Centre de règlement des différends sportifs du Canada (CRDSC)

Sport Dispute Resolution Centre of Canada (SDRCC)

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2015 Canadian Sport Dispute Resolution Code

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Article 1 Definitions

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

(a) "Affected Party" « Partie affectée » means a Person who may be adversely affected by a decision of the Sport Dispute Resolution Centre of Canada (hereinafter "SDRCC"), such as losing a previously granted status or privilege, and:

(i) who is accepted by the Parties as an Affected Party; or

(ii) who is accepted or named by the Panel as an Affected Party;

(b) "Answer" « Réponse » means a response to a Request, as more fully described in Section 3.7 hereof;

(c) "Anti-Doping Program" « Programme antidopage » means the Canadian Anti-Doping Program administered by the Canadian Centre for Ethics in Sport (hereinafter "CCES");

(d) "Arbitrator" « Arbitre » means an individual accepted and recognized as an Arbitrator by the SDRCC from time to time, who meets the qualifications determined by the SDRCC and who is willing to arbitrate cases for the SDRCC pursuant to the terms of this Code;

(e) "Arbitration" « Arbitrage » has the meaning ascribed thereto in Section 6.1 hereof;

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

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

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

(i) "Code" « Code » means this Canadian Sport Dispute Resolution Code, as amended by the SDRCC from time to time;

(j) "Doping Appeal" « Appel antidopage » means an appeal of a decision of a Doping Dispute Panel, the CCES or the Therapeutic Use Exemption Committee of the CCES, pursuant to the appeal rules of the Anti-Doping Program;

(k) "Doping Appeal Panel" « Formation d'appel antidopage » means the Panel that hears or has heard a Doping Appeal;

(l) "Doping Dispute" « Différend relié au dopage » means any dispute other than a Doping Appeal, arising out of the application of the Anti-Doping Program;

(m) "Doping Dispute Panel" « Formation d'audience antidopage » means the Panel that hears or has heard a Doping Dispute;

(n) "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 is not admissible to be funded by Sport Canada's financial contribution to the SDRCC.

(o) "International-Level Athlete" « Athlète de niveau international » has the meaning ascribed thereto in the Anti-Doping Program;

(p) "International Standard" « Standard international » has the meaning ascribed thereto in the Anti-Doping Program;

(q) "Intervention" « Intervention » means an application made by a potential Intervenor in accordance with Section 6.13 hereof;

(r) "Intervenor" « Intervenant » means a Person, not a Party to a proceeding, who has an interest in the Arbitration and whose presence is useful for the proper adjudication of the dispute, who files an Intervention in accordance with Section 6.13 hereof and:

(i) who is accepted by the Parties as an Intervenor; or

(ii) who is accepted by the Panel as an Intervenor;

(s) "Jurisdictional Arbitrator" « Arbitre juridictionnel » means one (or more) of the Arbitrators, designated from time to time 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 6.10 hereof;

(t) "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;

(u) "Med/Arb Neutral" « Médiateur-Arbitre neutre » means an individual accepted and recognized as a Med/Arb Neutral by the SDRCC from time to time who meets the qualifications determined by the SDRCC and who is willing to conduct a Med/Arb for the SDRCC in accordance with this Code;

(v) "Mediation" « Médiation » has the meaning ascribed thereto in Section 5.1 hereof;

(w) "Mediator" « Médiateur » means an individual accepted and recognized as a Mediator by the SDRCC from time to time who meets the qualifications determined by the SDRCC and who is willing to mediate cases for the SDRCC in accordance with this Code;

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

(y) "Minor" « Mineur » designates an individual who has not reached the age of majority or is not considered of legal age under the laws and regulations applicable in his province of residence;

(z) "NSO" « ONS » includes any Canadian sport organization that is:

(i) a ''National Sport Organization" recognized from time to time by the SDRCC;

(ii) a multisport service organization receiving funding from Sport Canada, including, without limitation, the Canadian Centre for Ethics in Sport, the Canadian Olympic Committee, the Canadian Paralympic Committee, Commonwealth Games Canada, Canadian Interuniversity Sport, the Canadian Collegiate Athletic Association, and the Canada Games Council;

(iii) a representational sports-related group receiving funding from Sport Canada from time to time;

(iv) an umbrella sport organization, including, without limitation, the Aquatics Canada and the Canadian Ski and Snowboard Association; and

(v) a Canadian Sport Centre receiving funding from Sport Canada.

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

(i) a single individual appointed as an Arbitrator;

(ii) three individuals appointed as Arbitrators, one of whom shall be designated as the President;

(iii) a Jurisdictional Arbitrator; or

(iv) an individual appointed as a Med/Arb Neutral;

(bb) "Party" « Partie » means:

(i) any Person or NSO participating in a Mediation, Arbitration or Med/Arb;

(ii) any Member or NSO using the services of the Resolution Facilitator to help resolve a dispute;

(iii) any Affected Party;

(iv) in connection with Doping Disputes or Doping Appeals, any Person designated as a Party by the applicable rules of the Anti-Doping Program;

(v) the Government of Canada, in connection with disputes related to a decision of Sport Canada in the application of its Athlete Assistance Program ("AAP");

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

(dd) "President" « Président » means the chairperson of a Panel;

(ee) "Provisional and Conservatory Measure" « Mesure provisoire et conservatoire » means any measure ordered by a Panel upon an application filed with that Panel in order to prevent the occurrence of irreversible consequences or to suspend the implementation of a decision being appealed while waiting for the final decision to be rendered after the completion of an Arbitration or Med/Arb;

(ff) "Provisional Hearing" « Audience préliminaire » has the meaning ascribed thereto in the Anti-Doping Program;

(gg) "Provisional Suspension" « Suspension provisoire » has the meaning ascribed thereto in the Anti-Doping Program;

(hh) "Request" « Demande » means a request to the SDRCC for Mediation, Arbitration or Med/Arb, as more fully described in Section 3.4 hereof;

(ii) "Resolution Facilitation" « Facilitation de règlement » means the process described in Article 4 hereof and overseen by the Resolution Facilitator;

(jj) "Resolution Facilitator" or "RF" « Facilitateur de règlement » or « FR » means an individual designated, from time to time, by the SDRCC to assist and guide Parties to resolve their dispute in a mutually agreeable manner in accordance with Article 4 hereof;

(kk) "Respondent" « Intimé » means a Person responding to a Request;

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

(mm) "Sports-Related Dispute" « Différend sportif » means a dispute affecting participation of a Person in a sport program or a sport organization. Such disputes may include (but are not limited to) those related to:

(i) team selection;

(ii) a decision made by a NSO board of directors, a committee thereof or an individual delegated with authority to make a decision on behalf of a NSO or its board of directors, which affects any Member of a NSO;

(iii) any dispute affecting participation of a Person in a sport program or a sport organization, for which an agreement to conduct an SDRCC Mediation, Arbitration or Med/Arb or use the services of the Resolution Facilitator of the SDRCC has been entered into by the Parties; and

(iv) any dispute arising out of the application of the Anti-Doping Program;

(nn) “TUE” « AUT » stands for “Therapeutic Use Exemption” and has the meaning ascribed thereto in the Anti-Doping Program;

(oo) “WADA” « AMA » means the “World Anti-Doping Agency”.

Article 2 General Provisions

2.1 Administration

(a) The SDRCC administers this Code to resolve Sports-Related Disputes.

(b) Subject to Subsection 2.1(c) hereof, 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 a Mediation, Arbitration or Med/Arb agreement exists between the Parties to bring the dispute to the SDRCC;

(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 that a Panel determines, in its discretion, is not appropriate to bring before the SDRCC or to a dispute where the Panel determines 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.

SDRCC 15-0272 Provincial Taekwondo Society of Nova Scotia et. al. v. Taekwondo Canada Board of Directors; Robert Décary, Arbitrator. The term "Sports-Related Dispute" is given a wide meaning in the definition found in the Code where it is said in subsection 1.1(mm) to mean any "dispute affecting participation of a Person in a sport program or sport organisation [...]" The term "participation", while not defined in the Code, is given a broad interpretation by the Arbitrator. He finds that in issues related to corporate governance, where in this case a sport organization is defined as a member of the NSO and is involved in the drafting and approval of bylaws and policies, a decision to rescind its membership status affects its participation in the affairs of the NSO and therefore is within the jurisdiction of the SDRCC.

SDRCC 15-0268 Gao v. Taekwondo Canada; Richard W. Pound, Arbitrator. Disputes arising from "field of play" decisions are to be considered as sports-related disputes. Deference to officials is a question of policy, not law. Questions of *if* an arbitrator can intervene and *should* the arbitrator intervene are separate issues. It is possible for arbitrators to overrule field of play decisions in certain circumstances, therefore they must be given an opportunity to properly assess the evidence before deciding whether do so.

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 the 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 hereof 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 Miscellaneous Provisions

(a) This Code may be amended from time to time by the SDRCC.

