

IN THE NEUTRAL ZONE

News and Events of the Sport Dispute Resolution Centre of Canada



www.sdrcc.ca

October 2018

Launch of the SDRCC Investigation Unit as a Pilot Project by Martin Gariépy and Marie-Claude Asselin

It is in 2016 that the SDRCC established an ad hoc committee to revive the idea, first raised in the year 2000 in a report entitled “A Win-Win Solution”, of creating an ombuds program for sport in Canada. Just over a year after tabling the “Closing the Loop - A Proposal for a Sport Ombuds in Canada” to the Minister of Sports and Persons with Disabilities, the SDRCC Board of Directors recognized the immediate challenges that the sport community was facing in dealing with harassment and abuse allegations. The need for expert assistance was evident and the concept of an investigation service was discussed by the SDRCC Board of Directors in May 2018. When the Honourable Kirsty Duncan announced stronger measures to eliminate harassment in the Canadian sport system in June, the ideas debated by the Board the previous month simply crystalized.

Federally-funded sport organizations must now take all necessary measures to create a workplace free from harassment, abuse or discrimination of any kind. Among other things, “they must make provisions - within their governance framework - for access to an independent

third party to address harassment and abuse cases [...] effective immediately”. The Minister’s directives have obviously created a need for federally-funded organizations to have access to independent third-party services. The SDRCC Board of Directors, supported in its efforts by many in the sport community, decided to play a leadership role in extending its expertise to launch a pilot project to increase access to independent investigation services. Ideally however, such services would be accessible through an independent intake/hotline service (see box on the left).

Who Can Use the Services of the Investigation Unit?

The services are offered, on a voluntarily and fee-for-service basis, to all federally-funded sport organizations. At this time, the pilot project does not target other organizations, such as provincial sport organizations or clubs. However, if the project is implemented on a permanent basis in the future, this option may be considered to allow more sport organizations to retain the services of qualified investigators.

When will the Services be Available?

The plan is for the services to be officially launched in November 2018 and the pilot project is expected to last 18 months, until March 31, 2020. An evaluation of the pilot will be conducted in early 2020 to determine if the program will be a permanent service of the SDRCC.

What are the Fees Associated with these Services?

The SDRCC is well aware that federally-funded sport organizations do not have unlimited financial resources and aims to keep (continued on page 2)

HOTLINE / INTAKE SERVICE: One of the most difficult obstacles for victims and witnesses of harassment and abuse is to have to report issues to individuals often perceived as being partial. The SDRCC believes that complaints should be filed through a confidential hotline/intake service, answered by individuals who are properly trained to handle crisis situations and callers in distress.

The SDRCC recommendation is that a partnership be entered with an organization that already offers such services. At the date of publishing, no funding is currently available to implement this service.

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Launch of the SDRCC Investigation Unit as a Pilot Project *(continued)*

the fees reasonable and the services accessible. When retaining the services of a member of the Investigation Unit, the sport organization may do it through the execution of a standard form agreement designed by the SDRCC with pre-defined remuneration conditions. Alternatively, the sport organization may negotiate different financial arrangements with the investigator.

Who Oversees the Investigation Unit?

As a means of keeping its arbitration services segregated from the new investigation services, the SDRCC Board of Directors has created an *Advisory Committee - Investigation Services* to oversee the operations of the Investigation Unit. The composition of the committee, comprised of an athlete representative appointed by AthletesCAN, a member of the SDRCC Board and three external members, together combining expertise in sport, harassment matters and investigations, ensures it is properly qualified to formulate and recommend criteria, policies and guidelines for the program. The committee's members are: Karen Bellehumeur, Joseph de Pencier, Jean Dupré, Allison Forsyth, and Jennifer Oliveros.

Brief Overview of Operations

In the absence of an independent hotline/intake service, the participating NSO, upon receipt of a complaint, will notify the SDRCC of such complaint. An investigator will be appointed to conduct a **preliminary assessment**. The appointed investigator shall contact the complainant and, if deemed appropriate, the respondent, and consult with the sport organization in order to draw a list of potential witnesses and other considerations. An investigation plan will be designed by the investigator, with an estimate of costs and recommendations on immediate actions, if required.

