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## Safe Sport: A Common Goal, a Shared Responsibility by Kirsten Whelan

On July 6, 2021, the Government of Canada announced that the SDRCC had been selected to establish and deliver an independent safe sport mechanism, in order to oversee the implementation of the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS) for federally-funded sport organizations. In the months since, the SDRCC has worked diligently towards building this mechanism and implementing this new mandate.

The SDRCC has recently completed a series of focus groups in which all federally-funded sport organizations were invited to participate, as well as consultations with provincial and territorial bodies. By

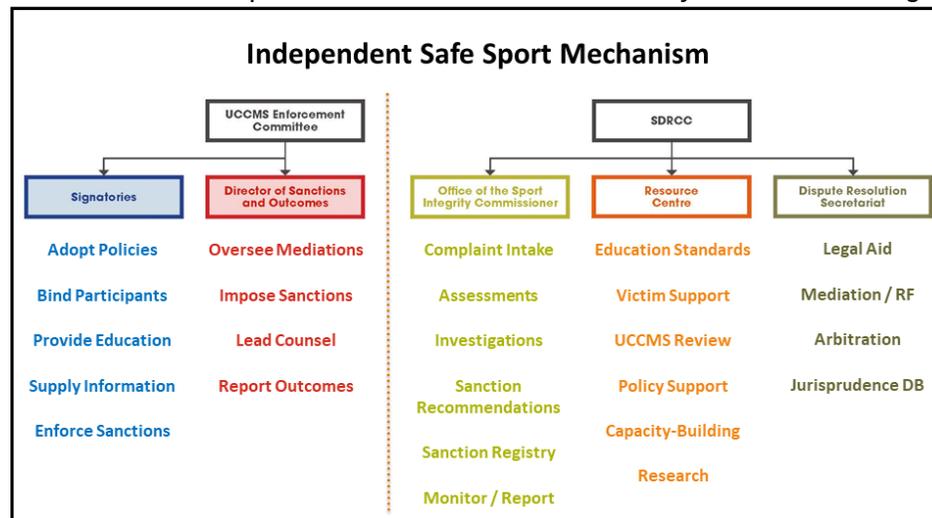
November 2, 2021, a total of 31 focus groups were held, representing a participation rate of 80% from federally-funded sport organizations, and all 13 provinces and territories have been consulted. An Athlete Advocacy Committee has been established to ensure that athletes have a direct input channel throughout the mechanism's implementation.

The SDRCC's current organizational structure includes a Dispute Resolution Secretariat and a Resource Centre, which will both be expanded. The Dispute Resolution Secretariat will provide traditional mediation and resolution facilitating services, where appropriate, as well as hearings under the newly created Safeguarding Tribunal and the Appeal

Tribunal. The Resource Centre will expand its current role to integrate victim support services, awareness, education and research, the UCCMS review, as well as policy support and capacity-building.

In order to implement the independent mechanism, one new division, the Office of the Sport Integrity Commissioner, will be introduced and will oversee the complaint intake process, the conduct of preliminary

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assessments and investigations, as well as the maintenance of a database of imposed sanctions. It will also monitor compliance by signatories and issue reports, as required. The Sport Integrity Commissioner will also act in an expert advisory capacity in all UCCMS functions under the responsibility of the Resource Centre.

The model proposed by the SDRCC takes a trauma-informed approach and aims to limit the number of forums in which a complainant must retell their experience, while preserving the rights of all parties to procedural fairness and natural justice. The findings of an independent investigation will form the basis of further proceedings, with *de novo* hearings limited to instances where an error in the investigation has been established.

Recognizing that the task of ensuring safe and healthy sport environments for all participants should not rely on the ability of an individual complainant to present a legally compelling case, the responsibility to present legal arguments before the Safeguarding Tribunal will instead lie with the Director of Sanctions and Outcomes. In an effort to avoid re-traumatization and increase witnesses' comfort levels in delivering their testimony, the Safeguarding Tribunal rules, contained in Article 8 of the Canadian Sport Dispute Resolution Code, expressly provide for the possibility of procedural accommodations.

At all stages of the process, in cases where mediation is deemed an appropriate option, parties will be invited to engage in settlement discussions guided by a professional mediator. Benefits of mediation include greater autonomy for parties in crafting a mutually agreeable path forward, as well as a broader range of potential resolutions and an opportunity for direct acknowledgement. In situations where parties are likely to continue working together, mediation empowers them to engage in constructive conversation and reset the terms of engagement. The Director of Sanctions and Outcomes will monitor

settlement discussions to ensure that the outcome of a mediation aligns with the objectives of the program and is in the best interest of the sport community; without the Director's approval, a complaint will not be considered resolved.

The program will also make available a suite of victim services, including legal assistance and mental health support. In partnership with the Canadian Centre for Mental Health and Sport, eligible complainants will be referred to a range of mental health practitioners, in accordance with their needs and wishes. Specialized counsel will also be available to provide legal support in navigating the complaint process. The SDRCC's *Pro Bono Program*

will continue to facilitate access to free legal advice and services for all interested parties.

Prevention and education are key cornerstones of safe sport, and essential to achieving a positive culture change. The SDRCC aims to implement a holistic model of education that takes a broad vision of safe sport, with the aim of equipping participants to actively

foster welcoming sport environments. Accreditation standards will be developed to recognize various educational programs as UCCMS-compliant and ensure renewal requirements that will contribute to personal and professional development. While it is essential that participants be able to identify and address unacceptable behaviour, building a culture of safe sport will also require proactive work. The SDRCC envisions a model of education designed to ensure well-rounded participants, equipped with knowledge and skills that will support their efforts to engage in sport in a healthy and respectful manner.