(b) The SDRCC fee for the conduct of a Mediation, Arbitration or Med/Arb, as set from time to time by the SDRCC, is payable by the Claimant upon filing the Request.

(c) Any Claimant may apply to the SDRCC to waive the SDRCC fee if the Claimant believes that the fee will result in significant hardship. The SDRCC Executive Director shall have full discretion to grant or deny such application on the basis of sufficient justification as provided by the Claimant.

2.5 Breaches of Code

A Party may raise any alleged breaches of this Code by any other Party with the RF, Mediator, or Panel as the case may be. When raised before a Panel, the Panel may take such allegations into account in respect of any costs award pursuant to Section 6.22 hereof.

Annotation - Subsection 2.4(c):

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 previous versions of the Code (ie. 2011). 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.

Article 3 Resolution of Disputes

3.1 Availability of Dispute Resolution Processes

(a) The dispute resolution processes of Resolution Facilitation, Mediation, Arbitration or Med/Arb under this Code are available to any Person in connection with the resolution of a Sports-Related Dispute, subject to Subsections 3.1(b), 3.1(c) and 3.1(d) below.

(b) Unless otherwise agreed or set out herein, and if the dispute involves a NSO, where a Person applies to the SDRCC for the resolution of a Sports-Related Dispute, the Person must first have exhausted any internal dispute resolution procedures provided by the rules of the applicable NSO. For the avoidance of doubt, a NSO internal dispute resolution procedure is deemed exhausted when:

(i) The NSO has rejected the right of the Person to an internal appeal;

(ii) The NSO or its internal appeal panel has rendered a final decision; or

(iii) The NSO has failed to apply its internal appeal policy within reasonable time limits.

(c) Where a Person brings a Sports-Related Dispute to the SDRCC, the SDRCC will ask the Parties to declare whether they prefer to use Mediation, Arbitration or Med/Arb. If, prior to the completion or termination of the Resolution Facilitation process described in Section 4.2 hereof, the Parties do not reach an agreement with respect to which process they will utilize to help resolve their dispute, the Parties will be deemed to have agreed to refer their dispute to Arbitration in accordance with this Code.

(d) Any Person involved in a Sports-Related Dispute can access the SDRCC Dispute Resolution Processes on a Fee-for-Service basis, subject to Section 2.1 hereof.

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. CanoeKayak 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 a failure to exhaust internal dispute resolution procedures and a sufficient ground for the SDRCC to decline jurisdiction.

3.2 Mediators, Arbitrators and Med/Arb Neutrals

(a) To assist in the resolution of Sports-Related Disputes, the SDRCC will establish and maintain lists of Mediators, Arbitrators and Med/Arb Neutrals. The lists and all modifications thereto shall be published by the SDRCC. The name of an individual may appear on more than one list.

(b) In establishing the lists of Mediators, Arbitrators or Med/Arb Neutrals, the SDRCC shall:

(i) designate individuals with appropriate training who possess recognized competence with regard to sport and alternative dispute resolution procedure and have the requisite experience in conducting such matters; and

(ii) whenever possible, ensure fair representation of the different regions, cultures, genders and bilingual character of the Canadian society.

(c) Upon their appointment to the relevant list, the Mediators, Arbitrators and Med/Arb Neutrals shall sign a declaration undertaking to exercise their functions personally with impartiality and in conformity with the provisions of this Code and, when applicable, shall also disclose any reasons that could affect their ability to appear on the rotating list of the SDRCC as described under Subsection 6.8(d) hereof.

(d) Upon being appointed to deal with a particular Sports-Related Dispute, all Mediators, Arbitrators and Med/Arb Neutrals shall immediately disclose to the Parties and the SDRCC any conflict or potential conflict of interest and any circumstances that could create a reasonable apprehension of bias in respect of their appointment.

3.3 Other Proceedings

Mediators, Arbitrators, Med/Arb Neutrals, members of the Board of Directors of the SDRCC and staff of the SDRCC are not compellable witnesses in any court or administrative proceeding, including other SDRCC proceedings, and none of the Parties may attempt to subpoena or demand the production of any notes, records or documents prepared by the SDRCC in the course of the Mediation, Arbitration or Med/Arb.

3.4 Request

(a) When a Sports-Related Dispute is brought to the SDRCC, the Claimant shall complete a Request and file such Request with the SDRCC. The Request shall contain:

(i) names, address and contact information of the Member or the NSO initiating the process and the name of the Respondent or other Party;

(ii) a brief statement of the dispute including, if applicable, facts, legal arguments, questions to be answered, remedy sought and proposed solutions to the dispute;

(iii) the reasons why the SDRCC has jurisdiction to deal with the dispute;

Annotation - Subsection 3.4(a)(iii):

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.

(iv) a copy of the agreement to go to Mediation, Arbitration or Med/Arb or, if no such agreement exists, a statement as to whether the Party would prefer Mediation, Arbitration or Med/Arb;

(v) the names of preferred SDRCC roster members, if applicable, to act as Mediator, Arbitrator or Med/Arb Neutral;

(vi) the identification of any Person whose selection, carding, ranking, or other status could be affected by the decision, the reasons justifying why that Person should be an Affected Party and, if available, the address, phone number and email address of the Person;

(vii) the language (English or French) that the Claimant would like to use to present its case;

(viii) where a Sports-Related Dispute is submitted to the SDRCC on appeal from a prior decision, the Claimant shall submit, if applicable, a copy of the decision being appealed; and

(ix) the signature of the Claimant or of an authorized representative.

(b) The Request may contain:

(i) a copy of the applicable rules, policies or governing documents of any NSO participating in the Sports-Related Dispute;

(ii) any Request for Provisional and Conservatory Measures in accordance with Section 6.15 hereof; or

(iii) any exhibits or other evidence upon which the Claimant intends to rely.

(c) Subject to Subsection 3.4(d) hereof, the SDRCC may waive any of the requirements set forth in this Section 3.4, with the exception of Paragraphs 3.4(a)(iii) and (iv) hereof.

(d) Under exceptional circumstances or if all Parties agree, the SDRCC may accept a Request that is not filed within the time limit or that is not completed pursuant to Sections 3.4 or 3.5 hereof. The SDRCC may, in its discretion, refer this issue to a Panel.

Annotations - Subsection 3.4(d):

Also see annotations under Section 3.5 and its subsections

SDRCC 08-0071 Tuckey v. Softball Canada; Jane H. Devlin, Arbitrator: Arbitrator found that the factors which can overrule the problematic filing of a request outside of the time limit laid out in subsection 3.5(b) must be unusual or extraordinary according to subsection 3.4(d) [formerly subsection 3.4(e)]. 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 3.5. Flexibility is an exception to the rule and must be interpreted as such. Subsection 3.4(d) [formerly subsection 3.4(e)] 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.

DAT 13-0002 Gerhart v. Canadian Centre for Ethics in Sport, et al.; Andrew D. McDougall, Arbitrator: Section 3.4 is the rule that sets out the required procedure that needs to be followed when submitting a request for arbitration. There is no reason that it should not apply in doping appeals. Had the drafters intended that it not be applied in such disputes, they could have made this explicit when drafting the Code. With respect

to 3.4(d) [formerly subsection 3.4(e)], the permissive “may” plays an important part in the rule’s interpretation and deliberately allows for the exercise of discretion. While discretion may be used in exceptional circumstances, this term should be given its ordinary meaning, that being extraordinary or unusual. In this case, the Claimant submits that extraordinary circumstances include the athlete’s age and the emotional effects of receiving a sanction for a doping violation. These fail to meet the threshold of extraordinary. A further factor held against the Claimant is that both she and her counsel were aware of the time limits and chose not to file. Finality is a general policy concern that underlies this subsection. Its purpose is to accommodate those who are subject to truly extraordinary circumstances, not to leave the issue open whereby a party can come back at any time and reopen a matter.

3.5 Time Limits

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

(b) In the absence of a time limit set by agreement or by statute, regulations or other applicable rules of a NSO, the time limit to file a Request shall be thirty (30) days following the later of:

(i) the date on which the Claimant becomes aware of the existence of the dispute;

(ii) the date on which the Claimant becomes aware of the decision being appealed; and

(iii) the date on which 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.

(c) Other than the time limit set out in Subsection 3.5(b) hereof, all time limits will have expired if the communication by a Party is not received before four (4) p.m., Eastern Time.

(d) Subject to the rules of the Anti-Doping Program applicable hereunder, 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.

Annotation – Section 3.5:

Also see annotations under Subsection 3.4(d)

SDRCC 13-0213 Wachowich v. Shooting Federation of Canada; Richard W. Pound, Arbitrator: The limitation periods set forth in the Code are the general rule. They are neither the exception nor merely guidelines. Sports-related disputes by their very nature must often be resolved in a timely manner. Some flexibility may be achieved through subsection 3.4(d) [formerly subsection 3.4(e)] under exceptional circumstances.

