may make an application for procedural accommodations, by way of a witness statement setting out the reasons for such application.

(f) When deciding whether to tailor procedures to meet the particular needs of a Minor or Vulnerable Person or an adult witness pursuant to Subsection 8.10(e), the Panel will take into account factors including, but not limited to:

(i) the nature of the allegations;

(ii) the nature of the relationship between the witness and the Respondent, including the existence of a power imbalance in favor of the Respondent;

(iii) the safety of the witness;

(iv) the symptoms suffered by the witness that have an impact on the consistency, coherence of their testimony and ability to recount relevant events;

(v) the vulnerability of the witness to intimidation and/or retaliation;

(vi) the communication skills, concentration span and level of understanding of the witness;

(vii) the need for frequent breaks in the witness' evidence; and

(viii) any other circumstances considered relevant by the Panel.

(g) Notwithstanding Subsection 8.10(f), where the proceedings arise out of any form of alleged sexual maltreatment, the Panel has full discretion to grant the accommodations if the Panel believes they are necessary to obtain a full and candid account from the witness.

8.11 Procedural Accommodations

(a) When the application for procedural accommodations is granted, the Panel may accommodate a person's vulnerability by various means, including but not limited to:

(i) allowing a support person to be present or to participate at the hearing;

(ii) allowing the presence of a specially trained animal for emotional support;

(iii) testifying by way of affidavits, via videoconference or closed-circuit camera, behind a screen, or via recorded statement;

(iv) advance approval by the Panel of any questions proposed to be put to the witness;

(v) the questioning being conducted by the Panel or neutral counsel;

(vi) allowing the Minor or Vulnerable Person to see their interview and/or their existing evidence before giving evidence for the purpose of memory refreshing; and

(vii) any such other procedural accommodations that the Safeguarding Panel deems fair, just and appropriate in the circumstances, balancing the need to achieving a fair hearing with the risk of harm to the witness.

(b) In particular, where the witness is a Minor, the Panel shall have regard to:

(i) the Minor's wishes and feelings; in particular the Minor's willingness to give evidence; as an unwilling Minor should rarely if ever be obliged to give evidence;

(ii) the Minor's particular needs and abilities;

(iii) the age, maturity, vulnerability and understanding, capacity and competence of the Minor, which may be assessed through professionals' discussions with the Minor;

(iv) the nature and gravity of the issues to be determined;

(v) evidentiary matters such as, but not limited to, the source of any allegations, the extent to which the case depends on the Minor's allegations alone, corroborative evidence, the quality and reliability of the existing evidence, the quality and reliability of any interview, whether the Minor has given evidence to another tribunal or Court, the manner in which such evidence was given and the availability of that evidence;

(vi) whether the Minor has retracted allegations;

(vii) the nature of any challenge a Party wishes to make;

(viii) the length of time since the events in question;

(ix) whether justice can be done without further questioning;

(x) the risk of further delay;

(xi) the wishes and views of any parent, person with parental responsibility for the Minor, or any guardian, if appropriate; and

(xii) any other matter which the Panel considers relevant.

8.12 Logistical Arrangements for In-Person Hearings

If a Minor is to give oral evidence at an in-person hearing, the SDRCC shall allow the following to occur:

(a) A familiarisation visit by the Minor to the hearing facility before the hearing with a demonstration of special measures, so that the Minor can make an informed view about their use;

(b) Consideration of the Minor's secure access to the building and suitability of waiting/eating areas so as to ensure there is no possibility of any confrontation with anyone which might cause distress to the Minor (where facilities are inadequate, a testimony by closed-circuit or videoconference should be granted); and

(c) Identification of where the Minor will be located in the hearing facility and the need for privacy.

8.13 Burden and Standard of Proof

(a) The burden of proof shall lie on the Party who asserts a particular fact or matter.

(b) The standard of proof shall be a balance of probabilities throughout the proceedings.

(c) The Panel may consider any evidence, whether or not such evidence would be admissible in a court of law.

(d) The evidence of Minors and of Vulnerable Persons, whether direct or hearsay, shall be admissible in proceedings before the Panel.

(e) Facts accepted by a criminal court, by a civil court or by a professional disciplinary tribunal of competent jurisdiction shall be admissible as evidence, as allowable by applicable law.

8.14 Costs

If the Applicable Conduct Rules and/or Specific Procedural Rules of the SO make no provisions for the award of costs, Section 5.14 shall apply.

8.15 Safeguarding Panel Decisions

(a) Except as provided for under Subsection 8.5(e), decisions of the Safeguarding Panel shall be communicated to the Parties within seven (7) days of the completion of the hearing process. Written reasons shall be provided to the Parties within fifteen (15) days of the completion of the hearing process. Upon request by the Parties, the time limits may be abridged by the Panel.

(b) Notwithstanding Subsection 8.15(a), when the decision must be communicated to the Parties simultaneously in both official languages, the written reasons shall be provided to the Parties within twenty-one (21) days of the completion of the hearing process.

