



Representing Affected Parties

by Dr. Emir Crowne, SDRCC *pro bono* lawyer



Representing affected parties during the dispute resolution process is a complex task. From the outset it is essential to identify the affected party's interests and position. It cannot, and should not, be assumed that the affected party's interest(s) necessarily align with that of the respondent (usually the NSO).

Indeed, affected parties almost always arise in team selection or carding matters. They are rare in other types of sporting disputes dealt with by the SDRCC. To use the language of the Canadian Sport Dispute Resolution Code, an affected party is a person who "may be adversely affected" by a "decision of the [SDRCC]." Although one can query whether a mediated settlement falls under this definition, it is presumably intended to capture 'resolutions' (whether arbitral or mediated) that have been achieved through the machinery of the Code.

When a claimant athlete challenges a team selection decision, he/she is either arguing that he/she should have been named to the team in question, or the criteria/process used to nominate other athletes over the claimant was, in some way, defective, inappropriate or breached principles of fairness. Sometimes claimants

argue both (i.e. team selection and criteria/process). Where a claimant argues that a discretionary spot should be filled, there may not necessarily be any affected parties at all, or as is becoming commonplace, the NSO identifies everyone as an affected party.

This is what I call the "*affected party dump*." It is a growing tactic among NSOs. NSOs never admit flaws in their selection process. It is always airtight and above reproach. How dare a claimant challenge them? In answering the claimant's request, the NSO then names virtually every athlete as being "affected." It leaves the claimant in a dark and awkward spot. The claimant is implicitly seen as a "trouble-maker" and the affected parties, mindful of their own self-interest and need for self-preservation, simply side with the NSO throughout the process. The *affected party dump* tactic also makes settlement nearly impossible, since all parties have to agree.

Tactics aside, it is also important for affected parties to articulate their position early in the process. Affected parties, and their representatives, must be candid and forthright with the panel/SDRCC. If they truly will not be "adversely" affected by a decision, they should state it. The Panel then has the authority to decide whether they should remain involved in the proceedings or not. I have seen cases where an "affected party" in an *affected party dump* situation would have actually been better off if the claim-

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ant succeeded. This is not what the Code intended. It was intended to capture situations of truly adverse impacts, like team de-selection.

In other cases, NSOs invoke the *affected party dump* to clean up their own internally flawed processes. Even today, there are NSOs who do not involve or notify affected parties during their internal dispute resolution processes. Only when the matter arrives at the SDRCC does the respondent NSO indicate that several/all athletes may indeed be affected. Those NSOs argue that it's either their "policy" not to notify affected parties for internal appeals, or are simply unable to administratively coordinate such parties. It is then left to the SDRCC to handle not only the increased administrative burden, but to the arbitrator to decide on whether such "no notification policies" violate principles of natural justice and fairness (which they almost certainly do). This practice also needs to stop. NSOs that continue to not involve affected parties in their internal dispute resolution process should have this weighed against them during arbitration proceedings, and costs awards.

"...it is also important for an affected parties to articulate their position early in the process."

In closing, it is important to note that affected parties have the same standing as claimants and respondents under the Code. In a recent dispute, counsel for the claimant indicated that the claimant and respondent were in agreement as to the SDRCC's jurisdiction, so how could an affected party challenge such concurrence? To which the arbitrator promptly reminded everyone that all "parties" under the Code have equal standing. In that vein, affected parties - athletes who are truly affected in an adverse way - should undertake their own independent submissions. They should not rely on either the claimant or the respondent to make their case for them.

Indeed, inaction on the part of an affected party will (and should) prevent that party from re-appealing the issue if the claimant succeeds, either on the basis of issue estoppel or sub-section 6.12 (d) of the Code. Affected parties should therefore take the matter as seriously as the claimant does, and seek legal counsel or help from the SDRCC's *pro bono* list, if necessary. ■

** The views expressed within this article are those of the author alone, and not those of the SDRCC, the author's employers or the author's clients.*

NEW Resolution Facilitation Preparation Tool



Ever wondered what to expect from a resolution facilitation process? Ever wondered what you could do to come better prepared? This new tool proposes a grid for parties to fill out individually before a resolution facilitation (or mediation). The questions asked in the document can also be helpful during the session to guide the party's analysis of various settlement options that might be discussed. It can be downloaded as a Word document to be populated electronically or in printable PDF format. ■

<http://www.crdsc-sdrcc.ca/eng/dispute-resource-publications>

"Simplified Version" of Appeal Policy Guide now Available!!

The "Guide to the Development of an Appeal Policy" is now offered in a simplified version, especially designed to assist smaller sport organizations and those with less resources such as sport clubs, regional or provincial sport organizations. and is now available on the SDRCC website. ■

<http://www.crdsc-sdrcc.ca/eng/dispute-resource-contract-templates>

Notable Dates:

- June 7–8 , 2016: SDRCC kiosk and presentation at 2016 Canadian Interuniversity Sport's AGM (Toronto ON);
- June 11, 2016: Presentation at SaskSport's AGM (Regina, SK);
- July 17–25, 2016: SDRCC kiosk at 2016 Quebec Games (Montreal, QC);
- September 22-24, 2016: Presentation at International Academy of Mediators Conference (Vancouver, BC).



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 44 mediators and arbitrators and we will slowly be introducing you to some of them through our regular installments of “SDRCC Roster Member Profiles”. In this edition we would like to present, **Patrice Brunet, Arbitrator from Montreal, Quebec.**



What led you to a career in ADR?