Annotation – Subsection 3.5(b):

SDRCC 10-0127 Yong v. Taekwondo Association of Canada; John Brooke, Arbitrator: SDRCC does not have jurisdiction to hear a claim if the requirements in subsection 3.5(b) are not met.

Annotation – Subsection 3.5(b)(i):

SDRCC 12-0190 Clattenburg v. CanoeKayak Canada; Michel G. Picher, Arbitrator: The Arbitrator declines jurisdiction as "the jurisprudence of the SDRCC amply confirms that in a carding dispute it is at the point of nomination, or the failure of nomination, that a dispute is deemed to have matured for the purposes of the calculation of the time limits for filing an appeal." On the day of nomination, the athlete had positive knowledge that he had not been nominated. No material changes occurred between the date of nomination and announcement. The Arbitrator finds no practical reason why the athlete waited to challenge the decision. The wording of Rule 3.5 is broad, stating that the 30-day period commences when the party "becomes aware of the existence of the dispute." It is too restrictive to limit the rule's interpretation of awareness to when there has been a formal declaration by an NSO.

Annotation – Subsection 3.5(b)(iii):

SDRCC 09-0099 Stadnyk v. Bowls Canada Boulingrin; Richard W. Pound, Arbitrator: Arbitrator finds that a liberal interpretation of subsection 3.5(b)(iii) of the Code, and in particular what constitutes the last step in attempting to resolve the dispute, is warranted in the interests of encouraging parties to find a mutually satisfactory solution to their dispute and recognizing that litigation should be the last resort.

SDRCC 15-0260 Murray v. Racquetball Canada; David Bennett, Arbitrator. Agreeing to the procedural step of putting the matter before the SDRCC is not a "step in attempting to resolve the dispute." It is merely choosing a forum to deal with the dispute. This section was intended to cover the situation where the parties may have exceeded the standard time limits while they were negotiating or mediating a resolution. By accepting that the SDRCC hears the dispute, Racquetball Canada did not waive its right to claim that the appeal was out of time.

Annotations – Subsection 3.5(d):

DT 06-0038 Government of Canada, Racquetball Canada, Canadian Centre for Ethics in Sport v. Waselenchuk; Bernard A. Roy, Arbitrator: Where a provision of the Code is not accompanied by a similar provision in Article 7, the Code's general provisions apply where appropriate, unless there is a provision in Article 7 that specifically states the general provision may not apply under any circumstances. Therefore, the time extension contemplated by subsection 3.5(d) [formerly subsection 6.5(c) and 6.6(c) before that] applies to Article 7 and doping tribunals where the circumstances warrant its application.

DT 13-0213 Wachowich v. Shooting Federation of Canada; Richard W. Pound, Arbitrator: Subsection 3.5(d) [formerly subsection 6.5(c)] applies in operational or procedural matters that arise in an ongoing arbitration. It does not apply in a jurisdictional analysis. The Claimant's request to extend the limitation period for filing a request for arbitration failed. Sections 3.4 and subsections 3.5(a), (b) and (c) were used when determining whether the SDRCC has jurisdiction.

DAT 13-0002 Gerhart v. Canadian Centre for Ethics in Sport and the Canadian Amateur Wrestling Association; Andrew D. McDougall, Arbitrator: While both sections deal with time limits, subsection 3.5(d) [formerly subsection 6.5(c)] is more general while subsection 3.4(d) [formerly subsection 3.4(e)] refers specifically to the filing of a request for arbitration. Subsection 3.5(d) applies to an arbitration already in progress, for example for the rescheduling of conference calls or reorganization of a procedural calendar. The threshold for the extension of time limits is different under each rule. Subsection 3.5(d) requires only that there be justified grounds. Subsection 3.4(d) requires that there be exceptional circumstances surrounding the delay.

3.6 Communication of the Request

(a) Upon receiving the Request, the SDRCC shall communicate the Request to the Respondent and set time limits for the Respondent to submit its Answer as required by Section 3.7 hereof.

(b) The SDRCC will consider whether or not to communicate the Request to an authorized third party, which may include situations where the Respondent or the Affected Party is a Minor.

3.7 Answer

(a) The Answer to the Request shall contain:

(i) a brief statement of the dispute including, when applicable, the facts, legal arguments, questions to be answered, remedy sought, a statement of defence, any counterclaim and proposed solutions to the dispute;

(ii) the identification of any Person whose selection, carding, ranking or other status could be affected by the decision, the reasons justifying why that Person should be an Affected Party and the phone number and email address of the Person (if not already set out accurately in the Request);

(iii) a position on the participation of any Person identified in the Request as an Affected Party and the phone number and email address of the Person (if not already set out accurately in the Request);

(iv) a confirmation or rejection of the process proposed by the Claimant (Mediation, Arbitration or Med/Arb);

(v) the acceptance of the Mediator(s), Arbitrator(s) or Med/Arb Neutral(s) suggested by the Claimant or a suggestion of another Mediator, Arbitrator or Med/Arb Neutral;

(vi) subject to Subsection 3.9(b) hereof, the language (French or English) that the Respondent would like to use to present its case; and

(vii) the signature of the Respondent or of an authorized representative.

(b) The Answer may contain the following information to be submitted to the SDRCC within a time frame determined by the SDRCC:

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

(ii) any request for Provisional and Conservatory Measures in accordance with Section 6.15 hereof; or

(iii) any exhibits or other evidence upon which the Respondent intends to rely.

(c) If the Respondent fails to submit its Answer within the time limits set pursuant to Subsection 3.6(a) hereof, or if the Answer does not contain the mandatory information set out in Subsection 3.7(a) hereof, the SDRCC and any Panel may assume that the Respondent accepts the Request and may proceed directly with the appropriate process (Mediation, Arbitration or Med/Arb).

(d) The SDRCC may waive the requirements set out in Subsection 3.7(a) hereof. The SDRCC may, in its discretion, refer this issue to a Panel.

3.8 Administrative Meeting

As soon as a Request is filed, the SDRCC may convene an administrative conference call to discuss administrative matters, including the communication protocol for the case, the language of the proceedings, the process to be used (Mediation, Arbitration or Med/Arb), the appointment of the Panel, the participation of other Parties and the timing of the involvement of the RF.

3.9 Language of the Proceedings

(a) Parties are free to agree on the language of the proceedings to be either English or French. 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 3.9(a) hereof 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 3.9(e) hereof, 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 or by the SDRCC in accordance with the SDRCC's Official Languages Policy, as amended from time to time.

(f) Notwithstanding Subsection 3.9(e) hereof, 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.

3.10 Interpretation Services

Regardless of the language of the proceedings specified pursuant to Subsection 3.9(a) hereof, 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 Resolution Facilitation session, the Mediation session, and/or the Arbitration hearing. Such interpreter shall be selected and paid by the SDRCC.

3.11 Representation and Assistance

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

(b) Minors involved in SDRCC proceedings shall be represented by a parent or by a legal guardian. Subject to Subsection 3.11(a) hereof, the parent or legal guardian may authorize another adult to represent or speak on behalf of the Minor.

3.12 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, by webmeeting, 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

4.1 Resolution Facilitation

(a) Resolution Facilitation is a simple and informal process offered to Parties to a Sports-Related Dispute whereby a Resolution Facilitator (RF) appointed by the SDRCC works with Parties towards an agreement, focusing on effective communication and the interests of the Parties.

(b) The RF can also help Parties better understand the other options available from the SDRCC to help resolve the dispute.

(c) The Parties work with the RF to attempt to resolve the dispute until one of the Parties terminates the Resolution Facilitation process or if the RF 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:

(a) Prior to submitting a Request to the SDRCC, through a Resolution Facilitation request;

(b) Upon submitting a Request to the SDRCC;

(c) During Arbitration proceedings at any time prior to an award being rendered by the Panel; and

(d) Following publication of an Arbitration award to assist a Party in understanding the award.

4.3 Mandatory Resolution Facilitation in Arbitration

(a) Resolution Facilitation is mandatory where Parties to a Sports-Related Dispute request Arbitration.

(b) The Parties must be prepared to spend at least three (3) hours with the RF. The Parties must, in an attempt to resolve the 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 more 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 in an Arbitration 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 award costs against such Party pursuant to Section 6.22 hereof.

(d) The RF process 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 dispute.

(e) Where the Parties do not have adequate time to schedule meetings with the RF prior to an Arbitration (due to severe time constraints), the Parties may jointly apply to the SDRCC to waive the requirement to participate with the RF in settlement discussions. Upon receipt of such application, the SDRCC may in its discretion waive the requirement to participate in the RF process.

(f) The RF may provide the Parties with a written opinion of the likely outcome of an Arbitration of the dispute, or of any findings under 4.3(c). The opinion of the RF will not be communicated to the Panel until a decision is rendered by the Panel. Following the rendering of a decision, the RF's opinion may be communicated to the Panel regarding any submission made with respect to the costs of the Arbitration.

