

IN THE NEUTRAL ZONE

News and Events of the Sport Dispute Resolution Centre of Canada



www.sdrcc.ca

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The Key to Success of the SDRCC Mediation Program

Mediation, as a method of dispute resolution at the SDRCC, has demonstrated its effectiveness in recent years, but not without effort! Previously, requests for mediation were scarce and dispute resolution focused on the object of the conflict, not at all on the relationship between the parties. At first, barely 13% of the disputes managed by the SDRCC were resolved by amicable settlement. Then in 2006, in an attempt to overcome this challenge, the SDRCC instituted a mandatory three-hour mediation session (known as resolution facilitation) for all parties requesting arbitration. The SDRCC has seen the average rate of consent settlements climb exponentially to reach 33% between 2006 and 2015, with some years exceeding 50%. SDRCC mediation services were initially provided by a sole internal mediator, but today they are delivered by more than 28 professional mediators located across Canada. As the volume of requests increases, the mediators, many of whom are able to conduct sessions in English, French and sometimes even bilingually, are more than capable to help the sport community settle disputes amicably.

A Win-Win Solution

The resolution facilitation process imposed on parties who file an arbitration request with the SDRCC allows to address essential components of dispute resolution, which would otherwise not be considered under the rigid framework of arbitration. The less formal approach of resolution facilitation permits an open, frank discussion about the interests and needs of the parties while fully

respecting the confidentiality of the procedures. This dispute resolution method focuses on the relationship between the parties, an aspect that arbitration tends to undermine, particularly as it distinguishes a winner from a loser rather than concentrating on practical solutions that might solve the problem. Opposing sides in a dispute often tend to fiercely defend their own positions and points of view; however, within the context of resolution facilitation, which is carried out in good faith and without prejudice, the discussions allow parties to hear and better understand the perspective of others. The solution they can find together may sometimes focus on improving conditions moving forward and avoiding other conflicts, rather than on simply remedy past events.

“...the cost to the SDRCC of cases settled through arbitration is more than twice as much as for cases resolved by mediated settlement...”

A Wide Variety of Cases

The numbers also show that the cases most often resolved through mediation involve carding (36%) and team selection (27%). Considering that, in these types of cases, there are almost always more affected parties than places on a team or carding opportunities available, these disputes would readily appear to be impossible to settle amicably. The statistics become even more impressive when one considers that these disputes represent the most common cases brought before the ordinary tribunal of the SDRCC. Far behind in the percentage of settlement by consent, come the disputes concerning eligibility (12%) and disciplinary sanctions (7%) unrelated to doping.

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The Key to Success of the SDRCC Mediation Program *(continued)*

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The Financial Advantage

It is also interesting to examine the benefits of mediation from a strictly financial standpoint. The SDRCC has compiled data since 2006 (when resolution facilitation became mandatory for all arbitration requests), which reveal that the cost to the SDRCC of cases settled through arbitration is more than twice as much as for cases resolved by mediated settlement or in resolution facilitation. In fact, a case resolved by mediation costs on average \$3,600, compared to \$7,500 for a case resolved by arbitration (after deducting the costs associated with the mandatory resolution facilitation process). These costs include, among others, professional fees paid to mediators and arbitrators (paid at the same hourly rate), teleconferencing expenses, mediation or hearing facility rentals, as well as transcription, translation or interpretation charges.

The chart besides clearly illustrates the trend whereby the average cost of cases in the SDRCC ordinary tribunal varies annually in a way that is inversely proportional to the consent settlement rate.

