SPORT DISPUTE RESOLUTION CENTRE OF CANADA SDRCC

Complaints Process Policy

Final Version

Adopted by resolution of the Board of Directors, April 7, 2005
Revised by resolution of the Board of Directors, February 15, 2006
Revised by resolution of the Board of Directors, July 21, 2008
Revised by resolution of the Board of Directors, July 19, 2010
Revised by resolution of the Board of Directors, January 28, 2011
Revised by resolution of the Board of Directors, May 17, 2012

Revised by resolution of the Board of Directors, November 28, 2013

SDRCC

Complaints Process Policy

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

Telephone: 1-866-733-7767 (toll-free) 1-514-866-1245 (local)

Fax: 1-877-733-1246 (toll-free) 1-514-866-1246 (local)

Website: www.crdsc-sdrcc.ca

1. Governing Principles

The Sport Dispute Resolution Centre of Canada ("SDRCC") must maintain high quality dispute resolution services so that parties, the sport community, and the general public can have confidence in its processes. While the overall quality control plan of the SDRCC provides for several evaluation tools and methods to monitor and improve its dispute resolution services, the complaints process offers a fair, open, efficient, objective and predictable process to deal with complaints involving the SDRCC's arbitrators, mediators and the resolution facilitators ("DR service providers").

2. Objectives

The SDRCC complaints process is intended as an administrative procedure to improve, as required, the dispute resolution services and to investigate any alleged breach by the DR service providers of the Code of Conduct for SDRCC Mediators and Arbitrators. It is not intended to review, change or overturn the decisions rendered by arbitrators.

3. Role of the SDRCC

The SDRCC is responsible for managing the complaints process from an administrative standpoint and for outsourcing the services of an Independent Investigator on a case-by-case basis, as may be required by the present Policy. To ensure that the goals of its quality control plan are met, the SDRCC must also approve the outcome of every complaint, even negotiated or mediated outcomes.

All final decisions will be made by the SDRCC Complaints Committee, a subcommittee established by the Board of Directors in accordance with By-law 3.02, with delegated powers to resolve complaints. Where the services of an Independent Investigator are required, the role of the Complaints Committee is not to conduct a full review of the complaint itself, but to receive the Independent Investigator's report and consider its recommendations.

The complaints process is recognized as a source of learning and opportunity for improvement for both the SDRCC and its DR service providers. The SDRCC reserves the right to publish non-identifying information, from any complaint filed, for educational and quality control purposes.

4. Admissible Complaints

The SDRCC will only accept complaints that explicitly refer to a breach of one or more section(s) of the Code of Conduct for SDRCC Mediators and Arbitrators.

The SDRCC may receive complaints filed by any of the parties, representatives, witnesses or observers in a dispute resolution process, concerning DR service

providers conducting such process under the jurisdiction of the SDRCC, provided that the dispute resolution process:

- has concluded. For example, this means that the arbitrator's jurisdiction has come to an end before the complaint will be processed; and
- is not subject to appeal or judicial review by any party.

Complaints may also be filed by others who have first-hand knowledge of a possible breach of the Code of Conduct for SDRCC Mediators and Arbitrators by a DR service provider conducting a procedure under the jurisdiction of the SDRCC.

The SDRCC will not accept:

- complaints limited to the outcome of the decision (trying to overturn or re-do an arbitration or mediation or substitute for an appeal);
- complaints that request remedies that only the court could provide such as setting aside a decision or requests for new hearings; or
- frivolous, patently trivial, vexatious, repetitive or abusive complaints.

Before submitting a complaint to the SDRCC, the complainant must sign the Complaint Form to agree and undertake in writing not to use any information obtained during the course of the complaints process for any purpose other than the SDRCC complaints process, including any civil action against the DR service provider or against the SDRCC, or any application for judicial review.

The Executive Director will be responsible for determining the admissibility of the complaint before commencing the complaints process. The Executive Director may refer this question to the Complaints Committee. If a complaint is deemed inadmissible, either by the Executive Director or by the Complaints Committee, the complainant will be advised, with reasons for such conclusion.

5. Complaint Initiated by the Executive Director

The Executive Director also has discretion to initiate a complaint if a situation comes to his or her attention that raises a quality control concern or if a complaint is discontinued by the complainant for any reason. The Executive Director shall discuss with the Complaints Committee the grounds for initiating such complaint. Should the Executive Director and Complaints Committee find that:

- a serious or flagrant breach may have occurred; or
- the complainant may suffer retaliatory consequences for filing a complaint through the SDRCC's standard, written process; or
- the credibility of the SDRCC may be at risk;

then the Executive Director may initiate a complaint under the complaints process.