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

4.4 Confidentiality of Resolution Facilitation

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

(b) The RF, the Parties, their representatives and advisors, the experts and any other Persons present during the Resolution Facilitation shall not disclose to any third party any information or document given to them during the Resolution Facilitation, unless required by law to do so.

(c) The RF may not be called as a witness and the Parties undertake not to compel the RF 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 shall not produce a report of the discussions between the Parties. All written and oral statements and settlement discussions made in the course of the Resolution Facilitation shall be confidential and will be treated as having been made without prejudice and cannot be disclosed to a Panel except:

(i) as set out in Subsection 4.3(f) hereof; or

(ii) when all Parties consent to communicate certain information or documents to the Panel, such as an agreed statement of facts or a statement defining the scope of the Arbitration.

4.5 Cost of Resolution Facilitation

(a) There will be no fee charged for the services of the RF.

(b) Except for the costs outlined in Subsection 3.9(e) and Section 3.10 hereof, all other costs will be the responsibility of the Parties.

4.6 Settlement

If the Parties reach a settlement or agreement during the Resolution Facilitation process, 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.

Article 5 Mediation

5.1 General

(a) The term "Mediation" used in this Code includes a Mediation process and the Mediation portion of the Med/Arb, and the term "Mediator" includes a Med/Arb Neutral acting as a Mediator.

(b) Mediation under the provisions of this Article is a non-binding and informal procedure, in which each Party undertakes in good faith to negotiate with all other Parties, with the assistance of a Mediator, with a view to settling a Sports-Related Dispute.

5.2 Application of Mediation Rules

Where an agreement provides for Mediation under this Code, the rules set forth in this Article shall be deemed to form an integral part of such Mediation agreement. Unless the Parties agree otherwise, the version of these Mediation rules in force on the date when the Request is filed shall apply. The Parties may, however, agree to apply other rules of procedure. The Parties shall sign a Mediation agreement, the form of which will be provided by the SDRCC unless they have agreed to a different form of agreement.

5.3 Commencement of the Mediation

The Mediation shall be commenced:

(a) when a Request filed in accordance with Section 3.4 hereof states that the Claimant would like to attempt Mediation, and where the Answer states that the Respondent agrees to proceed by way of Mediation; or

(b) where the Parties agree, after the filing of a Request and Answer, to proceed by way of Mediation.

5.4 Selection of Mediator

Unless the Parties have agreed between themselves on a Mediator, the SDRCC will provide them a list of three (3) Mediators selected on a rotational basis. The Parties shall choose a Mediator from the list provided. If the Parties do not agree on a Mediator within the time limit set by the SDRCC, the SDRCC shall appoint the Mediator on a rotational basis.

5.5 Authority to Settle

The Persons present at the Mediation must have full authority to settle the Sports-Related Dispute without consulting anyone who is not present.

5.6 Conduct of Mediation

(a) The Mediation shall be conducted in the manner agreed by the Parties. Failing such agreement between the Parties, the Mediator shall determine the manner in which the Mediation will be conducted.

(b) Each Party shall cooperate in good faith with the Mediator.

(c) The Mediator shall devote sufficient time to the Mediation proceedings to allow it to be conducted expeditiously.

5.7 Confidentiality of Mediation Process

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

(b) The Mediator, the Parties, their representatives and advisors, the experts and any other Persons present during the Mediation shall not disclose to any third party any information or document given to them during the Mediation, unless required by law to do so.

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

(d) All written and oral statements and settlement discussions made in the course of Mediation will be treated as having been made without prejudice, and cannot be disclosed to a Panel except after a decision has been rendered, and then, only with respect to the issue of costs.

5.8 Time Limit of Mediation

Upon commencing a Mediation, the Parties and the Mediator will agree upon a time when the Mediation proceeding will terminate. In the event that the Parties cannot agree on a time limit for the Mediation, the Mediator will set a time limit, considering the date by which the Sports-Related Dispute must be resolved and the amount of time that would reasonably be required to resolve the Sports-Related Dispute should it go to Arbitration.

5.9 Termination of Mediation

The Mediation shall be terminated on the first of the following events to occur:

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

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

(c) a resignation by the Mediator for other reasons;

(d) a written notice by either the Claimant or the Respondent terminating the Mediation; or

(e) the expiry of the time limit established pursuant to Section 5.8 hereof.

5.10 Settlement

If the Parties settle at the 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.

5.11 No Settlement

In the event of a failure to resolve a Sports-Related Dispute by Mediation, the Mediator shall not accept an appointment as an Arbitrator in any arbitral proceedings 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. If the Parties do not settle at Mediation, they shall continue on to Arbitration pursuant to this Code unless otherwise agreed by the Parties in writing.

5.12 Costs of Mediation

Except for the costs outlined in Subsection 3.9(e) and Section 3.10 hereof, the Parties will pay their own costs for the Mediation, including costs of representatives.

Article 6 Med/Arb and Arbitration General Rules

6.1 Application of Med/Arb and Arbitration Rules

(a) The rules set out in this Article shall apply to all Med/Arb proceedings that do not settle at Mediation, and to all Arbitrations. Article 6 may apply to Doping Disputes and Doping Appeals, as permitted in Article 7.

(b) The term "Arbitration" used in this Code includes the Arbitration portion of the Med/Arb, and the term "Arbitrator" includes a Med/Arb Neutral acting as an Arbitrator.

6.2 Communications

(a) The Panel and the Parties shall communicate solely through the SDRCC. Any communication shall be made in writing and sent in a manner that enables its timely receipt by the SDRCC at its address and any other address specified by the SDRCC in writing. Any communication will only be effective upon receipt.

(b) All orders and other decisions made by the Panel shall be delivered to the Parties at the addresses given to the SDRCC at the commencement of the process or such other address as subsequently provided to the SDRCC by a Party in writing.

(c) Unless otherwise determined by the SDRCC, all communications from the Parties intended for the Panel, including all written submissions, shall be sent to the SDRCC by email or courier, or fax if impossible to send by email or courier. If sent by courier, all communications shall include as many copies as there are Parties and Arbitrators, together with one additional copy for the SDRCC. If an expedited procedure is established by the SDRCC, the Panel may waive the requirement that all communications be sent to the SDRCC.

(d) Any notices under these rules may be served on a Party by courier addressed to such Party, or its representative, at the last known address or by personal service, in or outside the province where the Arbitration is to be held.

6.3 Confidentiality of Proceedings

(a) Arbitration proceedings under this Code are confidential and the hearings are not open to the public.

(b) The Panel, the Parties, their representatives and advisors, the witnesses, the experts, the SDRCC and any other Persons 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 given to them during the Arbitration, except as provided for in this Code or under the rules and the by-laws of the SDRCC, or unless required by law to do so.

6.4 Waiver of Right to Object

Other than in respect of cost consequences pursuant to Section 2.5 hereof, a Party shall be deemed to have waived any right to object if that Party, being aware that any provision of this Code or any requirement under an Arbitration clause or agreement has not been complied with, commences or proceeds with an Arbitration and does not object to the non-compliance without undue delay.

6.5 *(Deliberately left blank)*

6.6 Waiver of Alternative Relief

The Parties to Arbitration under this Code automatically waive their rights to request further or alternative relief or seek other remedies from:

(a) the courts of any provincial or federal jurisdiction of 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.

6.7 Onus of Proof in Team Selection and Carding Disputes

If an athlete is involved in a proceeding as a Claimant in a team selection or carding dispute, the onus will be placed on the Respondent to demonstrate that the criteria were appropriately established and that the selection or carding decision was made in accordance with such criteria. Once that has been established, the onus of proof shall shift to 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 6.6:

SDRCC 08-0077 Mayer v. Canadian Fencing Federation; Richard W. Pound, Arbitrator: The issue of team selection should not be put before a Court prior to the completion of the SDRCC arbitration process as any supervisory court should have the benefit of background and reasons for a team selection decision. NSOs also have a duty to respect and follow the SDRCC process as their funding through Sport Canada is based in part on their agreement to comply with dispute resolution mechanisms provided through the SDRCC.

Annotations – Section 6.7:

SDRCC 07-0061 Movshovich v. Shooting Federation of Canada; Ross C. Dumoulin, Arbitrator: Selection criteria approved by the Canadian Olympic Committee must be the basis of selection and be binding on athletes. The Arbitrator found that the federation did not meet the onus of establishing a justification in not selecting the Claimant to the team because no rationale was provided.

SDRCC 08-0074 Mayer v. Canadian Fencing Federation; Stephen L. Drymer, Arbitrator: The Arbitrator found that it was in the application of its selection policies that the Respondent erred, when it retroactively removed one of the qualifying events without reasonable justifications. This had the effect of depriving the Claimant of the points he had gained in that competition and, in doing so, gave an unfair advantage to another Candian athlete who had not earned any points at that event. Such actions on the part of the Respondent were deemed to be in violation of its own selection policies, of its athlete agreement and of the fundamental principles of natural justice. The Respondent having failed to demonstrate that the selection decision was made in accordance with the criteria, its decision was overtuned.

