

# IN THE NEUTRAL ZONE

News and Events of the Sport Dispute Resolution Centre of Canada



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

October 2015

## The Future of Athlete Agreements in Canada by AthletesCAN



AthletesCAN, the association of Canada's national team athletes, will be releasing *The Future of Athlete Agreements in Canada*, a system wide evaluation of the Athlete Agreement's efficacy in reflecting both the needs and obligations of high performance athletes and National Sport Organizations (NSOs) this October. Prior to its official release, the paper has been presented to athlete leaders from more than 50 sports at the 2015 AthletesCAN Forum, the largest gathering of Olympic, Paralympic and World Championship athlete representatives outside of competition on September 26<sup>th</sup> in Mississauga, ON.

AthletesCAN has had a long history of advocacy initiatives which have identified areas in need of change to support and uphold the rights of Canada's high performance athletes. Athlete Agreements in particular have undergone a drastic change since the 1980s and no longer meet the needs of the parties carrying out both sides of the contractual agreement.

After doping, the majority of disputes in the Canadian sport system flowing out of the construction or enforcement of Athlete Agreements are team selection and carding eligibility cases. These 'Athlete

Agreements', between athletes and NSOs, adopted systemically in Canada, govern the daily relationships and mutual obligations between athletes and their sport organizations.

Disputes related to Athlete Agreements, like any formal or informal dispute in Canadian sport, are distractions to the performance of Canada's athletes and, ultimately, to reaching the goals of the Canadian Sport Policy. These disputes need to be minimized to optimize interactions between athletes and their NSOs and create high performance relationships that add value to the sport system and enhance the athlete experience.

It is for these reasons that in 2014 the AthletesCAN Board of Directors struck a working group to assess the current state of the Athlete Agreement in the Canadian sport system and, where necessary, propose possible interventions. This paper, entitled *The Future of Athlete Agreements in Canada*, is a summary of that research and findings.

"The goal of this project is to raise awareness of the challenges that modern Athlete Agreements create for athletes and NSOs", says Josh Vander Vies, President of AthletesCAN. "The paper aims to begin a national conversation on tangible changes to help both NSOs and athletes better under-

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## The Future of Athlete Agreements in Canada (continued)

(continued from page 1) stand how to use the Athlete Agreement to improve their relationship, and in turn, performance both on and off the field of play. After extensive research and consultation, we have established four recommendations for NSOs and athletes to implement as part of a risk management strategy which would address both capacity and financial implications of appeals, disputes and possible breaches in contract.”

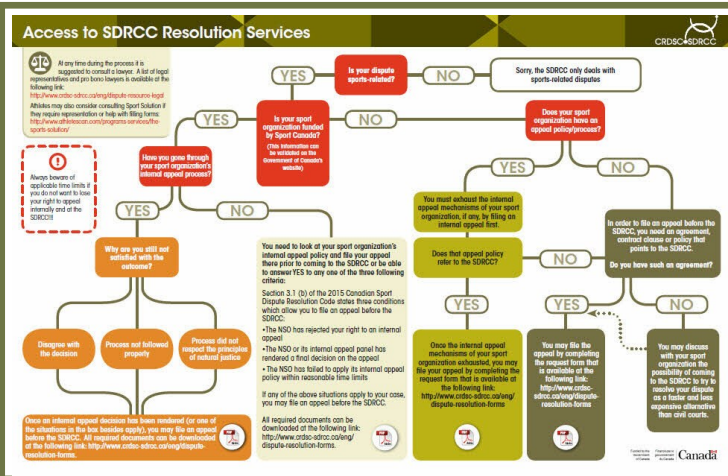
The first section of the paper discusses how the Athlete Agreement has changed as Canadian sport has evolved into a more sophisticated high performance system. In the second section, four particular issues within the AA were identified: provisions regarding self-funded athletes, the integration of anti-doping provisions into AAs, use of social media clauses and relocation requirements. In particular and through these issues, the commentary focuses on an increasing power imbalance between the parties that has made the enforcement of Athlete Agreements difficult to predict and has restricted athlete input into these and other pertinent matters. Concrete examples from the archives of the AthletesCAN Sport Solution Legal Clinic and SDRCC decisions illustrate how particular instances of these issues have affected athletes and NSOs.

*“The goal of this project is to raise awareness of the challenges that modern Athlete Agreements create for athletes and NSOs.”*

“Although relatively few disputes brought before the SDRCC are strictly about the Athlete Agreement, those agreements are regularly invoked by parties in SDRCC proceedings and they often inform decisions of arbitrators” notes Marie-Claude Asselin, CEO of the SDRCC. “Because the Athlete Agreement may equally serve to deny an athlete’s appeal or to overturn a decision of the NSO, its thoughtful crafting should be intended to protect the rights of both the NSO and the athlete.”

Section three explores the structures and experiences in other similarly situated jurisdictions, including the United States, Australia, New Zealand and the United Kingdom. The final section proposes specific solutions to identified issues, including separating commercial obligations from the main agreements, developing meaningful reciprocal obligations within the AA, facilitating negotiation, and annotating agreements in order to help both NSOs and athletes better use the Athlete Agreement to meet their respective and mutual needs.

