

# IN THE NEUTRAL ZONE

News and Events of the Sport Dispute Resolution Centre of Canada



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

October 2017

## Early Resolution Facilitation – A First Step Towards De-escalating Conflict

by Philippe N'Djoré-Acka & Stéphane Grégoire

Many sport community members who have experienced an SDRCC proceeding are familiar with resolution facilitation (RF). This process, a mandatory step to arbitration at the SDRCC, was introduced in 2006 as an informal resolution mechanism to help parties to a dispute explore possible solutions in a safe, confidential and non-prejudicial environment. This dispute resolution method, much akin to mediation, focuses on the relationship between the parties and on finding practical solutions to improve conditions moving forward and avoiding future conflicts. SDRCC mediator Paul Denis Godin speaks to the merit of this approach: “[Resolution Facilitation] also adds value even when disputes don’t settle, by improving understanding and respect amongst the parties, and helping to rebuild damaged relationships which may be crucial in a team context<sup>1</sup>”.

This begs the question: why wouldn’t parties choose to explore this option **before** the dispute escalates to an arbitration before the SDRCC? The SDRCC believes it is in the best interest of sport organizations to introduce *Early Resolution Facilitation* (“Early RF”) as part of their internal appeal process. As its name implies, Early RF takes place **before an internal appeal panel** is conducted by the sport organization.

### WHY EARLY RF?

Statistics show that nearly 40% of non-doping-related

disputes brought before the SDRCC are settled amicably **before** escalating to an arbitration. By introducing Early RF to the sport community, sport disputes could settle prior to a National Sport Organization or Multi-sport Service Organization (NSO/MSO) internal appeal **instead** of at the SDRCC. How would this be possible? Early RF brings a neutral third party, the resolution facilitator, into play during the initial stages of a dispute rather than at the end. Too often the internal appeal process is hijacked by the perception that the only option left is to determine a winner and a loser; this leaves no room for parties to discuss the issue in a productive manner or attempt to better understand each other’s perspective. In the event that a settlement is not possible, the disputing parties often leave the RF session with a better understanding both of each other’s respective positions, as well as the alternative paths and resources available to resolve their dispute.

### THE BENEFITS OF AN EARLIER INTERVENTION

**For Athletes & Coaches**, Early RF provides a less confrontational and antagonistic means of resolving their disagreement with decisions made by their NSOs/MSOs. Relationships in sport are built on understanding and trust, and this process can help maintain (if not strengthen) those bonds, despite a potentially difficult situation for all individuals involved or affected. Early RF also provides an opportunity to expedite the resolu-

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## Early Resolution Facilitation – A First Step Towards Conflict De-Escalation *(continued)*

tion process. For athletes and coaches, this means less time and resources spent in a hearing room or preparing their case, and therefore more time and resources focusing on training, recovering, strategizing and competing in their respective sports.

**For Administrators**, the internal appeal process can place quite a strain on a sport organization. The time and money invested in internal appeal processes by NSOs/MSOs inevitably drain resources away from their high performance programs. Not only can a lengthy appeal further deplete sport organizations' already scarce resources, it also risks damaging relationships between athletes, coaches and administrators who play a key role in the overall success of their program. By adopting the Early RF process, NSOs/MSOs will have attempted cooperative dialogue as a means of resolving a dispute before having to resort to a more adversarial means. Similarly, the addition of the neutral third party resolution facilitator allows the MSO administrators to distance themselves from the decision-making process. This can be seen as an opportunity to increase the trust and perceived fairness between the athlete, coach, or fellow administrator towards its federation.

*“The time and money invested in internal appeal processes by NSOs/MSOs inevitably drain resources away from their high*

Through its partnership with the Canada Games Council (CGC), the SDRCC has provided dispute resolution services for the Canada Games since 2005. The CGC is the first sport organization to point to the SDRCC's Early Resolution Facilitation services in its internal appeal policy. Aaron Bruce, the Acting Director of Sport and Games with the CGC spoke about his satisfaction of this process: “We have had organizations/individuals file an appeal simply because they didn't understand the decision-making process and wanted more information. With Early RF, we are able to quickly convene an informal dispute resolution process that provides an efficient way to openly discuss items and dispel any misinformation. Now we are sometimes able to sort out and close an appeal after only one meeting, without having to go through a formal appeal”.

### CONCLUSION

Based on the aforementioned advantages and the testimonial from the CGC, the SDRCC believes the sport community would benefit from implementing Early RF into their appeal policies. By prefacing an internal appeal with a process that focuses on open communication, NSOs/MSOs and disputing parties can envision drastically reducing their legal costs, improving their existing relationships and, if all else fails, moving forward to the appeal process with a better understanding of the issues at hand. The only

### EARLY RF AT THE CANADA GAMES

### Notable Dates:

- **October 10:** Presentation in the *Sport and the Law* course, Acadia University (Wolfville, NS);
- **October 23:** Presentation in the *Sport Law Clinical Practice* course, Western University (London, ON);
- **November 3-5:** Kiosk at the *2017 Petro-Canada Sport Leadership sportif Conference* (Calgary, AB);
- **November 6:** Presentation at the *Women in Sports Law Conference* (Montreal, QC);
- **November 14:** Presentation to the *Sports and Entertainment Law Club*, University of Victoria (Victoria, BC);
- **November 16:** Presentation to the *Sport, Entertainment, and Law Society*, University of British Columbia (Vancouver, BC);
- **January 12, 2018:** Kiosk at *Allard School of Law*, University of British Columbia (Vancouver, BC);
- **January 13, 2018:** Workshop hosted by Gymnastics BC; (Richmond, BC);
- **January 23, 2018:** Presentation in the *Managing a Sport Club* course, Université Laval (Quebec City, QC);