The sport organization, in receipt of the investigation plan, will take the necessary measures to implement it, which may include **retaining an investigator** from the SDRCC Investigation Unit (not necessarily the one who prepared the plan) or any other investigator of its choice. In the latter case, the terms of the mandate are to be negotiated between the sport organization and the external investigator. The investigator retained will **conduct the investigation** and validate the facts. After gathering information from the various witnesses, the complainant and the respondent, reviewing files and documents, the investigator will analyze the information and draw conclusions. The investigator will communicate the results of the investigation in a **written investigation report**. The report will contain the allegations, a description of the facts, an analysis of each incident and a conclusion with recommendations. If the conclusion points to a code of conduct or policy breach, the report will formulate non-binding recommendations as to the appropriate course of action, as provided in the sport organization's relevant discipline policies.

Further to the receipt of the report, the sport organization will proceed with the implementation of the **proper course of action**, as contemplated in its own rules. For example, such course of action may be to provide the complainant and the respondent with an opportunity to provide written comments about the investigation report, or call for a full disciplinary hearing process to be held. Whether or not the outcome of the process thereby followed agrees with the recommendations of the investigation report, such outcome is **subject to an internal appeal** under the sport organization's appeal policy, also a mandatory requirement for federally-funded sport organizations.

The parties may **further appeal** the internal appeal panel's decision **before the SDRCC**, if they are not satisfied with the outcome or with the fairness of the process followed. Any such appeal will be heard by a single and independent SDRCC arbitrator, under the Ordinary Tribunal. As of note, to guarantee the independence of the Ordinary Tribunal seized with such appeals, no SDRCC arbitrators are allowed to be of the pool of investigators forming the SDRCC Investigation Unit unless they have resigned as arbitrators.

Guaranteeing the Independence of the Unit

The SDRCC will implement strict guidelines in the creation of its Investigation Unit to maintain it separate from its arbitration services. First, the two services are overseen by two different committees that share no member: the Advisory Committee for the Investigation Unit, and the ADR Services Committee for the roster of arbitrators. The two services will be administered as two separate entities and measures will be in place to ensure that no information on cases is shared between the investigators and the arbitrators, other than through formal submissions by the disputing parties. During the pilot project phase, SDRCC mediators, who have no decision-making authority in the conduct of mediation or resolution facilitation, will be allowed to remain mediators and conduct investigations. This will occur under strict conditions with regards to mandatory disclosure of prior investigations conducted for the benefit of parties, where these parties are later involved in SDRCC cases. The provision allowing mediators to also be investigators will be revisited as part to the pilot project evaluation.

A Nation-Wide Coordinated Approach

While the SDRCC is proud to offer a solution to help federally-funded sport organizations access independent investigation services in the short-term, it cautions that this does not constitute a complete nor a permanent solution. Indeed, much is yet to be accomplished in terms of education, awareness and policy-making, to ensure that sports everywhere in Canada offer a safe and welcoming environment for ALL athletes and other participants. ■



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

They come from every region of Canada and have extensive experience in alternate dispute resolution and sports-related issues, but how much do we really know about them? The SDRCC has an impressive list of 50 mediators and arbitrators and we will slowly be introducing you to some of them through our regular installments of “SDRCC Roster Member Profiles”. In this edition we would like to present, **Charmaine Panko, a Med/Arb Neutral from Saskatoon, Saskatchewan.**

What led you to a career in ADR?



My decision to go to law school was motivated by the experience my husband and I had with the conventional legal system. Upon reflecting on the costs, I had recalled that as a little girl I used to imagine growing up to be a lawyer (among other things!) and it seemed to make more sense to have our own “in house” lawyer rather than paying someone else when these things came up. By the time I finished my education my husband and I had eight children (we now have 11!) and I believe that my interest in alternative dispute resolution came as a natural extension of the creative approaches necessary to manage the dynamics of our busy (and noisy!) household.

Specialization/Area of Expertise:

I am a collaborative lawyer, mediator, arbitrator and trainer. I practice in all substantive areas of law and also work at the community level to assist in conflict resolution education.

As an arbitrator with the SDRCC, I...

...enter into the process with genuine interest and curiosity as to what each party’s underlying needs are and what information is needed to be shared to increase understanding. When people are able to express and hear each other’s fears and concerns, their goals, beliefs, and the things that are important to them, the possibility for options to resolve the dispute suddenly become numerous and not limited to simply a win/loss outcome.