*The Future of Athlete Agreements in Canada*, to be followed by additional resources for NSOs and sport system stakeholders to support the change process, aspires to promote best ever performances across a thriving Canadian sport system, through a targeted and measured modification of existing practices. ■



## New resource: ACCESS TO SDRCC RESOLUTION SERVICES

The purpose of this flow chart is to help members of the sport community understand where they stand in an appeal process and to know if or when they can appeal a decision to the SDRCC. This tool also refers parties to the appropriate forms to file their request and to other resources to obtain legal assistance. This most recent SDRCC tool is now available in a pdf version as well as on an interactive platform at the following link: <http://www.crdsc-sdrcc.ca/eng/dispute-resource-publications>. ■



## 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, David Bennett, **mediator and arbitrator** from **Ottawa, Ontario**.

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



I have always liked problem solving and negotiating. Throughout my career, I often saw that the lawyers seemed to “win” more than their clients. That led me to seek another approach. I decided to establish a Dispute Resolution practice eighteen years ago. Through my work as a mediator and Discrimination and

Harassment Counsel for the Law Society of Upper Canada, I have worked towards assisting parties in resolving their disputes in a manner in which everyone can “win”. For the past four years I have had the privilege of being an Adjudicator for Indian Residential School claims, giving me the experience to embark on a new career as an arbitrator.

### Specialization/Area of Expertise:

My areas of expertise include sports law, workplace issues, discrimination and harassment, public policy, and aboriginal issues. I act as a mediator, investigator, arbitrator and ombudsman.

### As a mediator-arbitrator with the SDRCC I...

...have been very fortunate to combine my passion for sports with my dispute resolution background. I thrive on

the high stakes involved and the speed with which cases need to be resolved. I enjoy the opportunity to meet the high performance athletes and dedicated volunteers who contribute to Canadian sports. I also appreciate working with some of the best mediators and arbitrators in the country. It is a pleasure to work with such a supportive organization led by Marie Claude.

### Favorite Sport(s):

I have a passion for hockey, which I have played since I was a young boy. I am a true sports fan and through my work with the SDRCC have developed an appreciation for all competitive sports.

### Dispute Prevention Tip for Athletes and Federations:

I am always in awe of the training, commitment and competitive drive that go into becoming an elite athlete. The desire to win is what serves athletes so well in competition. However this need to “win” is often a liability in resolving a sports dispute. The idea of a “win-win” solution can be new to many athletes. The ideal outcome of a successful mediation is that everyone can win. My advice to athletes is to trust the ADR professional to guide them, just as they rely on their coaches. ■

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

### Notable Dates:

- **October 16, 2015:** SDRCC workshop at the Board of Governors’ meeting of Curling Canada (Ottawa, ON);
- **October 17, 2015:** SDRCC workshop at the Board of Directors’ meeting of the Shooting Federation of Canada (Ottawa, ON);
- **November 7, 2015:** SDRCC kiosk at the Athlete Advance and Game Plan Summit 2015 hosted by the Canadian Sport Institute Pacific (Richmond, BC);
- **November 10, 2015:** SDRCC workshops hosted by Sport Manitoba (Winnipeg, MB);
- **November 12-14, 2015:** SDRCC kiosk at the 2015 Petro-Canada Sport Leadership sportif (Winnipeg, MB);
- **January 27-28, 2015:** SDRCC kiosk and workshops at the 2016 Canadian Sport for Life Summit (Gatineau, QC);
- **February 11, 2016:** SDRCC Arbitrator and Mediator Conference and CAS Public Seminar (Vancouver, BC). ■





## EXITING BOARD MEMBERS

At the end of November this year, three SDRCC board members will finish their second and last mandate as Directors. Judith Ann Tutty, John Reid and Frank Fowlie dedicated the last six years to their shared passion for sport and alternative dispute resolution in Canada. They all, each in their own way, greatly contributed to the success of our organization during their term, and their legacy will be felt for a long time.

THANK YOU SO MUCH FOR YOUR CONTRIBUTION !



## The SDRCC 2016 Mediator and Arbitrator Conference is Going International !!!

The SDRCC is partnering with the **Court of Arbitration for Sport (CAS)** to host a seminar in Vancouver, BC, on February 11, 2016. This event marks the first time that the CAS will hold such an event on Canadian soil. Taking place in lieu of the public component of the **SDRCC Annual Mediator and Arbitrator Conference**, the seminar will be open to the public and will bring together some of the best alternative dispute resolution (ADR) professionals in the world.

A full day of exciting sessions and networking opportunities will bring participants to learn more about the following topics, already on the preliminary program: a presentation of the CAS system; time and cost issues in arbitration; the role of mediation in sport; the new World Anti-Doping Code; recent doping jurisprudence; and the future of sports arbitration and mediation.

### Who should attend?

- ♦ Lawyers, arbitrators and mediators with an interest in sport law and sport ADR;
- ♦ Law students with an interest in ADR and/or in sport;
- ♦ Students in sport administration;
- ♦ Sport administrators, board members, athlete representatives and agents.

### Will my participation count for CLE credits with my law society?

The SDRCC conference program has been recognized in the past by the law societies of BC, NB, ON, QC and SK. Results from applications for CLE credits will be released as soon as available.

### How do I Register?

Information to be made available soon on the SDRCC website at [www.sdrcc.ca](http://www.sdrcc.ca). ■



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