SDRCC 08-0091 Landeryou v. Canadian Racquetball Association; Larry Banack, Arbitrator: The burden rests on the Claimant to assert grounds upon which to question the correctness of a decision made by a NSO, which would justify the substitution of an alternate decision or remedy. In this case, because the ranking system fulfilled the function for which it was designed, as designed, and was applied equally to all athletes, the Claimant has failed to discharge his burden of proof to establish that in fact the ranking decision made by the NSO "was influenced by bias."

SDRCC 10-0117 Forrester v. Athletics Canada; James W. Hedley, Arbitrator: There must be an extremely compelling case made in order that the results of the team selection process can be interfered with, even if an irregularity appears in the process which may have had some bearing on the ultimate fairness of how the criteria are applied. The Arbitrator declined to rule on whether the selection procedure was violated and held that the evidence cannot support that the selection rules are so defective as to compel the Arbitrator to reconstruct the performance criteria as requested by the Claimant.

SDRCC 10-0123 Prince Edward Island Table Tennis Association v. Table Tennis Canada; John P. Sanderson, Arbitrator: Where a time limit imposed by an internal appeal policy has been exceeded, there is no right to proceed to arbitration. This case also clarifies that pre-selection stages, which may be important but are not determinative of the actual team selection, should not be included in "team selection dispute" under section 6.7. It was never intended that arbitrators would monitor each rung of the ladder of competitions that culminate in a decision regarding the identity of the competitors who make up the team. For both legal and practical reasons, arbitrators should interfere as little as possible in disputes where the team selection stage has not been reached.

SDRCC 10-0126 D'Alessio v. Canoe Kayak Canada; Richard H. McLaren, Arbitrator: If there is no factual or valid challenge to the sport organization's criteria, the burden on the sport organization under section 6.7 to demonstrate that the criteria were appropriately established is satisfied. If there is no evidence that a selection decision was not made in accordance with the sport organization's established criteria, then the sport organization has established its burden to prove that the selection decision was made in accordance with its criteria under section 6.7.

SDRCC 11-0140 Li v. Badminton Alberta; Stephen L. Drymer, Arbitrator: A selection decision may be overturned if the selection criteria are found to be inappropriately established or the selection decision was not made in accordance with the selection criteria. Selection criteria are not appropriately established if not drafted or adopted with the intention of formally establishing selection or procedures, and if never published or in any manner distributed or communicated to members of the sport organization including athletes, coaches & selectors. The correct interpretation of selection criteria is determined on the basis of the wording of the selection criteria, and/or intention of the drafters of the selection criteria. It is insufficient to merely assert what is considered to be the true meaning and intention of the rules in question or to merely rely on a prior decision.

SDRCC 12-0167 Chamilova v. Gymnastics Canada; Ross C. Dumoulin, Arbitrator: Section 6.7 does not apply to situations where an athlete declines to join a team at the time of the team selection and his/her later request to join the same team is rejected. Arbitrator found the issue not to be a team selection decision.

SDRCC 12-0182 Veloce v. Cycling Canada Cyclisme; Stephen L. Drymer, Arbitrator: The decision to hold a time trial in consultation with the fairly notified concerned parties was a reasonable exercise of discretion afforded to the selection committee under the selection policy and not an amendment to the selection policy. The mandated discretion of the Selection Policy is not to be interfered with by an arbitrator unless it was "exercised arbitrarily, in a discriminatory fashion or in bad faith."

SDRCC 13-0200 Milovitch Sera v. Canadian Amateur Wrestling Association; Stephen L. Drymer, Arbitrator: Where a properly established selection policy mandates certain selection criteria, NSO selection committees and review committees must comply with the criteria. Athletes may also have obligations to respect rules that they know, and to know the rules that they must respect if they are outlined in a carding agreement contract. The Arbitrator found a decision of the review committee made without reference to its own established criteria cannot be held against an athlete who at all times was fully compliant with the criteria. The role of an arbitrator is to ensure that the rules of an NSO are valid and have been followed. It is not for an arbitrator to determine who is the best or most deserving athlete.

SDRCC 13-0201 Azmat, Khan and Springett v. Cricket Canada; Stewart McInnes, Arbitrator: An appeal alleged that the NSO failed to follow its own procedures in a selection decision where the NSO did not publish any formal, written criteria although athletes knew of a selection camp and fitness testing. While the Arbitrator finds that there were "imperfect applications in the pre-selection procedures" and that the NSO should improve the integrity of its procedures, the Arbitrator was unable to find a palpable or egregious error in the conclusion of the appeal panel.

SDRCC 13-0202 Otto v. Canadian Amateur Wrestling Association; John H. Welbourn, Arbitrator: The Arbitrator finds that a Claimant cannot demonstrate that he would have been selected based on established criteria where he did not initially meet the criteria and did not engage the grievance procedure within the prescribed time limit.

SDRCC 13-0205 Kazemi v. Taekwondo Canada; Ross C. Dumoulin, Arbitrator: The Arbitrator finds that the selection criteria have not been appropriately established. A selection methodology that is based on rankings but does not account for the fact that there will be two third place finishers who have achieved an unequal number of points in competition (created to fulfill a policy of awarding more medals to promote the sport and not to recognize equality of performance) cannot be properly applied.

SDRCC 13-0209 Bastille v. Speed Skating Canada; Graeme Mew, Arbitrator: Arbitrator remits the matter back to the selection committee for failure to follow their own rules. The selection policy stated that should the competition results of the last 12 months not be sufficient to compare athletes, competitions beyond the period may be considered. The selection committee erred by not explaining why it was necessary to consider results outside of the 12 month period and why it then chose to only look at results of a particular competition.

SDRCC 13-0211 Laberge v. Bobsleigh Canada Skelton; Graeme Mew, Arbitrator: Selections must be made in accordance with the natural and ordinary language of the selection criteria. Any subjective intentions of discretion must be properly conveyed in the wording of a document on which athletes rely. The Arbitrator found the appeals committee selection decision did accord with a properly established selection criteria even if the reasons of the appeal committee were flawed. The Arbitrator also noted that a fair hearing process requires that all parties who may be affected by an arbitral decision have a right to participate in the process.

SDRCC 14-0218 Stangeland v. Canadian Snowboard Federation; John H. Welbourn, Arbitrator: The Claimant failed to establish a team selection decision was not made in accordance with selection criteria ratified by the NSO and subsequently approved by the Canadian Olympic Committee. The document outlining the analysis and selection decisions of the NSO is detailed and does not demonstrate that the NSO misapplied its own rules.

SDRCC 14-0219 Barlow v. Canadian Snowboard Federation; Carol L. Roberts, Arbitrator: A Claimant who brings forward no evidence in support of the assertion that he could have been selected in accordance with the criteria cannot meet the onus upon him to overturn a selection decision based on properly established selection criteria.

SDRCC 15-0265 Richer v. Canadian Cerebral Palsy Sports Association et al.; Richard W. Pound, Arbitrator: With a default position of deference to decision makers when dealing with selection criteria, accusations of biased decisions are to be taken seriously. A person alleging bias must bring forward convincing evidence to support the allegation. Evidence of bias may be direct or circumstantial, and may lead to inferences and a shifting of onus. An allegation, a disagreement with the outcome, or the mere exercise of discretion is not evidence of bias.

6.8 Composition and Appointment of Panel

(a) The Panel shall be composed of one (1) Arbitrator unless:

(i) an Arbitration agreement specifically calls for three (3) Arbitrators;

(ii) the SDRCC determines that the complexities or circumstances of a particular case are such as to warrant the appointment of three (3) Arbitrators; or

(iii) the matter is a Doping Appeal and, by virtue of the Anti-Doping Program, requires three (3) Arbitrators. For the avoidance of doubt, for all Doping Disputes, the Panel shall be composed of one (1) Arbitrator appointed in accordance with Subsection 6.8(b) hereof.

(b) Where a sole Arbitrator is to be appointed,

(i) the Parties shall choose the Arbitrator. If the Parties do not agree on an Arbitrator within the time limit set by the SDRCC, the SDRCC will choose an Arbitrator on a rotational basis, exercising discretion in the appointment only to make sure that the Arbitrator is available, is able to speak the language requested by the Parties, is geographically located in a place that makes it convenient to conduct the Arbitration if either Party has indicated that there is to be an in-person hearing, and has no conflict of interest or potential or perceived bias; or

(ii) in cases where an Arbitrator needs to be appointed quickly, the Parties on consent may waive the requirement to choose an Arbitrator.

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

(i) the Claimant and the Respondent shall each appoint one (1) Arbitrator within the time limit set by the SDRCC. The two (2) selected Arbitrators shall appoint the third Arbitrator, who shall be the President of the Panel. In the event that either of the Parties fails to appoint an Arbitrator in accordance with this Paragraph, the SDRCC shall appoint such Arbitrator on a rotational basis; and

(ii) for Doping Appeals, under no circumstances may the Arbitrator who rendered the decision being appealed be appointed to the Panel.