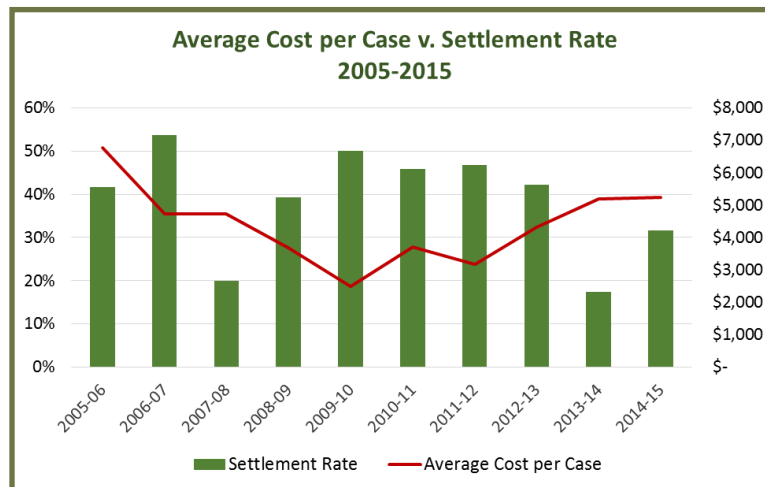
A Mitigated Time Factor

A statistical analysis of the SDRCC's ordinary tribunal confirms that cases are resolved quicker by arbitration than by consent settlement. It should be noted that one rule of mandatory resolution facilitation is that it may under no circumstances delay the arbitration process. Of importance is the fact that the applicable rules require that mandatory resolution facilitation never, in any way, delay the arbitration process. This means that for extremely urgent cases

(i.e. where a resolution is needed within just a few hours), the SDRCC may waive the obligation for parties to participate in mediation in order to proceed immediately with the arbitration. This situation certainly sheds light, in part, on those results, because when time is of the essence, arbitration becomes the priority; in all other situations, parties are permitted to take the time necessary to find sustainable solutions to their dispute.

Aside from the time required to attend the resolution facilitation session, the parties involved have little or no preparation to do and no documents to submit beforehand. Even if the facilitation does not lead to a mutually agreed-upon solution, the parties may still take advantage of the session to agree on certain uncontested facts, and possibly even develop a joint statement of facts, thereby greatly reducing the amount of evidence and written submissions they must prepare for the hearing before the arbitrator. For most parties, the time thus saved represents a significant saving in costs as well.

In short, there are obvious benefits to integrating informal dispute resolution, such as mediation, into the more formal arbitration process. The experience of the SDRCC clearly demonstrates that this obligation allows for a higher amicable settlement rate, while considerably reducing administrative tribunal costs and, most likely, costs incurred by the parties. This process also enables not only to address issues that fall outside of the more formal framework, but also to work on solutions or on the relationship between the parties involved, so that future dispute may be avoided. ■



Notable Dates:

- **February 11, 2016:** SDRCC kiosk and workshops hosted by ViaSport BC (Vancouver, BC);
- **February 11, 2016:** SDRCC kiosk at the Court of Arbitration for Sport Public Seminar (Vancouver, BC);
- **February 19-21, 2016:** SDRCC kiosk and presentation at the Coaches Association of Ontario Conference (Niagara Falls, ON);
- **March 9, 2016:** SDRCC workshop hosted by Sport4Ontario (Toronto, ON);
- **March 23, 2016:** SDRCC presentation at Algonquin College (Ottawa, ON);
- **April 14 2016 :** SDRCC presentation at Rugby Canada's Annual General Meeting (Victoria, BC);
- **April 28-29, 2016:** SDRCC workshop at the 2016 National Aboriginal Physical Activity Conference (Vancouver, BC).



The SDRCC Case Management Portal, Five Years Later

Case management at the Sport Dispute Resolution Centre of Canada, as in so many organizations, used to be weighed down by printed documents, tabbed binders, fax transmissions, postal and courier deliveries, etc. Far from being eco-friendly, this situation was also costly, slow and administratively cumbersome for the tribunal and the panel as much as for the parties and their representatives. Then came the email era, which, while much faster and kinder to the environment, caused confusion through presumed message transmission errors, inadequate electronic filing systems among recipients, lost or omitted attachments, attachments that were too heavy to send via email, full mailboxes, calendar transcription errors, and so on.

The good news is that since February 2011, the SDRCC has provided to parties access to its Case Management Portal (CMP). This innovative online dispute resolution platform allows the SDRCC to be a virtual and accessible tribunal, from anywhere in the world, 24 hours a day. A godsend for parties, particularly athletes, coaches and sports federation employees who are active in the international arena almost year-round, as well as for their representatives who are often on the move as much as their clients. Arbitrators and mediators have also gradually adopted the CMP, some a little faster than others.

An Overview

The CMP provides users with full access to their case from any computer or smartphone. From documents submitted by the parties and their representatives to administrative tribunal correspondence, including the panel's orders and awards and an interactive calendar of proceedings, the entire case is literally at the users' fingertips of users, regardless of their location or time of day. Its main functionalities are described in the sidebar.

The Benefits of Virtual Case Management

Managing tribunal cases using the CMP offers a number of indisputable advantages, from both the SDRCC's and parties' points of view. In addition to centralizing all key components of a case on a platform accessible 24/7, this

Main Features of the CMP

Users navigate through six different tabs, each with its own particular features.