Further engagement with other stakeholders is ongoing in order to ensure that the mechanism will meet the needs of the sport community. The SDRCC has also begun hiring for new roles to support the program's implementation, with a goal of having the mechanism fully operational for the 2022-23 fiscal year. ■

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

They come from every region of Canada and have extensive experience in alternate dispute resolution and sports-related issues, but how much do we really know about them? The SDRCC has an impressive list of 58 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, **L. Yves Fortier**, arbitrator and mediator from Montréal, Québec.



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

For the first 25 years of my career as a lawyer, I was a litigator. In my mind, being a lawyer meant being a litigator. I appeared as lead counsel before all levels of court in Quebec and Canada, including the Supreme Court. I

also argued cases before the International Court of Justice in the Hague. In the fall of 1988, my friend and former associate Brian Mulroney, who was Prime Minister of Canada at the time, appointed me as Canada’s Ambassador to the United Nations in New York. I spent four exciting years at the UN, including two years as a member of the Security Council, which I chaired in 1989. That’s where I really learned to negotiate, and then to adjudicate. When I returned to Ogilvy Renault in 1992, I started doing commercial arbitration. Sports arbitration was a natural next step. I joined the Court of Arbitration for Sport, and I’ve also been a member of the SDRCC since 2007. Over the years, I’ve become an ADR arbitration and mediation “afficionado.”

### Field of specialization/Area of expertise:

For the past 20 years, I’ve worked exclusively as an arbitrator and mediator. I believe that if you act as an arbitrator, you should not also practice as a lawyer. When people ask me what my specialization is, I tell them that my area of expertise is arbitration and mediation, period.

In our next edition, look for the profile of a SDRCC mediator.

### As an SDRCC arbitrator and mediator, I...

...dealt with the full spectrum of issues that are brought to the Centre by both federations and athletes. Earlier this year, before the Tokyo Olympic Games, I was involved in several athlete selection cases, mainly as a med/arb neutral. Those files are particularly challenging, because all the athletes have trained for years to achieve their dreams of becoming Olympians. It was very moving for me to see some familiar names on the results lists in Tokyo.

### Favourite sport(s):

My favourite sports have always been tennis and skiing. When I was very young (!), I competed at the junior level. Now, after having torn both my quadriceps, I can no longer practice either of those sports, unfortunately. And so, long live golf and... the Habs!

### Dispute avoidance tips for athletes:

Admittedly, there are certain sports disputes that can only be resolved through arbitration. Those cases must be decided by arbitrators. However, there are other cases that are better handled through mediation. In my role as a med/arb neutral, I tell athletes and their lawyers that if mediation is not successful, and the case goes to arbitration, there will be a winner and a loser. On the other hand, if mediation is successful, there will be two winners. Athletes’ lawyers have a huge responsibility. They know the law, they’re familiar with mediation, and they know the mediators. It falls upon them to provide their clients with sound advice. To the athletes, I always say, “Follow your lawyer’s advice.” ■

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## New Chairman and Board Members

The SDRCC welcomes six new Board members. **Pierre Chabot**, **Heather Kemkaran-Antymniuk**, and **Dorianne Mullin** were appointed for three-year mandates beginning in September. **Katie Damphouse**, **Kevin Kelly**, and **Alice Strachan** will join them in December. **Brad Kielmann** also succeeded William L. Ryan as Chairman of the Board. Their biographies can be consulted on the SDRCC Board's webpage at [crdsc-sdrcc.ca/eng/about-bod](http://crdsc-sdrcc.ca/eng/about-bod).

A very special thanks to our outgoing Board members who devoted six years to SDRCC business : **Michael J. Bruni**, **Shu-Tai Cheng**, **Linda Cuthbert**, **Susan Kitchen**, **Graeme Mew** and **William L. Ryan**. We also acknowledge the departure of **Marisha Roman**, for professional reasons. They each contributed in an exceptional fashion to a pivotal moment in the history of the SDRCC, by supporting the development of the concept for the independent mechanism to prevent and address maltreatment in sport. ■

**THANK YOU SO MUCH FOR YOUR CONTRIBUTION!**



## New SDRCC Staff Members



**Marianne Gagné** first completed her undergraduate studies in Kinesiology at the University of Northern Iowa and later acquired her master's degree in Sport Management at the University of Ottawa. Marianne has gained experience working with the Canadian Paralympic Committee as well as with the Celtix du Haut-Richelieu, a semi-professional soccer club. Being an elite soccer player and an avid sports fanatic, she has a strong will to make sport in Canada safer for everyone and is very excited to take on the role of Education and Research Coordinator.

**Nikolas Martin** holds a bachelor's degree with specialization in Sport Psychology from Laurentian University and a master's degree in Human Kinetics from the University of Ottawa. He is passionate about sport, having been involved as both an athlete and a coach at various levels in recent years. He joins our team as Support Services Coordinator, as part of the Centre's new mandate to help individuals who experienced harassment and abuse in sport. ■



## Notable Dates:

- **December 1-2, 2021:** SDRCC Webinar on Early Resolution Facilitation (open to the public);
- **January 12-13, 2022:** SDRCC Webinar on Negotiation Skills (open to the public);
- **January 21, 2022:** Virtual presentation at a conference organized by the ReFORM committee;
- **January 29-30, 2022:** Virtual training for BC law students participating in the Sport Law Connect Program;
- **February 1, 2022:** Presentation to students in the Managing a Sport Club course at Université Laval;
- **February 5-6, 2022:** Virtual training for BC law students participating in the Sport Law Connect Program. ■



1080 Beaver Hall, Suite 950, Montréal, Québec, H2Z 1S8

Tél: (514) 866-1245 Fax: (514) 866-1246  
1-866-733-7767 1-877-733-1246

[www.sdrcc.ca](http://www.sdrcc.ca)

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