(c) The SDRCC may publish a summary of the Safeguarding Panel decision in accordance with the Applicable Conduct Rules and Specific Procedural Rules, provided that what is disclosed does not enable the public to identify any Minor.

(d) If the Safeguarding Panel concludes that there is a risk to the welfare of a Minor or Vulnerable Person, consideration may be given as to whether its decision shall be communicated to one or more of the following:

  (i) any statutory body concerned with the welfare of Children or Vulnerable Persons;

  (ii) the police; and

  (iii) any SO that may have a legitimate interest in the decision.

(e) No decision of the Safeguarding Tribunal, save in exceptional and urgent circumstances, shall be disclosed under Subsection 8.15(c) if the parties have, within seven (7) days of receipt of the decision, made representations that it should not be disclosed. Upon receipt of those representations, the Safeguarding Panel shall consider whether, in the light of those representations, its decision shall be disclosed.

(f) Notwithstanding any publication ban, Safeguarding Panel decisions may be disclosed to arbitrators of the Safeguarding Tribunal and of the Appeal Tribunal redacted to remove any information that could identify the Parties and/or the witnesses.

Article 9 Specific Arbitration Rules for the Appeal Tribunal

9.1 Application of Article 9

Subject to the rules contained in this Article 9, an Appellant may appeal to the Appeal Tribunal a doping-related decision or a final decision of a Safeguarding Panel pertaining to consequence.

In connection with all appeals of doping-related decisions enumerated in Section 9.3, the specific procedures and rules set forth in this Article shall apply in addition to the rules specified in the CADP. To the extent that a procedure or rule is not specifically addressed in this Article or in the CADP, the other provisions of this Code shall apply, as applicable.

9.2 Decision Being Appealed

The decision being appealed shall remain in full force and effect pending determination of the appeal, unless specified otherwise in the applicable rules or unless an Appeal Panel constituted under this Article orders otherwise.

9.3 Doping-related Decisions Appealable Before the Appeal Tribunal

The following decisions may be appealed to an Appeal Panel exclusively as provided in Rule 13 of the CADP:

(a) A decision by a Doping Panel that an anti-doping rule violation was committed, a decision imposing consequences or not imposing consequences for an anti-doping rule violation, or a decision that no anti-doping rule violation was committed;

(b) A decision that an anti-doping rule violation proceeding cannot go forward for procedural reasons (including, for example, prescription);

(c) A decision by WADA not to grant an exception to the six (6) months' notice requirement for a retired athlete to return to competition under Rule 5.6.1 of the CADP;

(d) A decision by the CCES not to bring forward an adverse analytical finding or an atypical finding as an anti-doping rule violation, or a decision not to go forward with an anti-doping rule violation after an investigation in accordance with the International Standard for Results Management;

(e) A decision to impose, or lift, a Provisional Suspension as a result of a Provisional Hearing;

(f) The CCES' failure to comply with Rule 7.4 of the CADP;

(g) A decision that the CCES lacks authority to rule on an alleged anti-doping rule violation or its consequences;

(h) A decision to suspend, or not suspend, consequences or to reinstate, or not reinstate, consequences under Rule 10.7.1 of the CADP;

(i) Failure to comply with Articles 7.1.4 and 7.1.5 of the World Anti-Doping Code;

(j) Failure to comply with Rule 10.8.1 of the CADP;

(k) A decision under Rule 10.14.3 of the CADP;

(l) A decision by the CCES not to implement another anti-doping organization's decision under Rule 15 of the CADP;

(m) A decision under Article 27.3 of the World Anti-Doping Code, but exclusively as provided in Rule 13.2 of the CADP;

(n) A decision of the CCES denying an application for a TUE, as provided in Rule 13.4; and

(o) A decision of the CCES under Rule 14.3.7 of the CADP.

9.4 Doping-related Decisions only Appealable Before the CAS

(a) Any TUE decision by an International Federation (or by the CCES where it has agreed to consider the application on behalf of an International Federation) that is not reviewed by WADA, or that is reviewed by WADA but is not reversed upon review, may be appealed by the Athlete and/or the CCES exclusively to the CAS [CADP 4.4.6.3].

(b) In cases arising from participation in an international event or in cases involving International-Level Athletes, the decisions of the Doping Panel may be appealed exclusively to the CAS [CADP Rule 13.2.1].

(c) A decision by WADA assigning results management under Article 7.1 of the World Anti-Doping Code.

9.5 Safeguarding Panel Decisions Appealable Before the Appeal Tribunal

Unless otherwise specified in the Applicable Conduct Rules or Specific Procedural Rules:

(a) a Safeguarding Panel decision is appealable only as it pertains to a consequence; and

(b) only the Parties who had the right to make fulsome submissions as to the consequence before the Safeguarding Panel may appeal its decision.