The **Main** tab offers users an overview of their case as well as general and administrative information, such as the list of parties involved and the teleconference numbers assigned to the case.

The **Party Filings** tab enables users to view all of the documents submitted in a case and sort them by name, date and/or party. All documents may also be downloaded onto a local computer, tablet or smartphone, as applicable.

The **Admin Documents** tab provides users with access to all SDRCC administrative communications in reference to their case, including letters, notices, emails and the minutes of preparatory meetings.

The **Orders/Awards** tab contains all documents issued by the panel, including preliminary decisions, procedural orders and awards, along with the reasons for the decision.

The **Events** tab contains the calendar of proceedings for the parties, all deadlines for the filing of documents and communication of information to the tribunal as well as all scheduled meetings, including mediation sessions and hearings. Users can choose to download/import all or some events from the CMP calendar to their own electronic agenda. The calendar automatically sends an email reminder to the parties 24 or 72 hours prior to each event, as applicable.

The **Forms/Resources** tab is a directory where users can find all tribunal forms, preparatory meeting agendas, procedural rules that apply to their case and other helpful resources such as the CMP User Guide.

tool allows users who travel to limit the need to print and carry in their luggage numerous documents, which prevents theft, loss and oversights and any resulting breach of confidentiality. Regardless of whether they travel or not, 82% of users surveyed by the SDRCC confirmed that the CMP had substantially reduced the need to print documents. While no formal data collection has been conducted on this aspect, it is fair to claim that

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The SDRCC Case Management Portal, Five Years Later *(continued)*

(continued from page 3) the tool represents significant time and cost savings for both the SDRCC and the parties involved in cases. In fact, in addition to bringing down postage/courier costs to deliver documents to all parties and panels, the CMP has lowered the SDRCC's printing and copying costs, eliminated the need for document storage and increased staff productivity.

It should also be noted that the SDRCC's administrative team can now open urgent cases remotely on evenings and weekends, which eliminates the need for staff to be at the office to deal effectively with these situations. The CMP's administrative interface allows a user to be added to a case in no time at all. Users who are added to a case during proceedings - lawyers for example - gain access to the same information as the other parties, even about what occurred prior to them being added to the CMP. In addition, documents can be uploaded by an employee from any computer, which means documents are available to the parties and panel within minutes. A message is sent directly from the CMP administrative interface to all parties to advise them of changes made to the case file.

The CMP is also useful for the professional development of arbitrators and mediators who take part in the SDRCC Observer Program, as it permits case observers to consult documents online and read up on the situation before the resolution process begins. Last but not least, the CMP promotes an environmentally-responsible management of tribunal cases.

The CMP Security

Security merits a special section, not only because it is a priority of all users, given the confidential nature of the

cases handled by the SDRCC, but also because it is an obligation to which the SDRCC has committed. Among the security measures governing the use of the CMP are random passwords assigned to new users, who can then change them, provided that the new password is robust. A user account is blocked following three unsuccessful connection attempts. Sessions expire after a predetermined period of inactivity, which lowers the chances of the account being accessed by a non-authorized person if the user forgets to properly log out. All documents uploaded to the CMP are encrypted and completely deleted once a file has been closed, 21 days after its resolution. In a survey conducted by the SDRCC in 2013, 100% of users said they were comfortable with the portal's security measures. However, despite this high satisfaction rate, the SDRCC added additional security measures as part of a recent system update.

From an administrative perspective, because messages to the parties are sent directly from the CMP platform and case-related documents are accessible online, email attachments sent by SDRCC personnel have almost become a thing of the past.

This has eliminated the risk of the wrong attachment being inadvertently sent, or going to unwanted recipients.

In short, the CMP is a versatile tool that has become indispensable to an efficient, accessible, economic, eco-friendly and simplified management for all users of SDRCC's dispute resolution services. Moreover, it is drawing the interest of other administrative tribunals in the sports world and beyond, which suggests that the product may be marketable in the near future. The SDRCC frequently updates the CMP and pays particular attention to suggestions for its improvement. ■

"This innovative online dispute resolution platform allows the SDRCC to be a virtual and accessible tribunal, from anywhere in the world, 24 hours a day."

Sport organizations and sport tribunals interested in experiment with the CMP, with the goal of possibly using it for the management of their own appeal procedures, may contact the SDRCC. Access may be granted to a fictive case to enable them to become familiar with the user's interface.



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