(d) The SDRCC will maintain, and revise from time to time, a rotating list of Arbitrators based on criteria determined by the SDRCC.

6.9 Confirmation of the Panel

The Panel selected by the Parties will only be deemed appointed after confirmation by the SDRCC. Before proceeding with such confirmation, the SDRCC will ascertain that each Panel member fulfils the requirements of Section 3.2 hereof and has no conflict that prevents the Panel from acting in the particular case.

6.10 Jurisdictional Arbitrator

(a) Where no Panel has yet been appointed to deal with a Sports-Related Dispute, and an issue arises between the Parties which they cannot resolve, the SDRCC may appoint a Jurisdictional Arbitrator from the rotating list of Arbitrators, having regard to the location of the Parties, the preferred language of the Parties and the existing time limitations.

(b) The Jurisdictional Arbitrator shall have all the necessary powers to decide any issue in dispute between the Parties which would have otherwise been argued before the Panel had it been constituted. Notwithstanding the foregoing, the Jurisdictional Arbitrator shall not render a decision on the main substantive issue in dispute between the Parties.

(c) A Jurisdictional Arbitrator appointed by the SDRCC for a Sports-Related Dispute may not be appointed as an Arbitrator on a Panel in connection with the main substantive issue in dispute between the Parties, unless that Arbitrator is selected by the Parties in accordance with this Code.

6.11 Challenge, Removal and Replacement of an Arbitrator

(a) The appointment of an Arbitrator may be challenged if there is doubt regarding the Arbitrator's independence or a perception of conflict of interest. The challenge shall be brought immediately after the grounds for the challenge become known and in accordance with Subsection 6.11(c) hereof.

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

(c) A challenge shall be brought by a Party by way of a written petition to the SDRCC, which sets forth the facts giving rise to the challenge. The Arbitrator shall be informed of the challenge and given the opportunity to resign. If the Arbitrator chooses not to resign, the challenging Party may apply for three (3) other Arbitrators to be appointed by the SDRCC, on a rotational basis, to conduct a hearing and receive written submissions from all Persons with an interest in the proceedings who desire to make written submissions. This Panel shall rule on the challenge.

(d) The SDRCC may remove an Arbitrator if that Arbitrator refuses to, or is prevented from, carrying out its duties or if a decision to excuse the Arbitrator has been made pursuant to Subsection 6.11(c) hereof.

(e) In the event of the resignation, death, or removal of an Arbitrator, such Arbitrator shall be replaced in accordance with the provisions applicable to the Arbitrator's appointment. Unless otherwise agreed by the Parties or otherwise decided by the Panel, in accordance with Subsection 6.11(c) hereof, the proceedings shall continue without repetition of the procedure that took place prior to the replacement.

Annotation – Section 6.10:

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 6.10 and a jurisdictional arbitrator may be appointed.

6.12 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.

(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, at its discretion, serve notice in accordance with Subsection 6.12(b) hereof on any Person who may be adversely affected by a decision on the dispute for which a Request was filed.

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

6.13 Participation of an Intervenor

If a Person not already designated by the Parties pursuant to Section 6.12 hereof 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 Person wishing to intervene.

Annotation – Section 6.12:

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 become illogical for not having considered their statements. 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.

Annotation – Subsection 6.12(a):

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.

6.14 Decision on the Participation of an Affected Party or Intervenor

(a) A Person may only participate in Arbitration as an Affected Party or an Intervenor if the Person files an Intervention and:

(i) if Parties agree in writing; or

(ii) if the Panel determines that the Person should participate.

(b) Upon expiration of the time limits provided for in Sections 6.12 and 6.13 hereof, as applicable, the Panel shall make a decision whether the Person who has requested to be an Affected Party or Intervenor may participate. If such a decision is made by a Jurisdictional Arbitrator, such decision may be amended or rescinded by the subsequently appointed Panel.

(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 to the proceeding.

Annotations – Subsection 6.14(a)(ii):

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.

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). 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.

6.15 Provisional and Conservatory Measures

(a) No Party may apply for Provisional and Conservatory Measures under this Code before:

(i) a Request has been filed with the SDRCC; or

(ii) a Doping Dispute or Doping Appeal has been initiated in accordance with Sections 7.3 and 7.4 hereof.

(b) If an application for Provisional and Conservatory Measures is filed, the Panel may invite 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 issue a provisional or conservatory order upon mere presentation of the application, provided that any Parties so wishing shall be heard subsequently.

(c) Provisional and Conservatory Measures may be made conditional upon the provision of security.

6.16 Procedures of the Panel

(a) Upon appointment, the Panel may convene a preliminary meeting to discuss and decide procedural or other preliminary matters.

(b) Subject to the specific provisions set out in this Article, the Panel shall have the power to establish its own procedures so long as the Parties are treated equally and fairly and given a reasonable opportunity to present their case or respond to the case of another Party as provided for by this Code and applicable law. The Panel may take such steps and conduct the proceedings as considered necessary or desirable by the Panel to avoid delay and to achieve a just, speedy and cost-effective resolution of the dispute.

(c) The Panel may require witnesses to testify under oath or affirm the truth of the evidence that they will give.

Annotations – Section 6.15:

SDRCC 04-0016 Gagnon v. Racquetball Canada; Patrice M. Brunet, Arbitrator: Provisional and 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 or provisional measure, 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 provisional or conservatory measures only where there are reasonable grounds.

6.17 Scope of Panel's Review

(a) The Panel shall have full power to review the facts and apply the law. In particular, the Panel may substitute its decision for:

(i) the decision that gave rise to the dispute; or

(ii) in case of Doping Disputes, the CCES assertion that a doping violation has occurred and its recommended sanction flowing therefrom,

(iii) and may substitute such measures and grant such remedies or relief that the Panel deems just and equitable in the circumstances.

(b) For the avoidance of doubt, the Panel shall have the full power to conduct a procedure de novo where:

(i) the NSO did not conduct its internal appeal process or denied the Person 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 in the NSO internal appeal process occurred such that the internal appeal policy was not followed or there was a breach of natural justice.

Annotations – Section 6.17:

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 06-0044 Béchard v. Canadian Amateur Boxing Association; Richard W. Pound, Arbitrator: The Arbitrator is not automatically empowered to substitute his or her decision for that of the administrative body. Deference must be accorded to the administrative body when reviewing its decision, as the administrative body is presumed to have specific knowledge and experience to make choices from among several possibilities. Absent evidence to the contrary, it is presumed that the administrative body acted in good faith on the reliance of its expertise. Deference however is not absolute. The standard of review in this case is reasonableness. When applying this standard, the test should be whether or not the reasons for the decision can stand up to a "somewhat probing examination."

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. (See also SDRCC 15-0278 *Stellingwerff v. Athletics Canada*, below)

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 6.17 of the Code. However, in this case the Claimant's appeal is dismissed because the Respondent's selection criteria were not based on improper considerations.

DT 12-0177 Russell v. Canadian Centre for Ethics in Sport and Swimming Natation Canada; Richard H. McLaren, Arbitrator: This rule, often referred to as the *de novo* rule, gives the Doping Panel the power to determine whether the sanction imposed for a doping violation is appropriate and the power to reduce the period of ineligibility. However, it is not within the panel's scope to re-litigate the anti-doping rule violation and the *de novo* proceedings should be built upon what has been done up to the point of the hearing.

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 6.17 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 15-0278 Stellingwerff v. Athletics Canada: Carol Roberts, Arbitrator: A lack of intent to discriminate will not save an otherwise discriminatory policy. The claimant, a female athlete who suffered an injury, was prohibited from obtaining a medical/injury card in circumstances where she had previously received such a card due to a pregnancy. Pregnant female athletes are therefore treated adversely from male athletes based solely on their pregnancy. Ontario human rights legislation prohibits discrimination based on sex, which includes pregnancy, and sets a floor beneath which parties cannot contract out.

SDRCC 16-0295 Beaulieu v. Canada Snowboard; Jeffrey Palamar, Arbitrator: In the appropriate circumstances, age may be considered as a valid selection criteria, notwithstanding the Charter and/or applicable human rights legislation. Age as a selection or carding criteria is not necessarily or automatically offensive or inappropriate and is justified where there is a credible basis and proper rationale for the age limit. In this case, the Arbitrator found that the age limitation respecting Developmental Cards (in the context of Senior Cards otherwise not being limited at all by age, but tied to performance) was appropriate and justified.

6.18 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 default of a Party. The Panel shall require the Party who is present to submit such evidence as the Panel may require for the making of an award.

6.19 Stenographic Record

(a) Any Party desiring a stenographic or other record of all or a portion of the hearing shall make arrangements directly with a stenographer or other service provider and shall notify the other Parties of such arrangements at least three (3) days in advance of the start of the hearing or as required by the Panel.

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

(c) The requesting Party or Parties shall pay the cost of the services that they request. If a Party seeks a copy of a transcript or recording, full or partial, requested by another Party, then the Party seeking a copy shall pay half the total cost of the transcription or recording, not just the cost of the copy of the second transcript or recording.