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

They come from every region of Canada and have extensive experience in alternate dispute resolution and sports-related issues, but how much do we really know about them? The SDRCC has an impressive list of 59 mediators and arbitrators and we will be introducing them through our regular installments of “SDRCC Roster Member Profiles”. In this edition we would like to present, **Richard W. Pound, Arbitrator from Montreal, (QC)**.

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

My first exposure to ADR came as a result of being both a lawyer and a Chartered Public Accountant and therefore familiar with financial statements and business law. I have acted in several Canadian commercial arbitrations, as well as international arbitrations under the rules of the International Chamber of Commerce. In the sport context, I have done several arbitrations in the Court of Arbitration for Sport and many under the SDRCC rules. Quite



apart from the intellectual challenges of making decisions, I believe that experience as an arbitrator helps lawyers to focus on the importance of identifying the real issues in any case and making an effective presentation of evidence and argument.

### Specialization/Area of Expertise:

My principal area of expertise is tax litigation, but my sport involvement has led me into many other fascinating fields, such as television, marketing, investigations and legislative drafting.

### As an arbitrator with the SDRCC, I...

... want the disputing parties to be satisfied that they have had an opportunity to say everything they want to say in support of their respective positions and that I have heard and understood their positions. In rendering decisions, I want the parties to understand why they

may have won or lost. I also want to help the parties to organize their presentations and to address any points that I think may be important. If there are openings for settlement, even in the middle of a hearing, I encourage the parties to explore them, since a settlement satisfies both parties and a judgment may not.

### Favorite Sport(s):

The sports in which I competed with some degree of success are swimming and squash, but I appreciate any sport played at the highest levels. I have, reluctantly, decided that golf is not a sport, but an insoluble problem...

### Dispute Prevention Tip for Athletes and Federations:

Disputes, in the multi-faceted context of sport, with all of its rules, decisions and judgment calls, are inevitable. Not all disputes, however, are equally important. Nor are all the outcomes an “either-or” situation, so look for possible solutions before the dispute gets formalized. As an athlete, you do not fool yourself about training and competing, so do not fool yourself into thinking you will always be right. But, if you do think you are right and that the only way to achieve the appropriate outcome is by way of an appeal, prepare for it the way you prepare for competition and do your best, even

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

knowing that the outcome you want is not guaranteed. ■



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## A New SDRCC Workshop: Negotiation Skills for Sport Leaders

The SDRCC has recently added a new topic to its list of dispute prevention workshops. The objective of this workshop on negotiation skills is to build capacity among sport leaders to resolve disputes amicably without the need for neutral third-party intervention. The primary target audience is comprised of board members and senior management, but the topic is equally relevant to coaches, officials, athletes or even parents, among whom negotiations are a common occurrence. Unfortunately, more often than not, relationship preservation is pushed to the sidelines when emotionally-charged parties face each other in a conflict.

The workshop introduces the best practices of principled negotiation, through interactive scenario analyses and mock negotiations grounded in the sport context. Participants will learn tips and strategies to discover the underlying interests of parties, de-escalate conflicts and preserve relationships throughout the resolution of a disagreement or dispute. While comparing different approaches to negotiation, step-by-step processes are suggested to better analyse, strategize and communicate during a negotiation.

The workshop was successfully piloted in September 2017 and now forms part of the regular offering by SDRCC. Contact us at [education@crdsc-sdrcc.ca](mailto:education@crdsc-sdrcc.ca) if you are interested in this workshop being delivered, free of charge, to members of

## The Case Management Portal “Cloned” to be Licensed

Qualified by many as a jewel of online dispute resolution, the Case Management Portal (CMP) was designed, conceived and produced thanks to a close collaboration between the SDRCC and Canadian software developer hyperNET. Noting that several members of the alternative dispute resolution community expressed interest in this ground-breaking tool for online mediation and arbitration case management, the SDRCC has now opted to market it, using a software-as-a-service (SaaS) model.

The *Clinique de médiation of Université de Montréal* proudly became the very first CMP licensee. The SDRCC is equally thrilled that its work can benefit another not-for-profit organization which shares the same goals of providing its clients with a quick, affordable, practical, modern and secure access to justice. ■



## New Staff Member at the SDRCC

Stéphanie Du Grenier joined the SRDCC team on September 20<sup>th</sup> as Interim Case Manager. She will be in charge of case management in the Dispute Resolution Secretariat and for assisting in the general administration of the Centre.

She holds a bachelor degree in public management and a master in international law. Also fascinated by sea and mountains, Stéphanie is an avid scuba diver and rock climber. ■

**Save The Date! The next SDRCC Mediator & Arbitrator Conference will be held in Winnipeg, Manitoba, from November 1<sup>st</sup> to 3<sup>rd</sup>, 2018**



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

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

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

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