6. Initiation of a Complaint

How: The complainant must complete the Complaint Form and send it to the Executive Director. This form will guide the formulation of the complaint and serve to declare consent to follow the SDRCC's protocols and conditions as outlined in the present policy. Incomplete forms will be returned to the complainant with a mention of missing information and a deadline for completion and resubmission. No further action shall be taken if the duly completed form is not resubmitted prior to that deadline.

Timing: The Complaint Form shall be submitted within 45 days following the completion of the dispute resolution process. The Complaints Committee may accept a complaint that is not filed within the time limit if it is satisfied that there are exceptional circumstances to justify a reasonable extension of time, taking into account the likelihood of prejudice to the DR service provider.

7. Overview of the Complaints Process

General: The notion is to have a paper-oriented process where adversarial oral hearings are a last resort and the exception rather than the rule. An oral session will only be convened at the discretion of the Complaints Committee if there is a serious factual allegation and the resolution of that allegation is required for the appropriate evaluation of the complaint.

Types of Complaints: The Code of Conduct for SDRCC Mediators and Arbitrators sets out the standards of conduct governing the professional and ethical responsibilities of the DR service provider of the SDRCC. It is intended to complement existing legal and professional requirements. Breaches of certain provisions of the Code of Conduct do not bear the same seriousness and consequences.

Interim Provision: Once a complaint is accepted and considered admissible, the Executive Director has discretion in the best interests of the program not to give out new assignments to the DR service provider in question until the final disposition by the Complaints Committee. In such case, the process of investigation and decision by the Complaints Committee will be completed as soon as practical and possible from the time of the initial filing of the complaint.

Communication of the Decision: Both the complainant and the DR service provider who is the subject of the complaint will be advised by the Complaints Committee of its final decision with reasons.

8. Process

Initial Review: Upon receipt of a complaint concerning an alleged breach of the Code of Conduct by a DR service provider, the Executive Director shall promptly advise the Complaints Committee of the complaint. The Complaints Committee will conduct an initial review of the complaint to determine the course of action to be taken, if any, which may include the gathering of further information by the Executive Director. The DR service provider will then be notified by the Executive Director of the complaint and of the course of action determined by the Complaints Committee.

Investigation: The Complaints Committee may, after reviewing the facts, decide to submit the complaint to an Independent Investigator for a more complete investigation and recommendations. The DR service provider will be given an opportunity to respond to the allegations during the investigation phase.

Final Determination: The Complaints Committee will reconvene to review the conclusions of the Investigator's Report. If the Complaints Committee is considering the imposition of sanctions, the DR service provider will be invited to file a position statement before the Complaints Committee makes a final determination on the complaint.

9. The Independent Investigator

The Independent Investigator will be an arms-length service provider hired on a contractual basis with the SDRCC. The Independent Investigator will be appointed by the Executive Director in consultation with the Complaints Committee.

The investigation will be conducted by the Independent Investigator on behalf of the SDRCC and not as agent of the complainant.

Declaration of Independence: The Independent Investigator shall execute a Declaration of Independence stating his/her independence from the dispute resolution provider, the complainant, and any other person involved in the procedure giving rise to the complaint.

Admissibility: The Independent Investigator has the discretion not to proceed with any complaint and to respond directly to the complainant if the complaint is inappropriate or without merit.

Authority of the Independent Investigator: After reviewing the complaint and documents submitted by the complainant, the Independent Investigator will conduct its investigation independently from the SDRCC. The Independent Investigator will have full authority to investigate the complaint, including the authority to contact and interview or request written or oral submissions or records from any relevant individual or organization in order to verify whether or not the complaint is substantiated.

Independent Investigator's Report. After the investigation is completed, the Independent Investigator will issue a report, indicating whether or not the complaint is substantiated. If the complaint is substantiated, the Independent Investigator will also include recommendations for an appropriate outcome in the interests of quality control. The Independent Investigator's report will be submitted to the Complaints Committee with a copy to the complainant and to the DR service provider who is the subject of the complaint.

10. Authority of the SDRCC Complaints Committee

If the Complaints Committee finds that a complaint is substantiated, it may adopt the Independent Investigator's recommendations in whole or in part, reject them or substitute an alternative outcome. Outcomes will depend on the facts and circumstances of each case.

The Complaints Committee may, at its sole discretion, request that a second investigation be conducted by another Independent Investigator before rendering a final decision.

The decision of the Complaints Committee shall be the final decision on the complaint.

11. Outcomes and Possible Sanctions

If the Complaints Committee finds that a complaint is substantiated, the outcome may include remediation, a simple warning or reprimand, training, review, observation, or a temporary or permanent removal of the DR service provider from the SDRCC list of arbitrators, mediators and resolution facilitators. In determining what to do on any substantiated complaint, the Complaints Committee may take into account any previous substantiated complaints about the DR service provider.