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## Introducing the New Tribunal Divisions and Procedural Rules of the SDRCC

By Kirsten Whelan and Ann-Sophie Laramée

On January 1<sup>st</sup>, 2021, the new Canadian Sport Dispute Resolution Code (the Code) came into force after being adopted by the SDRCC's Board of Directors. The Code has been revised and updated to better serve the sport community. In developing the Code, the SDRCC implemented two working groups composed of roster mediators and arbitrators, staff and members of the sport community to propose changes meant to facilitate the resolution of sport disputes in a fair, timely and cost-effective manner. Two rounds of consultation were held to seek feedback from clients and from the legal sector, taking into account the perspectives of various stakeholders involved in sports-related disputes. This article outlines the key changes and revamped layout of the 2021 Code

### Layout Overview

The Code presents a new layout highlighting the structural changes made to the SDRCC Dispute Resolution Secretariat. It introduces a new division, the Safeguarding Tribunal, in addition to the existing Ordinary and Doping Tribunals. The appellate division, once dedicated exclusively to appeals of doping-related decisions, can now hear appeals from the Safeguarding Tribunal as well. Accordingly, in addition to general arbitration rules applicable to all four tribunals (art. 5), each tribunal's particular rules are laid out in separate articles in the Code (art. 6 to 9). Also, rules pertaining to mediation and resolution facilitation have been combined to form a single article (art. 4).

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**Ordinary Tribunal (art. 6):** This section outlines the rules pertaining to appeals arising from decisions made by sport organizations or through their internal dispute resolution procedures, including team selection and carding disputes.

**Doping Tribunal (art. 7):** Provisions of this section regulate first-instance doping matters, providing a right to hearing to any member of the Canadian sport community presumed by the Canadian Centre for Ethics in Sport to have violated anti-doping rules. This section of the Code has been modified in order to align with the 2021 Canadian Anti-Doping Program (CADP).

**Safeguarding Tribunal (art. 8):** This article contains the procedural rules designed to provide hearing services for disciplinary procedures arising from code of conduct violations. These rules are adapted to take into account the distinctive and sensitive nature of the complaints, and include provisions to protect and accommodate vulnerable parties and witnesses.

**Appeal Tribunal (art. 9):** A completely new article defining the rules pertaining to appeals from decisions of the Safeguarding Tribunal or doping-related decisions. Relevant provisions for doping appeals have been updated to match the 2021 CADP.

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**Specialized Rosters:** Two specialized rosters will be established from the broader pool of SDRCC arbitrators, allowing parties to benefit from professionals with particular knowledge and experience in matters related to doping and safe sport. Special provisions were adopted to further ensure independence of the Appeal Tribunal by limiting the circumstances in which a member of a specialized tribunal's roster can be appointed as sole arbitrator or panel chair in an appeal from that division.

### Key Changes

**Definition of a Sport Organization (ss. 1.1(vv)):** The new Code now refers to the term Sport Organisation (SO), rather than National Sport Organisation (NSO). The term was broadened in order to facilitate the administration of the SDRCC's fee-for-service program.

**Increased Scope of Authority of the Jurisdictional Arbitrator (s. 5.4):** In addition to being able to rule on a challenge of the SDRCC's jurisdiction, the new Code extends to the jurisdictional arbitrator an increased range of powers. This includes merging two or more cases together when certain conditions are met, ruling on a time-sensitive request to apply a conservatory measure and deciding on the challenge of an arbitrator, which was previously ruled on by a 3-person panel.

**Definition of an Affected Party (ss. 1.1(a) and s. 6.5):** The new Code also clarifies when a person can be identified as an affected party, notably defining it as a person who "may be tangibly and adversely affected by an award of a Panel of the Ordinary Tribunal" and providing that "[a] Person who has not asserted the same claim as that of the Claimant is not *de facto* an Affected Party". This clarification is particularly relevant to team selection and carding disputes, where other athletes cannot be considered as affected parties solely because they had a right of appeal and did not file one.

**Conservatory Measures (ss. 1.1(o) and s. 6.7):** In light of the new structure with four divisions, what were previ-

ously known as provisional and conservatory measures are now referred to as conservatory measures, and apply only to the Ordinary Tribunal. This change was made in order to avoid confusion with provisional suspensions in doping cases and with provisional measures, which are exclusive to the Safeguarding Tribunal.

**Possibility to Waive the Resolution Facilitation (RF) (s. 6.9):** Due to increased use of early RF, the Code now enables parties, in certain circumstances, to jointly apply to the SDRCC to waive the otherwise mandatory RF session prior to an arbitration. This allows parties who

have already engaged in substantive settlement discussions to accelerate the process and proceed directly to a hearing.

**Scope of Review (s. 6.11):** The scope of review in the Ordinary Tribunal is clarified with regards to the panel's power to conduct a hearing *de novo*. The Code also includes a new provision indicating that for deference to be afforded, the initial decision maker must demonstrate relevant expertise.

*"The appellate division, once dedicated exclusively to appeals of doping-related decisions, can now hear appeals from the Safeguarding Tribunal as well."*

### Conclusion

A new layout and tribunal structure, among other changes, highlight the transition to the 2021 Canadian Sport Dispute Resolution Code, providing an updated framework for dispute resolution in the Canadian sport community.

In order to support the Code's implementation, the SDRCC will develop and share an annotated version. The SDRCC also invites sports organizations, athletes and legal representatives (including the SDRCC's pro bono lawyers list) to attend its upcoming webinars in order to learn more about these new changes to the Code and what they entail for parties to potential sports-related disputes. Please consult the *Notable Dates* section on page 4 for more information.