9.6 Initiation of an Appeal

(a) A Person shall initiate an appeal by completing a notice of appeal form, as provided by the SDRCC, and by delivering it to the SDRCC and to:

  (i) all Parties who were before the Doping Panel whose decision is being appealed, within thirty (30) days of the notification of the Doping Panel’s decision [CADP Rule 13.2.2];

  (ii) all Parties involved in the CCES’ decision being appealed, within ten (10) days of the notification of the CCES’ decision [CADP Rule 13.2.2]; or

  (iii) as applicable, the Respondent and the Entity Pursuing the Violation, within thirty (30) days of the Safeguarding Panel’s decision on consequence, unless specified otherwise in the Applicable Conduct Rules or Specific Procedural Rules of the SO.

(b) An Appellant of a doping-related decision who was not a Party before the Doping Panel, but is otherwise entitled to appeal, shall initiate an appeal within twenty-one (21) days of receiving a copy of the case file that was before the Doping Panel [CADP 13.6.2].

(c) Appeal hearings should be conducted expeditiously. Except where all Parties agree or fairness requires otherwise, the SDRCC shall take all appropriate action to ensure that the hearing process commences no later than forty-five (45) days from the receipt of the appeal.

(d) Notwithstanding any of the foregoing, when fairness so requires, the Panel shall take all appropriate action to expedite the commencement of hearings.

9.7 Appointment of an Appeal Panel

(a) In the normal course, a Panel of three (3) arbitrators shall hear all Appeals. However, if all Parties involved in the decision under appeal agree, in writing, a single Arbitrator may be appointed by the Appeal Tribunal to sit as the Appeal Panel.

(b) An Arbitrator cannot be appointed as a one-person Panel or as chairperson of a three-person Panel if that Arbitrator is a roster member of the Tribunal from which the decision is appealed, unless all Parties agree.

(c) Under no circumstances may any individual who has had any prior involvement in the case, directly or indirectly, and whether as an Arbitrator, Mediator or otherwise, be appointed to the Appeal Panel.

9.8 Scope of Review

(a) For an Appeal of a doping-related decision, the scope of review includes all issues relevant to the matter and is expressly not limited to the issues or scope of review before the initial decision maker. Any party to the appeal may submit evidence, legal arguments and claims that were not raised in the first instance hearing so long as they arise from the same cause of action or same general facts or circumstances raised or addressed in the first instance hearing [CADP Rule13.1.1].

(b) Unless the Appeal Panel determines otherwise, an appeal of a Safeguarding Panel decision on consequence shall take the form of a judicial review.

9.9 Parties and Observers in an Appeal of a Doping-related Decision

(a) The Parties are:

(i) the Parties who were before the Doping Panel [CADP Rule 13.2.2.1.3(a)]; or

(ii) if there is no decision of the Doping Panel, the CCES and the Person subject to a decision made by the CCES [CADP Rule 13.2.2.1.3(b)].

(b) The International Federation, the Canadian Olympic Committee and the Canadian Paralympic Committee, if not a Party before the Doping Panel, and WADA each have the right to attend hearings of the Appeal Panel as an observer.

9.10 Procedures of the Panel in Appeals of a Doping-related Decision

(a) The Appeal Panel shall have the power to regulate its procedures in a manner consistent with Article 7 and the CADP Rule 8.2 [CADP rule 13.2.2.2.1].

(b) When the Person whom the CCES asserted to have committed an anti-doping rule violation requests an in-person hearing, it shall be held in Canada in the municipality most convenient to that Person, unless impractical in the circumstances.

9.11 Procedures of the Panel in Appeals of a Safeguarding Panel Decision

(a) It is not expected that Appeal Panel will require hearing any evidence from a Minor or Vulnerable Person but, if necessary, it shall do so in accordance with Sections 8.10 and 8.11.

(b) For the avoidance of doubt, an Appeal Panel shall have the power to increase, decrease or remove any consequence imposed by the Safeguarding Panel.

9.12 Appeal Panel Decisions

(a) All decisions made by an Appeal Panel comprised of three (3) Arbitrators shall be provided to the Parties no later than fifteen (15) days from the completion of an Appeal hearing process. The Appeal Panel shall also provide written reasons to the Parties for its decision within forty-five (45) days of the completion of an Appeal hearing process.

(b) Where the Appeal Panel consists of a sole Arbitrator, all decisions shall be provided to the Parties no later than seven (7) days from the completion of an Appeal hearing process. The Appeal Panel shall also provide written reasons to the Parties for its decision within fifteen (15) days of the completion of an Appeal hearing process.

(c) WADA, the International Olympic Committee, the International Paralympic Committee and the relevant International Federation shall have the right to appeal any decision of the Appeal Panel in a doping-related matter to the CAS [CADP Rule 13.2.2.3.2].

(d) Subject to Subsection 9.12(c), all Appeal Panel decisions shall be final and binding.

9.13 Costs

(a) The Appeal Panel in a doping-related appeal shall have the same powers to award costs as the Doping Panel.

(b) Subject to the Applicable Conduct Rules and Specific Procedural Rules of the SO, the Appeal Panel in an appeal of a Safeguarding Panel decision shall have the same powers to award costs as the Safeguarding Panel.

9.14 Publication of Appeal Panel Decisions

The publication of an Appeal Panel decision is governed by the same publication rules as the decision being appealed.