I also appreciate how important the outcome of the arbitration is to all parties involved. I want to ensure they have an

opportunity to present all their evidence and to know that they have been heard. I realize that after the parties have implemented my order they will likely have continued contact with each other and that their relationship needs to be functional. I strive to provide some direction to the parties to assist them in figuring out how best to move forward which in my opinion is just as important as the decision itself.

Favorite Sport(s):

I am a curler but I love watching hockey, the sound of blades on ice, and breathing in the fresh cool air of the rink!

Dispute Prevention Tip for Athletes and Federations:

We need to have crucial conversations about difficult things and to not be afraid to have them. The more people know, the better able they are to understand and accept, regardless of whether the topic is selection criteria or addressing a particular incident. Assumptions set us up for conflict so be proactive, providing more rather than less information, be open to questions, and be committed to answering in a timely and transparent manner. Remember that all behaviors are really just strategies to address unmet needs. Being genuinely curious about people’s needs can open up a world of possibilities and options to address problems before they even become problems and potentially end up escalating into a situation requiring third party intervention. ■

In our next edition, look for the profile of another SDRCC Roster Member.

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 Sport Dispute Resolution Centre of Canada

GETTING READY FOR THE HEARING

Information for self-represented parties

BEFORE THE HEARING

- 1 RIGHT TO REPRESENTATION
- 2 FORMAT OF THE HEARING

The Centre created a *Guide to SDRCC Proceedings* in the form of an online collection of resources to assist parties, particularly those without representation, navigate proceedings. While many of these publications existed already, they now follow the chronological order of typical proceedings, providing specific information to parties at every stage of the case management process. The newest additions to the series are *Getting Ready for the Hearing* and *So, I'm an Affected Party?* To consult this invaluable tool: <http://www.crdsc-sdrcc.ca/eng/guide-to-proceedings>.

A SPORT ADMINISTRATOR'S GUIDE TO ANTI-DOPING RULE VIOLATION ASSERTIONS

The purpose of this document is to clarify the roles and when a member of their organization is accused of an anti-doping rule violation (ADRV) against a member of their organization. This document provides guidance to sport administrators in those rare but complex situations.

WHO'S WHO IN ANTI-DOPING

Also, sport administrators now have access to a publication entitled *A Sport Administrator's Guide to Anti-Doping Rule Violation Assertions*. The publication targets more specifically those individuals designated by their organizations to be the main contact of the CCES on anti-doping matters.

Since doping cases in most sports are few and far between, they may have limited experience when it comes to dealing with an asserted ADRV against a member of their organization. The document provides them with some basic guidance in those rare but complex situations: <http://www.crdsc-sdrcc.ca/eng/documents/Anti-Doping-for-Administrators-EN.pdf> ■

New Online Resources

Helping Parties Better Understand the SDRCC Process in Ordinary and Doping Proceedings



Upcoming Vacancies to Fill on the SDRCC Board of Directors

The Government of Canada will soon be seeking volunteers to fill anticipated vacancies on the SDRCC Board of Directors, for terms beginning in July 2019. SDRCC Board members are appointed by the Minister of Science and Sport. The SDRCC invites the sport community to solicit skilled individuals who might be interested in serving on its Board. ■

Stay tuned for a call for applications to be issued in the next few weeks!

Notable Dates

- **October 12:** Workshop for Cross Country Canada's Board of Directors (Gatineau, QC);
- **October 15:** Presentation to law students at Western University (London, ON);
- **October 17:** Presentation to law students at Université Laval (Quebec City, QC);
- **November 1-3:** 2018 SDRCC Mediator and Arbitrator Conference (Winnipeg, MB);
- **November 8-10:** SDRCC Kiosk and Presentation at the 2018 Sport Leadership Conference (Ottawa, ON);
- **November 23:** Presentation at ADR Institute of Canada 2018 National Conference (Montreal, QC);
- **December 1:** Workshop and SDRCC Kiosk at the 2018 Rowing and Sailing Ontario Annual Conference (Toronto, ON);
- **January 22-24:** SDRCC Kiosk at the 2019 Canadian Sport For Life Summit (Gatineau, QC). ■



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ISSN 1712-9923

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Funded by the
Government
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