To familiarize yourself with the way in which SDRCC proceedings are conducted, consult the Guide to SDRCC Proceedings at the following link: <http://www.crdsc-sdrcc.ca/eng/guide-to-proceedings>. ■



## 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 45 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, **Sarah Daitch, Mediator from Montreal, Quebec.**



### What led you to a career in ADR?

While competing in nordic skiing, including as a member of Canada’s national team, I studied International Relations. With an interest in human rights law, I learned that in pursuit of accountability and rights, parties often struggled financially and emotionally. This led me to consider ADR. After my ski career, I pursued graduate studies in Dispute Resolution, and became a certified mediator. I also wanted to work with Indigenous communities, including the communities where I grew up in Nunavut and the Northwest Territories, where my parents worked as teachers after immigrating to Canada. I was interested in how dialogue process could be a tool for communities to shape fair decisions and foster greater well-being through improving interactions with government and industry. I set up a small consulting business to work on mediation, facilitation and multi-party collaborative process.

### Specialization/Area of Expertise:

Beyond mediation for sport, I help organizations prevent disputes and collaborate on public issues. I design processes and facilitate multi-party collaboration and dialogue in the social, environmental and natural resource spaces. My small consultancy has provided services to government agencies, NGOs and tribal governments. For example, my team is currently working with United Nations Development Programme on a project to strengthen the participation of communities and civil society actors in mining governance through community-based environmental monitoring committees.

### As a Mediator with the SDRCC, I...

...am honoured to serve the Canadian sport community. As

a former athlete who came up through the club and provincial system onto the national team, and now as a mediator working with sport organizations, I am able to create a shared sense of understanding with the parties. This makes space to invite their thinking about ways to navigate their issues constructively.

### Favourite Sport(s):

Cross Country Skiing! I volunteer as a director for the board of Nordiq Canada. I also play tennis, run, bike tour, hike, lift weights and do yoga. The former professional athlete in me is now a weekend warrior!

### Dispute Prevention Tip for Athletes and Federations:

When disputes emerge that require outside support, consider it an opportunity to learn and improve. Spend time identifying the issues behind the specific dispute. Ask: What has caused the harm? What is needed to repair the harm? In the Canadian sport system, mediation has the potential to be transformative rather than transactional, because of the long-term relationships between athletes and their national federations. This provides an incentive to repair and rebuild relationships. Constructive outcomes from disputes are when athletes and federations reflect and choose to take initiatives forward that clarify or strengthen the organization’s policies or practices. This can improve communication, foster transparency and build safer and more positive environments. I have seen federations work towards these changes, helping to prevent future disputes. It is meaningful work that takes time and commitment. ■

In our next edition, look for the profile  
of an SDRCC arbitrator.

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## The SDRCC's New Women in Arbitration Mentorship Program!

At the SDRCC, one of our main goals is to maintain the Centre as an inclusive, sustainable, accountable and responsible model of good governance. For many years, we had noticed that achieving gender equity among alternative dispute resolution practitioners was quite the challenge, even more so with arbitrators than with mediators. In fact in 2017, after its last round of recruitment, women accounted for only 14% (4 out of 29) of arbitrators on the SDRCC roster, while they made up 42% (15 out of 36) of mediators. It was actually easy to feel complacent in these numbers, as women arbitrators did not fare much better other sports arbitration bodies around the world, such as the Court of Arbitration for Sport, the Sports Tribunal of New Zealand, or Sport Resolutions in the United Kingdom.

Meanwhile, the arbitration profession in other industries made immense strides in gender equity, led by the International Chamber of Commerce which, through its initiatives and incentive programs, successfully increased the percentage of women arbitrators on its panels from 23% in 2015, to 50% in 2018. **So, there are qualified women arbitrators out there, they are just not doing sports arbitration, yet!**

With the goal of increasing opportunities for women arbitrators in this so-far male-dominated profession, the SDRCC is launching its Women in Arbitration Mentorship Program. The program allows female arbitrators who demonstrate great potential, but may lack the necessary

experience, to be selected as program participants. These women will benefit from the same mandatory training as the SDRCC roster, will shadow current arbitrators acting on SDRCC cases and will be mentored by a current roster member.

Through this Women in Arbitration Mentorship Program, these future female sport arbitrators will increase their familiarity with conducting multiparty proceedings and virtual proceedings, gain knowledge of the Canadian sport system, gain knowledge in sports law and alternative dispute resolution, as well as develop their skills in sports-related decision writing.

Earlier this month, a total of 11 women were selected by the Board of Directors to take part in the program. Their first orientation and training sessions will take place at the next SDRCC Mediator and Arbitrator Conference in May 2021. Upon successfully completing certain tasks to evaluate their progress, they will be eligible to be fast-tracked to full membership onto the roster, without having to wait for the next roster renewal process (which would normally be in 2024-2025).

If all program participants graduate as planned, the ratio of women on the roster of arbitrators will have more than tripled, expected to reach 46% within a few months from now. This program is generously supported through the Government of Canada's *Gender Equity and Safety in Sport* funding. ■

### Notable Dates (all events are virtual):

- **February 2, 2021:** Presentation to students in Managing a Sport Club at *Université Laval*;
- **February 9, 2021:** Presentation to students in Sports Arbitration at Queen's University;
- **February 24 & 25, 2021:** SDRCC Webinar Series on Practices and Initiatives for Safe Sport (open to the public);
- **March 9, 2021:** Presentation to the ADR Board of the University of North Dakota School of Law;
- **March 9 & 16, 2021:** Presentation on Athlete Identification & Selection to coaches of the Canadian Sport Institute - Ontario;
- **April 15, 2021:** Presentation of a webinar hosted by the Canada Games Council;
- **May 6-8, 2021:** SDRCC Mediator and Arbitrator Conference. ■



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