6.20 Resolution Facilitation and/or Mediation during Arbitration

(a) In addition to the requirement to utilize the RF as set forth in Article 4 hereof, at any time during the Arbitration process and prior to an award being rendered by the Panel, the Parties may jointly make a request in writing to the Panel asking for Mediation or the assistance of the RF.

(b) Upon receipt of such request, the Panel shall adjourn the process to allow the Parties to appoint a Mediator or to meet with the RF. The Mediation process, including the appointment of the Mediator, will be conducted in accordance with Article 5 hereof and the Resolution Facilitation process will be determined by the RF in accordance with Article 4 hereof.

(c) If the Mediation or the Resolution Facilitation process fails to resolve the dispute to the satisfaction of any of the Parties, the matter will be referred back to the Panel and the Arbitration process shall continue.

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

Annotation – Section 6.18:

DT 10-0124 Canadian Centre for Ethics in Sport (CCES) v. Brandon Krukowski; Graeme Mew, Arbitrator: In this case, "due notice" in section 6.18 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 6.18.

6.21 Awards

(a) All awards shall be in writing, dated and signed by the Panel.

(b) For a Panel of three (3) Arbitrators, the award shall be made by a majority decision or, if all three (3) Arbitrators have different decisions, by the President of the Panel alone.

(c) Subject to Subsections 6.21(d) and 6.21(e) hereof, Arbitration decisions shall be communicated to the Parties within seven (7) days of the completion of the hearing process. In the absence of an agreement between the Parties to the contrary, the Panel shall also provide written reasons for the award. Such written reasons, if any, 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.

(d) All awards made by the Panel on Doping Disputes shall be provided to the Parties no later than five (5) days from the completion of the hearing process. The Panel shall also provide written reasons to the Parties for its decision within twenty (20) days of the completion of the hearing process.

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

(f) When an award is due on a Saturday, Sunday or statutory holiday, the next business day shall be the deadline, unless agreed otherwise by the Panel and the Parties.

(g) Subject to Subsection 6.21(h) hereof, 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. Proceedings before a Panel may not be restrained by injunction, prohibition or other process or proceeding in a court and are not removable by certiorari or otherwise by a court.

(h) Notwithstanding Subsection 6.21(g) hereof, a Party shall have the right to appeal an award in a Doping Dispute pursuant to Section 7.4 hereof. In addition, WADA and the applicable international federation shall have the right to appeal any award of the Doping Panel or of the Doping Appeal Panel to the CAS.

(i) All awards shall be made public unless otherwise determined by the Panel. Notwithstanding the foregoing, the Panel has no such discretion with respect to an award in a Doping Dispute or Doping Appeal and that award must be made public, subject to the applicable rules of the Anti-Doping Program.

(j) All Arbitration awards, orders and other decisions made by the Panel shall be communicated in accordance with Section 6.2 hereof and delivered by any means permitting proof of receipt.

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

6.22 Costs

(a) Except for the costs outlined in Subsection 3.9(e) and Section 3.10 hereof and subject to Subsection 6.22(c) hereof, each Party shall be responsible for its own expenses and that of its witnesses.

(b) Parties wishing to seek costs in an Arbitration shall inform the Panel and the other Parties no more than seven (7) days after the award being rendered.

(c) The Panel shall determine whether there is to be any award of costs and the extent of any such award. When making its determination, the Panel shall take into account the outcome of the proceedings, the conduct of the Parties and their respective financial resources, intent, settlement offers and each Party's willingness in attempting to resolve the dispute prior to or during Arbitration. Success in an Arbitration does not mean that the Party is entitled to be awarded costs.

(d) The filing fee retained by the SDRCC can be taken into account by a Panel if any costs are awarded.

(e) The decisions on costs shall be communicated to the Parties within seven (7) days of the last submission pertaining to costs.

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

Annotations – Section 6.22:

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 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 06-0047 Hyacinthe v. Athletics Canada, Sport Canada; Richard W. Pound, Arbitrator: This case provides a thorough analysis of factors considered under section 6.22 of the Code and the relevant principles underlying their application. 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. An arbitrator has a broad discretion to decide whether costs should be awarded, and if so, the amount of such an award.

SDRCC 07-0056 Strasser v. Equine Canada; Stewart McInnes, Arbitrator: The language of section 6.22 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 6.22.

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 10-0121 L'Écuyer Lafleur v. National Karate Association; Henri Pallard, Arbitrator: While in this particular case the Arbitrator decided not to award representation fees incurred by the parties during the resolution facilitation or mediation phase of the SDRCC proceedings, he rejected the claim by the Respondent that those representation fees were excluded from consideration in a cost award under section 6.22. Awarded costs must be fair and reasonable in the circumstances.

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 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.

DT 10-0117 Athletics Canada and Canadian Centre for Ethics in Sport v. Adams; Larry Banack, Arbitrator: Arbitrator applied factors listed in subsection 6.22(c) [formerly subsection 6.22(b)] (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.

SDRCC 16-0295 Beaulieu v. Canada Snowboard; Jeffrey Palamar, Arbitrator. Dealing with a request for costs from the losing party, the Arbitrator recognized that the outcome of the proceedings is the primary consideration when determining an award for costs, except when actions by the opposing party lead to needless legal expenses being incurred. In contrast with the Arbitrator in case *SDRCC 13-0211 Laberge v. Bobsleigh Canada Skeleton,* he found no evidence of this case meeting any of the criteria enumerated in subsection 6.22(c) to even consider making an award on cost in favor of the unsuccessful party.

Annotation – Subsection 6.22(d):

SDRCC 06-0047 Hyacinthe v. Athletics Canada, Sport Canada; Richard W. Pound, Arbitrator: The filing fee retained by the SDRCC is clearly an expense incurred in the course of the arbitration process.

SDRCC 15-0273 Pyke v. Taekwondo Canada; David Bennett, Arbitrator. The Claimant, having been successful on the merits, sought to have the SDRCC filing fee of $250 reimbursed by the Respondent. The Arbitrator ruled against her, finding that this was not a situation where one party's conduct in resolving the dispute financially harmed the other party. He considered the filing fee, which was in fact the only cost incurred by the Claimant, to be minimal. He emphasized that success in an arbitration alone does not mean a party is entitled to costs.

6.23 Interpretation of an Award

(a) If a Party believes the award is unclear, incomplete, or ambiguous or its components are contradictory or contrary to the reasons, or it contains clerical mistakes or a miscalculation of figures, such Party may request the assistance of the RF in understanding the award. While the explanation of the RF is not binding, access to the RF is intended to assist Parties to understand decisions of the Panel.

(b) After consulting with the RF, the Party may apply to the Panel for the interpretation of an award.

(c) When an application for interpretation is filed, the Panel shall review whether there are grounds for interpretation. The Panel shall rule on the application within seven (7) days following the submission of the application to the Panel.

6.24 Applicable Law for Arbitrations

The applicable law for Arbitrations shall be the law of the Province of Ontario and the arbitration legislation in place in Ontario shall be the law of SDRCC Arbitrations.

Annotations – Section 6.23:

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.

Article 7 Specific Arbitration Procedural Rules for Doping Disputes and Doping Appeals

7.1 Application of Article 7

In connection with all Doping Disputes and Doping Appeals, the specific procedures and rules set forth in this Article shall apply in addition to the rules specified in the Anti-Doping Program. To the extent that a procedure or rule is not specifically addressed in this Article or in the Anti-Doping Program, 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 either:

(i) the notification of an anti-doping rule violation pursuant to Rule 7.3 of the Anti-Doping Program was issued; or

(ii) the notice of appeal is received by the SDRCC or the Doping Appeal Panel, as applicable.

(b) The time limits will have expired if the communications by the Parties are not received before four (4) p.m., Eastern Time, on the date when such time limit expires.

7.3 Initiation of a Doping Dispute

(a) With respect to Arbitration hearings in respect of Doping Disputes, 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 shall commence no later than forty five (45) days from the notification pursuant to Rule 8.2.1 of the Anti-Doping Program.

(b) With respect to a hearing involving a Person subject to a Provisional Suspension imposed under Rules 7.9.1 or 7.9.2 of the Anti-Doping Program, unless there is an agreement between such Person, the CCES and the NSO, the SDRCC shall take all appropriate action to ensure that the Person is given, pursuant to Rule 7.9.3 of the Anti-Doping Program, either:

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

(ii) an opportunity for an expedited final hearing, in accordance with Rule 8.2.1 of the Anti-Doping Program, on a timely basis after imposition of the Provisional Suspension.

7.4 Initiation of a Doping Appeal

(a) With respect to a Doping Appeal, a Person shall initiate the process by delivering a notice of appeal in writing to all Parties who were before the Doping Dispute Panel and to the SDRCC within thirty (30) days of the Doping Dispute Panel's decision pursuant to Rule 13.2.2 of the Anti-Doping Program.