Well, to begin with, I never envisioned making a career of this! As a 20-year-old law student, I got involved with Triathlon Québec, Triathlon Canada and the International Triathlon Union. Following this, I was “hired” (as a volunteer) on internal appeal committees, notably for freestyle skiing. In 1994 at the age of 25, I was appointed to the Court of

Arbitration for Sport. I think I hold the record as the youngest CAS arbitrator to date! As a lawyer, I also represented Canadian athletes at the 1996, 2002 and 2006 Olympic Games. It took several years before I actually began to earn money in this profession.

Specialization/Area of Expertise:

For 25 years, I have practised business immigration law and, of course, sports law. I also hold governance certification from The Directors College (C. Dir.). Since the summer of 2015, I have led the organization in charge of planning the ITU Triathlon World Cup, which will be held on August 7, 2016, in Montreal.

As an arbitrator with the SDRCC, I...

...consider myself very fortunate to be able to combine my passion for sport with my profession. Many key issues surround national teams and doping, and arbitrators are charged with protecting the essence of sport. It is a true

privilege to be an active player in this arena, particularly considering that the SDRCC is a world leader in sports arbitration. The decisions we make often have far-reaching consequences, and I am humbled by the opportunity to do what I do. Program administrators and athletes alike have invested enormous resources into their careers, and out of respect for them, we have a duty to clearly understand all of the issues involved and make fair decisions.

Favorite Sport(s):

I have been involved in many sports, but I’ve had a love affair with the triathlon since the age of 20. I still compete, but it appears I’m slowing down.

Dispute Prevention Tip for Athletes and Federations:

All parties must read the applicable codes, regulations and policies carefully, because these are the foundations on which arbitrators base their rulings. Also, the issues are often emotionally charged and are therefore difficult for athletes to assess when the case involves them personally or when the athlete is our child (even if he or she is an adult!) Turning to a lawyer or other expert for legal advice enables the person to gain an objective perspective of the chances for success before proceeding further. We tend to forget that the telephone is a useful instrument that promotes dialogue in a spirit of openness and understanding. As useful as emails are, they will never replace dialogue and the nuances communicated through conversation. ■

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



Follow us on [LinkedIn](#). Stay current on the publication of new decisions while keeping up with the Sport Dispute Resolution Centre of Canada’s activities!



What do you think of an Ombuds Program for Canadian sport? Tell us by taking our survey!

The idea of creating an **Ombuds Program** for the Canadian sport community has recently been revived by the SDRCC. A working committee was appointed by its Board of Directors to “engage in a consultative process to clarify needs and expectations of the sport community with regards to an eventual Ombuds Program, to formulate recommendations pertaining to the scope of service of an Ombuds Program and to evaluate the resources required to establish such program.”

An online survey was developed by that committee with the intent of reaching as many members of the sport community (including athletes, coaches, volunteers, parents, officials and staff members) as possible, and obtain their input into what an Ombuds Program for sport could look like in our country. We invite as many people as possible to take the survey and promote it through their sport organizations’ websites and social media. The survey will be **closed on June 24, 2016**. ■

Link to complete the English version of the survey: <https://www.surveymonkey.com/r/WP7TRTT>
Lien pour compléter le sondage en français : <https://www.surveymonkey.com/r/WHF22MZ>

SDRCC Welcomes New Roster Members

Roster attrition since the last appointments in 2014 prompted the Board of Directors to make mid-term appointments to its roster. The SDRCC is pleased to welcome **The Honourable Hugh Fraser** back as an arbitrator and welcome new-comer **Louise Pelletier** to our ranks as a bilingual mediator. Both Hugh and Louise began their mandates in February 2016 following attendance at the SDRCC Mediator and Arbitrator Conference in Vancouver, BC. ■

How are we doing?

The SDRCC is continually seeking to improve the quality of its services. To that end, we have launched a **Client Satisfaction Survey** for parties involved in SDRCC proceedings. If this applies to you and you receive an email with the link to our survey, please take 5-10 minutes to complete it as your opinions matter to us. ■

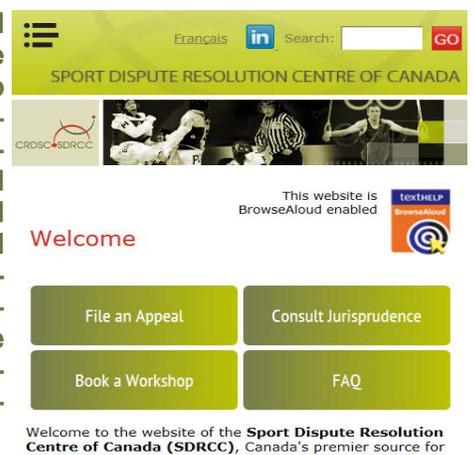
Comings and Goings...

The SDRCC welcomes **Christina Beauchamp** back from her parental leave and wishes **Catherine Pitre** much success in her new role as Head of Case Management at Sport Resolutions, our counterpart in the UK.

As **Cynthia Colas Livernois** left us to take her maternity leave, we welcome **François-Olivier Lanctôt** as interim Education and Communication Coordinator. Look for him and the SDRCC kiosk at your next Canadian sport community events. ■

Check out our New and Improved Website !

If you haven't visited the SDRCC website lately, be sure to check it out! Responsive design technology enables visual compatibility with all mobile devices and quick reference buttons help users better navigate the site and access resources and information. ■



The SDRCC team congratulates Cynthia on the birth of her son Nathan !!!



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