(b) An appeal from the decision of the CCES shall be initiated by a notice of appeal in writing to all Parties before the CCES and to the SDRCC within ten (10) days of the notification of the CCES' decision.

(c) With respect to Doping Appeals, unless there is agreement among the Parties, the SDRCC shall take all appropriate action to ensure that the appeal hearing process commences no later than thirty (30) days from receipt by the CCES of a notice of appeal pursuant to Subsection 7.4(a) or 7.4(b) hereof.

(d) Notwithstanding any of the foregoing, when fairness so requires, the SDRCC shall take action to expedite the commencement of hearings under this Section 7.4.

7.5 Resolution Without a Hearing

(a) Pursuant to Rule 7.10.2 of the Anti-Doping Program, if the Person against whom an anti-doping violation is asserted fails to dispute that assertion within the deadline specified in the notice sent by the CCES asserting the violation, then he/she shall be deemed to have admitted the violation, to have waived a hearing, and to have accepted the consequences that are mandated by the Anti-Doping Program or (where some discretion as to consequences exists under the Anti-Doping Program) that have been offered by the CCES. In such cases, a hearing shall not be required pursuant to Rule 7.10.3 of the Anti-Doping Program. If already appointed, the Doping Dispute Panel shall determine how to proceed in the absence of the Person the CCES asserts to have committed an anti-doping rule violation.

(b) In a Doping Appeal, failure by any Party or his/her representative to attend a hearing after notification will be deemed to be an abandonment of his/her right to a hearing. This right may be reinstated by the Doping Appeal Panel on reasonable grounds pursuant to Rule 13.2.2.2.5 of the Anti-Doping Program.

7.6 Parties and Observers

(a) With respect to a Doping Dispute, pursuant to Rule 8.2.3 of the Anti-Doping Program, the Parties are (A) the Person whom the CCES asserts to have committed an anti-doping rule violation; (B) the CCES; and (C) the relevant NSO. The Person's international federation, WADA and the Government of Canada may attend the hearing as observers if they elect to do so.

(b) With respect to a Doping Appeal, pursuant to Rule 13.2.2.1.3 of the Anti-Doping Program, the Parties are:

(i) the Parties who were before the Doping Dispute Panel; or

(ii) if there is no decision of the Doping Dispute Panel, the CCES and the Person subject to a decision made by the CCES.

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

(d) For the avoidance of doubt, observers shall not be considered Parties.

7.7 Preliminary Meeting

Pursuant to Rules 8.2.4 c) and 13.2.2.2.1 of the Anti-Doping Program, the Doping Dispute Panel or President of the Doping Appeal Panel, as applicable, shall convene a preliminary meeting of all Parties by teleconference, to settle procedural matters as soon as is possible after:

(a) the notification pursuant to Rule 7.3 of the Anti-Doping Program; or

(b) the receipt of a notice of appeal pursuant to Subsections 7.4(a) or (b) hereof.

7.8 Resolution Facilitation

The Resolution Facilitation process as set out in this Code shall apply to Doping Disputes and Doping Appeals, as modified to accommodate Doping Disputes and Doping Appeals. However, the Resolution Facilitation process shall not delay a hearing and if the Resolution Facilitation process has not concluded when the hearing is to occur, the hearing will still take place as scheduled.

7.9 Conduct of Hearing

Pursuant to Rule 8.2.4 and Rule 13.2.2.2.1 of the Anti-Doping Program, hearings shall be conducted as follows:

(a) The Doping Dispute Panel and the Doping Appeal Panel, as applicable, shall conduct an oral hearing unless the Person subject to the notification pursuant to Rule 7.3 of the Anti-Doping Program and the CCES agree to a documentary hearing.

(b) The Doping Dispute Panel and the Doping Appeal Panel, as applicable, may conduct an oral hearing in person, by video or teleconference or combination of these means.

(c) The Doping Dispute Panel and the Doping Appeal Panel, as applicable, shall conduct an in-person oral hearing in Canada in the municipality most convenient to the Person subject to the notification pursuant to Rule 7.3 of the Anti-Doping Program, unless impractical in the circumstances.

(d) The Doping Dispute Panel shall conduct the hearing in either English or French. A Party to a proceeding before the Doping Dispute Panel has the right to an interpreter at the hearing, with the Doping Dispute Panel to determine the identity and responsibility for the cost of the interpreter, pursuant to Rule 8.2.4 a) of the Anti-Doping Program.

(e) A Person participating in a proceeding before the Doping Dispute Panel has the right to retain and receive assistance from legal counsel at his or her own expense pursuant to Rule 8.2.4 b) of the Anti-Doping Program.

(f) Subject to Subsection 7.9(e) hereof (excluding legal counsel fees), the Doping Dispute Panel may award costs to any Party, payable as it directs pursuant to Rule 8.2.4 h) of the Anti-Doping Program.

7.10 Evidence and Submissions

The Doping Dispute Panel, and the Doping Appeal Panel, as applicable, shall receive and consider evidence and submissions from all Parties, including evidence from witnesses orally or in writing pursuant to Rule 8.2.4 g) of the Anti-Doping Program and subject to the Doping Appeal Panel's discretion to accept testimony by telephone or other means pursuant to Rule 13.2.2.2.8 of the Anti-Doping Program.

7.11 Burdens and Standards of Proof

Pursuant to Rule 3.1 of the Anti-Doping Program, in Doping Disputes, 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 Dispute 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 probability but less than proof beyond a reasonable doubt. When the rules of the Anti-Doping Program 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, the standard of proof shall be by a balance of probability.

7.12 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 Dispute Panel pursuant to Rule 3.2 of the Anti-Doping Program:

(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 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 CAS, on its own initiative may also inform WADA of any such challenge. At WADA's request, the CAS shall appoint an appropriate scientific expert to assist the Panel in its evaluation of the challenge. Within ten (10) days of WADA's receipt of such notice, and WADA's receipt of the CAS file, WADA shall also have the right to intervene as a Party, appear amicus curiae, or otherwise provide evidence in such proceeding.

(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 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.

(c) Departures from any other International Standard or other anti-doping rule or policy which did not cause an adverse analytical finding or other anti-doping rule violation shall not invalidate such evidence or results. If the Person establishes a departure from another International Standard or other anti-doping rule or policy which could reasonably have caused the adverse analytical finding or another anti-doping violation, then the CCES shall have the burden to establish that such departure did not cause the adverse analytical finding or the factual basis for the anti-doping rule violation.

(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.

(e) In a hearing on an anti-doping rule violation, the Doping Dispute 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 Dispute Panel) and to answer questions from the Doping Dispute Panel or the CCES.

7.13 Decisions Appealable Before the SDRCC Doping Appeal Tribunal

The following decisions may be appealed exclusively as provided in Rules 13.2 to 13.7 of the Anti-Doping Program:

(a) a decision 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 months' notice requirement for a retired athlete to return to competition under Rule 5.7.1 of the Anti-Doping Program;

(d) a decision by WADA assigning results management under Article 7.1 of the World Anti-Doping Code;

(e) 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 under Rule 7.7 of the Anti-Doping Program;

(f) a decision to impose a Provisional Suspension as a result of a Provisional Hearing;

(g) the CCES' failure to comply with Rule 7.9 of the Anti-Doping Program;

(h) a decision that the CCES lacks jurisdiction to rule on an alleged anti-doping rule violation or its consequences;

(i) a decision to suspend, or not suspend, a period of ineligibility or to reinstate, or not reinstate, a suspended period of ineligibility under Rule 10.6.1 of the Anti-Doping Program;

(j) a decision under Rule 10.12.3 of the Anti-Doping Program; and

(k) a decision by CCES not to recognize another anti-doping organization's decision under Rule 15 of the Anti-Doping Program.

7.14 Scope of Doping Appeal

Pursuant to Rule 13.1.1 of the Anti-Doping Program, the scope of review in a Doping Appeal includes all issues relevant to the matter and is expressly not limited to the issues or scope of review before the initial decision maker.

7.15 Scope of Doping Appeal in Respect of an International-Level Athlete

Pursuant to Rule 13.2.1 of the Anti-Doping Program, in cases arising from competition in an international event or in cases involving International-Level Athletes, the decisions of the Doping Dispute Panel may be appealed exclusively to the CAS in accordance with its rules and procedures.

7.16 Appeal of TUE Decision

(a) Pursuant to Rule 4.4.6.1 of the Anti-Doping Program, when the CCES fails to take action on a properly submitted TUE application within a reasonable time, the CCES' failure to decide may be considered a denial for purposes of the appeal rights provided in the Anti-Doping Program. If the CCES denies an application for a TUE from an athlete who is not an International-Level Athlete, the athlete may appeal exclusively to the SDRCC Doping Appeal Tribunal pursuant to Rules 13.2.2 and 13.2.3 of the Anti-Doping Program.

(b) Pursuant to Rule 4.4.6.3 of the Anti-Doping Program, 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, in accordance with Rule 13 of the Anti-Doping Program.